



**AGENDA**  
**BELOIT CITY COUNCIL**  
**City Hall Forum - 100 State Street, Beloit, WI 53511**  
**7:00 PM**  
**Monday, August 7, 2023**

Public Comments via email are welcome. If you would like to provide public comment for the Public Comment section of the Agenda, please submit those to [PublicComment@beloitwi.gov](mailto:PublicComment@beloitwi.gov) by 12:00 noon on Monday, August 7, 2023.

1. CALL TO ORDER AND ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. SPECIAL ORDERS OF THE DAY/ANNOUNCEMENTS
  - 3.a. Proclamation 2023-037 recognizing National Night Out (Forbeck)  
[Attachment](#)
  - 3.b. Proclamation 2023-038 recognizing National Farmers Market Week (Forbeck)  
[Attachment](#)
  - 3.c. Proclamation 2023-040 recognizing August as Black Business Month (Forbeck)  
[Attachment](#)
  - 3.d. Proclamation 2023-039 recognizing Gladys Elizabeth Mahan (Forbeck)  
[Attachment](#)
4. PUBLIC HEARINGS
5. PUBLIC COMMENTS
6. CONSENT AGENDA

*All items listed under the Consent Agenda are considered routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed from the General Order of Business and considered at this point on the agenda.*

  - 6.a. Consider the approval of the minutes of the regular meeting of July 17, 2023 (Granger)  
[Attachment](#)
  - 6.b. Consider the approval of the minutes of the special meeting of July 24, 2023 (Granger)  
[Attachment](#)
  - 6.c. Consideration of Resolution 2023-116 approving applicants for Alcohol Beverage Operator's (Bartender's) Licenses for years 2023-2025 (Granger)  
[Attachment](#)

- 6.d. Consideration of Resolution 2023-112 awarding Public Works contract C23-11, Riverside Park Lagoon Pump (Frisbee)  
[Attachment](#)
- 6.e. Consideration of Resolution 2023-113 awarding Public Works contract C23-06, Concrete Panel Replacement (Frisbee)  
[Attachment](#)
- 6.f. Consideration of Resolution 2023-115 accepting the petition for direct annexation of 5037 County Road X and the adjacent vacant parcel from the Town of Turtle (Christensen) - Acceptance and Referral to Plan Commission  
[Attachment](#)
- 6.g. Consideration of Resolution 2023-114 approving an amendment to the Rules of Procedure of the Board of Appeals (Christensen)  
[Attachment](#)
- 6.h. Consideration of Resolution 2023-118 approving a Development Agreement between the City of Beloit and NorthStar Medical Radioisotopes, LLC (Christensen)  
[Attachment](#)
- 6.i. Referral to Plan Commission: Ordinance No. 3806 amending the Zoning District Map of the City of Beloit for the property located at 5037 E County Rd X and the vacant land to the west (Christensen)  
[Attachment](#)

## 7. LICENSES

## 8. ORDINANCES

- 8.a. Consideration of Ordinance No. 3805 to amend section 18.02 (15)(aa) of the Code of General Ordinances of the City of Beloit authorizing outdoor vending by Balet Folklorico Juvenile Sangre Mexicana de Beloit Inc for two annual community events in Riverside Park or Telfer Park (Amundson) First Reading  
[Attachment](#)
- 8.b. Consideration of Ordinance No. 3798 to amend section 18.02 (15)(w) of the Code of General Ordinances of the City of Beloit authorizing outdoor vending by Hispanos Unidos Rompiendo Fronteras, Inc. for Hispanic Heritage Festival in Riverside Park or Telfer Park (Amundson) Second Reading  
[Attachment](#)
- 8.c. Consideration of Ordinance No. 3802 to amend section 2.02(2)(c) of the Code of General Ordinances of the City of Beloit pertaining to legal holidays for city council meetings (Krueger) Second Reading  
[Attachment](#)
- 8.d. Consideration of Ordinance No. 3793 amending the Zoning District Map of the City of Beloit for the property located at 2000 Gateway Boulevard (Christensen) Plan Commission recommendation for approval 5-0 Second Reading  
[Attachment](#)
- 8.e. Consideration of Ordinance No. 3804 amending the Future Land Map of the City of Beloit



Comprehensive Plan for the property located at 1006 Park Avenue (Christensen) Plan Commission recommendation for approval 5-0 Second Reading

[Attachment](#)

- 8.f. Consideration of Ordinance No. 3794 amending the Zoning District Map of the City of Beloit for the property located at 1006 Park Avenue (Christensen) Plan Commission recommendation for approval 5-0 Second Reading

[Attachment](#)

- 8.g. Consideration of Ordinance No. 3797 amending the Zoning District Map of the City of Beloit for the property located at 2231 Trevino Court (Christensen) Plan Commission recommendation for approval 4-1 Second Reading

[Attachment](#)

- 8.h. Consideration of Ordinance 3800 prohibiting parking on Prospect Street north of Public Avenue (Frisbee) Traffic Review Committee unanimously recommended approval of the ordinance Second Reading

[Attachment](#)

- 8.i. Consideration of Ordinance 3801 prohibiting parking on Fir Drive between Burton Street and Woodman Lane (Frisbee) Traffic Review Committee unanimously recommended approval of the ordinance Second Reading

[Attachment](#)

- 8.j. Consideration of Ordinance 3799 establishing a 15-minute parking zone for two parking spaces in the 300 block of State Street (Frisbee) Traffic Review Committee unanimously recommended approval of the ordinance Second Reading

[Attachment](#)

## 9. APPOINTMENTS

*The individuals named below have been nominated for a seat on a city board, committee or commission. Each nomination is subject to confirmation by the City Council, approval of appointment will be accomplished by one motion unless a council member requests to take up a nomination separately, in which event the nomination will be removed from the General Order of Business and considered at this point on the agenda.*

## 10. COUNCILOR ACTIVITIES AND UPCOMING EVENTS

## 11. CITY MANAGER PRESENTATION

- 11.a. City Manager Update

## 12. REPORTS FROM BOARDS AND CITY OFFICERS

- 12.a. Consideration of Resolution 2023-119 approving an Intergovernmental Agreement between the City of Beloit and Milwaukee Transportation Services, Inc (Milwaukee County Transit System) to participate in transit touchless fare media (WisGo App) (Christensen)

[Attachment](#)

## 13. ADJOURNMENT

\*\* Please note that, upon reasonable notice, at least 24 hours in advance, efforts will be made to accommodate the needs

of disabled individuals through appropriate aids and services. For additional information to request this service, please contact the City Clerk's Office at 364-6680, 100 State Street, Beloit, WI 53511.

Marcy J. Granger  
City of Beloit Clerk-Treasurer  
[www.beloitwi.gov](http://www.beloitwi.gov)

Regular City Council meetings occur on the first and third Mondays of the month. Meetings are televised on Charter Cable Access digital channel 992 and are live streamed via the Beloit Access Television (BATV) YouTube Channel. Council meetings are rebroadcast on Charter Cable Access digital channel 992 and are archived on the BATV YouTube Channel for viewing at your leisure.





## *Official Proclamation*

**WHEREAS**, the National Association of Town Watch (NATW) sponsored a unique nationwide crime prevention and community safety program on August 1, 2023, entitled "National Night Out"; and

**WHEREAS**, the National Night Out campaign was introduced in 1984 and provides a unique opportunity for the City of Beloit to join forces with thousands of other communities across the country in promoting community policing and crime prevention efforts; and

**WHEREAS**, the Beloit Police Department, Beloit Area Crime Stoppers and the Beloit Fire Department play a vital role in collaborating with our community to reduce crime, fear, and disorder in Beloit, Wisconsin, and supported "National Night Out" in Beloit on August 2, 2023; and

**WHEREAS**, it is essential that all residents of Beloit be aware of the importance of crime prevention and community policing programs and the impact that their participation can have on creating and sustaining safe neighborhoods in Beloit; and

**WHEREAS**, police-community partnerships, neighborhood safety, awareness and cooperation are important themes of the "National Night Out" program; and

**WHEREAS**, the City of Beloit has a longstanding tradition of gathering within our many diverse neighborhoods to celebrate and further law enforcement and community partnerships.

**NOW, THEREFORE, THE CITY COUNCIL PRESIDENT OF THE CITY OF BELOIT** does hereby proclaim Wednesday, August 2, 2023, was "**NATIONAL NIGHT OUT**" in Beloit, and encourages residents to continue to strengthen and promote neighborhood spirit and police-community partnerships beyond just one night of fellowship.

Presented this 7<sup>th</sup> day of August, 2023.

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Regina Dunkin, President  
Beloit City Council

ATTEST:

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Marcy Granger, City Clerk - Treasurer





## *Official Proclamation*

**WHEREAS**, local farmers provide residents with access to locally and regionally produced foods through the Beloit Farmers' Market, which accommodates the demand for a diverse array of agricultural products; and

**WHEREAS**, farmers markets and other agricultural direct marketing outlets provide infrastructure to assist in the distribution of farm and value-added products, thereby contributing billions of dollars each year to the U.S. economy; and

**WHEREAS**, farmers markets support healthy communities, bringing delicious and nutritious food to the table; and

**WHEREAS**, farmers markets promote sustainability of family farms, preserve farmland, increase access to nutritious food, support healthy communities, and stimulate local economies; and

**WHEREAS**, farmers markets are essential businesses, resilient and dependable in making seasonal foods available to the community without the added costs of shipping, storage and inventory control; and

**WHEREAS**, the Downtown Beloit Farmers' Market is held rain or shine every Saturday from 8 a.m. - 1 p.m. in the heart of downtown, State and Grand Ave., from May through October; and

**WHEREAS**, the Downtown Beloit Farmers' Market moves indoors on Saturdays from November through April, hosting vendors and customers from 9 a.m. to Noon at the Downtown Beloit Association, 557 E. Grand Avenue.

**NOW, THEREFORE, THE CITY COUNCIL PRESIDENT OF THE CITY OF BELOIT** does hereby proclaim the week of August 6 - 12, 2023 as "National Farmers Market Week" in the City of Beloit and encourage residents to attend the award-winning Downtown Beloit Farmers' Market to support area producers and provide fresh, healthy produce for meal options.

Adopted this 7<sup>th</sup> day of August, 2023.

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Regina Dunkin, President Beloit City Council

**ATTEST:**

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Marcy Granger, City Clerk-Treasurer





## *Official Proclamation*

**WHEREAS**, historian John William Templeton and engineer Frederick E. Jordan Sr. founded National Black Business Month in August 2004; and

**WHEREAS**, there are 3.23 million Black-owned businesses in the United States, generating more than one million jobs and \$200 billion in revenue; and

**WHEREAS**, Black-owned businesses serve communities like Beloit with diverse offerings and industries to positively impact the economy; and

**WHEREAS**, supporting Black-owned businesses is crucial to help address the racial wealth gap that exists in our nation, state and community; and

**WHEREAS**, Rock County Jumpstart will be celebrating Black businesses on August 11 from 11:30 a.m. to 1 p.m. at the Eclipse Center for the Black Business Month Awards Luncheon; and

**WHEREAS**, there will be special focus and emphasis on Black-owned businesses in the City of Beloit to recognize their many contributions to society; and

**WHEREAS**, the City of Beloit is committed to inclusion of all people as a core value.

**NOW, THEREFORE, THE CITY COUNCIL PRESIDENT OF THE CITY OF BELOIT** does hereby proclaim August 2023 as “**BLACK BUSINESS MONTH**” in the City of Beloit, and encourages all residents to recognize and support African American-owned businesses in the Greater Beloit community in an effort to close the racial wealth gap in Wisconsin.

Presented this 7<sup>th</sup> day of August 2023.

**CITY COUNCIL OF THE CITY OF BELOIT**

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Regina Dunkin, President

Attest:

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Marcy Granger, City Clerk-Treasurer





## *Official Proclamation*

**WHEREAS**, Gladys Elizabeth Mahan was born in Pontotoc, Mississippi on October 2, 1922, moving to Beloit, Wisconsin in 1958, where she passed away on July 18, 2023 at 100 years of age; and

**WHEREAS**, Mrs. Mahan was employed for many years at Frito Lay, finishing her career as a CNA at Carlyle Nursing Home; and

**WHEREAS**, she was a longtime and faithful member of Bethel AME Church in Beloit, where she served on the kitchen committee, and was a loyal member of the Rebecca Chapter #4 Order of the Eastern Star in Beloit; and

**WHEREAS**, Mrs. Mahan filled her home with the fragrant smells of cooking, the joy of music, and loved connecting with her family, neighbors and friends while sitting on the front porch; and

**WHEREAS**, she was devoted to her family, following their lives with interest and affection, and was a major organizer of the Easley Family Reunion. When the reunions were held in Beloit, Mrs. Mahan delighted in filling her home with family from far and wide; and

**WHEREAS**, Mrs. Mahan is warmly remembered for her quick wit, smile, caring advice and welcoming spirit, being loved and cherished by all who came in contact with her.

**NOW, THEREFORE, BE IT PROCLAIMED** that the Beloit City Council of the City of Beloit recognizes the contributions of Gladys Elizabeth Mahan to her family, church, and community, and extend sincere condolences to her family and friends on her passing.

Presented this 7<sup>th</sup> day of August, 2023.

CITY COUNCIL OF THE CITY OF БЕЛОIT

\_\_\_\_\_  
Regina Dunkin, President

ATTEST:

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Marcy Granger, City Clerk-Treasurer



**PROCEEDINGS OF THE BELOIT CITY COUNCIL****100 State Street, Beloit WI 53511****City Hall Forum – 7:00 PM****July 17, 2023**

- 1) CALL TO ORDER AND ROLL CALL  
President Dunkin called the meeting to order at 7:00pm  
Present: Regina Dunkin, Kevin Day, Yusuf Adama, Nancy V. Forbeck, Markese Terrell, Kevin Leavy and Sherry Blakeley via telephone
- 2) PLEDGE OF ALLEGIANCE
- 3) SPECIAL ORDERS OF THE DAY/ANNOUNCEMENTS
  - 3a. Proclamation 2023- 036 honoring David F. Luebke
  - 3b. Introduction of New Hire/Transfers/Promotions of City Employees  
Network Administrator – IT- Anthony Berger  
CSO/Animal Control (PT) - Police Catelyn Nolan, Records Clerk (FT) Police- Hope Phillips- Police Officer- Maya Freedman, Alyssa York, Harrison Creed  
Director of Support Services- Police – Krystynn Reinart  
Equipment Operator- Streets- Public Works- James Schwager  
Wastewater Operator- Flex- Public Works - Nathan Chamberlin
- 4) PUBLIC HEARINGS
  - 4a. Ordinance No. 3793 amending the Zoning District Map of the City of Beloit for the property located at 2000 Gateway Blvd, first reading was presented by Community Development Director Julie Christensen. President Dunkin opened the public hearing, no one spoke, public hearing was closed. Moved by Markese Terrell- second by Nancy V. Forbeck to lay over the ordinance. Motion carried.
  - 4b. Ordinance No. 3804 amending the Future Land Map of the City of Beloit Comprehensive Plan for the property located at 1006 Park Ave, first reading was presented by Community Development Director Julie Christensen. President Dunkin opened the public hearing, no one spoke, the public hearing was closed. Moved by Nancy V. Forbeck- second by Sherry Blakeley to lay over the ordinance. Motion carried.
  - 4c. Ordinance No, 3794 amending the Zoning District Map of the City of Beloit for the property located at 1006 Park Avenue, first reading was presented by Community Development Director Julie Christensen. President Dunkin opened the public hearing, no one spoke, the public hearing was closed. Moved by Nancy V. Forbeck -second Kevin Day to lay over the ordinance. Motion carried.

4d. Ordinance No. 3797 amending the Zoning District Map of The City of Beloit for the property located at 2231 Trevino Court, first reading was presented by Community Development Director Julie Christensen. President Dunkin opened the public hearing-

Matt Finnegan 2212 Knoll View Dr – I have submitted other requests for proposals in the same area. This one I want to make something in the price range of \$150,000 to \$170,000. One of the problems in Beloit is finding homes in that price range. These will not be really large places, but they will be nice. One side has already sold. These will be single family homes, not rental properties. It's a layout that we need to find more of in Beloit.

Nancy V. Forbeck – I'm very pleased about this. We are agonizing about the lack of housing in Beloit. Thank you

Public hearing was closed.

Kevin Day, to clarify, we are not voting on apartments, these are single family dwellings.

Moved by Markese Terrell- second by Yusuf Adama to lay over the ordinance. Motion carried.

#### 5) PUBLIC COMMENTS

Tia Johnson, Beloit – Thank you, council members, for removing the requirement to state one's address for public comment. This little constraint has been enough to prevent some of your constituents from coming to meetings to address the council. Equitable access to elected officials is a necessity for a representative democracy. This equitable access is essential for our democracy to withstand the forces of imposing oligarchies. The cherished belief our forefathers fought for was one person one vote. In the eyes of a democracy, we are all equal. Once elected officials cease listening to their constituents, we cease having a representative democracy. Imagine my concern when at last week's GBEDC meeting on housing a panelist instructed the council president to not listen to her constituents in reference to the old Kolak and 6<sup>th</sup> St neighborhoods in regard to their NIMBY opposition to proposals of dense housing negatively affecting those neighborhoods. This panelist implied the residents did not know what was best for Beloit or the housing situation in Beloit. Before the city commits to solving the symptoms of its housing problems, I encourage you to examine the causes of the housing issue. In 1980, the city's population was 35,207. In 2022, it was 36,449, resulting in an increase over those 42 years of 3.5%. I am requesting you find the change in the number of housing units for Beloit over those same years. Was that change greater or less than 3.5%? At the planning commission meeting the Vanderwalt presenters showed a decrease of 1% from 2010 to 2022. A commissioner at that meeting pointed out that there are several homes on the west side that sit vacant. I am in support of smart housing development, not forced development. I urge you to ask yourself, would I want this in my backyard? Do we have a housing problem, or do we have a greed problem? Thank you.

Teala & Scott Lamoreux, Beloit, Northwoods Premium Confections – We are having issues with parking downtown. The downtown area is growing, getting bigger and better. The problem we are having is that we do not have a back door to our business, and we rely on the street parking in front of the shop, and we do not have quick turnaround parking available. The street parking is a 2-hour limit. I am looking to see if



we can accommodate some parking stalls on the street for 15-minute parking. The downtown is growing, but we are not gaining any parking. We rely on our front door for people coming in and out quickly. We are not a café where people are hanging out. Thank you.

Jo Ann Maya, Beloit – I am here to continue to raise awareness about the 6<sup>th</sup> Street lot that has come up under some new zoning. It is zoned for single family use, but it was a surprise to all of us in the neighborhood to learn that they want to put a 120-unit development measuring 2-3 stories there, right in some of our backyards. We really cherish our greenspaces. I've gone door to door raising awareness because so many people were shocked to hear that this exponential growth was happening. We want to keep the greenspace. I was just walking through there and saw foxes and cardinals, and losing it would be overwhelming for our area. A large development would be overwhelming for the single-family use that it is zoned for. I encourage you to continue thinking about this, and we want to welcome our new neighbors but potentially 500 might be too much. Thank you.

Rosamaria Laursen, Beloit, Hispanos Unidos Rompiendo Frontera - 501c3 non-profit, just became established last March. Last year we submitted a request to vend in the parks because we wanted to have a Hispanic Heritage Festival at Riverside Park. This year we submitted a request to amend it to also include Telfer Park. To provide a little background, last year we expected around 500 people, and we stopped counting at 2500, it was amazing. It really spoke to the obvious need that the people of our community have to honor and recognize our heritage. Beloit is 20% Latino, which is around 7500 people. We invited the Mexican Consulate to come and help with some of the ceremonies, including the Mexican national anthem. We are always looking for ways to improve, and we did get overwhelmed with the parking. We decided Riverside is not big enough, so we started looking at Telfer Park. We understand there may be noise concerns, and we want to work with you to understand the parameters. Thank you.

David Ramirez, Beloit – I support the Hispanic Heritage Festival at Telfer Park. Last year we worked with Visit Beloit and brought in a lot of people from different states, all over the country. We worked with the hotels to accommodate visitors. This is a great way to use our city parks for community events. I see our city manager out walking our streets, in our stores, riding his bike, I love seeing that. Having people coming into our city, and coming to these events, that is going to be a great thing for Beloit.

Ann Sitrick Joyce, Beloit, Beloit Area Task Force on Homelessness – It was interesting tonight to hear Matt Finnegan talk about individuals looking for housing and having difficulty. I would like to share some additional information on housing. Most of the people having trouble finding housing are working people, and 90% of them are in a circumstance that without housing is a temporary event, due to moving, loss of income. Rentals have gone ridiculously high, which has been a real challenge for people. The average rent for a 3-bedroom home in Beloit is \$1,052, and 45% of those in rental households are extremely rent burdened by spending more than 1/3 of their income on rent. I have asked the clerk to share with you some comparisons that you have in front of you, including categories of spending for individuals, national household average, national median income, and Beloit income using the same percentages. Housing, Transportation, Taxes, and Food make up 78% of the budgets. The city and council have been working hard to address many of these challenges, housing tax incentives, changes in zoning, and the change in minimum square footage for residences. The

results of this study indicates that the median income in the city of Beloit is \$58,000, which is significantly lower than other communities in the area. Also, there has been less than a 1% gain in total housing units in a decade. From 2017 to 2021 the average sale price of a single family home was up 53-66% while nationwide home sale prices increased 17%. I know you are all aware of the challenges in regards to housing, it is critical. There is a great deal of difficulty for anyone in any income level in finding a home. I hope you will keep some of this in mind as you look for creative ways to address affordable housing needs in the city of Beloit, and I hope the statistics tonight will provide some background information. Thank you.

Debbie Fischer, South Beloit – Yesterday I was at a party presenting 16:49, that is a group that helps homeless youth. 16:49 is the time from when students leave school and return the next day. Over 500 of our youth are homeless. There are families everywhere that are also homeless. Workforce housing is critical right now. I understand people not wanting it in their back yard, but Beloit is landlocked. We don't have a lot of land options. We can't continue to have people that do not have a place to call home, especially our children. At the meeting last week, they were saying that there were 3 houses for sale from \$170,000-\$200,00, and they sold in 3 days and offers made like crazy. The typical house in Beloit is \$200,000-300,000. When people are working and making \$15-20/hour, they can't afford to buy a house. We have to find options in the City of Beloit for this. It might not be in the place that everybody wants it, but we have to find a place to build these homes for our families. Thank you.

4 emails submitted by Jenny Hoople – Aerial fireworks are banned within the city limits and yet, for weeks, they have been set off in my neighborhood every night. Last night they were being set off regularly from 4 houses within a block of us from 5pm until well past 11pm. My dog, who has a heart condition, wouldn't go out to use the bathroom all afternoon and evening. Ever since the pandemic, the amount of fireworks set off in the city has tripled. This is a quality of life issue and a public health issue. People with small children, sensitive pets, and veterans with PTSD are all in agreement. Even if I didn't have a sensitive pet, it is my right to be able to be outside in my yard enjoying a 4<sup>th</sup> of July cookout, which I could not do last night. I called the police 3 times with the addresses of where they were being set off to no effect. Understandably, because they were also being set off at that frequency on every block in the city. Please help us; It's great that July is Parks and Recreation Month now. Is the city specifically focusing most of those improvements and programs in our parks located in economically depressed areas of the community? Thank you for addressing this need specifically; I stand with Brian Knudson and his family. He is a dedicated community leader who does not deserve to be slandered and threatened for standing up for what is right; It may feel like there isn't much we can do, as individuals, as a community, to reverse human-accelerated climate change. Especially as wildfire smoke from Canada continues to pour over us and things are already feeling out of control and too big to do anything about. I love that the city of Beloit made a commitment to achieving Zero Carbon by 2040 in February of 2022. But time is ticking away and we need an Action Plan in place to achieve that obtainable goal. As other communities in Rock County and Wisconsin and across the nation and around the world follow suit, change will come. This isn't a goal we can afford to fall short on. Please make sure that our city's Strategic Plan makes achieving Zero Carbon by 2040 a priority. Thank you for your swift action and dedicated service.

6) CONSENT AGENDA

Moved by Yusuf Adama – second by Markese Terrell to approve items 6a-6i as presented. Motion carried.

6a. The regular minutes of June 19, 2023 were adopted.

6b. the regular minutes of July 3, 2023 were adopted.

6c. Resolution 2023-106 approving applicants for an Alcohol Beverage Operator's (Bartender's) License for years 2023-2025 was adopted.

6d. Resolution 2023-090 awarding contract C21-13, Big Hill Retaining Wall Phase I was adopted.

6e. Resolution 2023-103 approving a Subdivision Development Agreement between the City of Beloit and New Leaf Homes LLC was adopted.

6f. Resolution 2023-107 awarding Public Works contract C23-07 Street resurfacing was adopted.

6g. Resolution 2023-100 declaring official intent to reimburse expenditures from proceeds of borrowing was adopted.

6h. Resolution 2023-108 authorizing the City Manager to apply for Wisconsin Historic Preservation Fund Subgrants for Certified Local Governments was adopted.

6i. Resolution 2023-109 authorizing and supporting the submittal of a grant application to the US Department of Transportation USDOT for FFY 2023 SS4A Grant Program was adopted.

7) LICENSES

7a. Resolution 2023-104 approving the late renewals of Alcohol Beverage Licenses for license period July 1, 2023- June 30, 2024 was adopted. Clerk-Treasurer Marcy Granger presented. Moved by Nancy V. Forbeck- second by Markese Terrell to adopt the resolution as presented. Motion carried.

7b. Resolution 2023-105 approving an application for a new Class "A" Fermented Malt Beverage (Beer) License for SQRL Service Stations, d/b/a SqrL Service Station #706, located at 2158 Prairie Ave was adopted. Clerk- Treasurer Marcy Granger presented. Moved by Nancy V Forbeck- second by Yusuf Adama to adopt the resolution as presented. Motion carried.

8) ORDINANCES

8a. Ordinance No. 3802 to amend section 2.02(2)(c) of the Code of General Ordinances of the City of Beloit pertaining to legal holidays for city council meetings, first reading was presented by City Attorney Krueger. Moved by Markese Terrell -second by Yusuf Adama to lay over the ordinance. Motion carried.

8b. Ordinance No. 3800 prohibiting parking on Prospect Street north of Public Avenue First reading was presented by Department of Public Works Director Bill Frisbee. Moved by Nancy V. Forbeck -second by Kevin Day to lay over the ordinance. Motion carried.

8c. Ordinance No. 3801 prohibiting parking on Fir Drive between Burton St and Woodman Lane, first reading was presented by Director Bill Frisbee. Moved by Nancy V. Forbeck- second by Sherry Blakeley to lay over the ordinance over. Motion carried.

8d. Ordinance 3799 establishing a 15-minutes parking zone for two parking spaces in the 300 block of State Street, first reading was presented by Director Bill Frisbee.

Moved by Nancy V. Forbeck -second by Kevin Leavy to lay over the ordinance.  
Motion carried.

9) APPOINTMENTS

9a. Moved by Markese Terrell -second by Nancy V. Forbeck to approve the appointments as presented. Motion carried.

10) COUNCILOR ACTIVITIES AND UPCOMING EVENTS

Sherry Blakeley- No report

Kevin Leavy - No report

Yusuf Adama – On the 22<sup>nd</sup> I plan to be at the dog park and would like to see people there to talk and build community over our love of dogs.

Markese Terrell - Tomorrow I will be 34 years old, and I'm looking forward to spending time with my son. I wasn't able to make realtors roundtable, but I heard there were some interesting conversations. I have had personal conversations with some landlords. With rental costs going up, and we are limited on action we can take at the city level, I came up with a few solutions to propose. Working with state and federal representatives to explore ways to incentivize landlords, tax credits, or property management companies willing to lower rental costs for working class or lower income renters. I believe there are ways to start the discussion about helping landlords maintain rental properties that could help them cut the costs of having to fully come out of pocket for those properties. Issues such as the cost of maintaining rental properties to be livable are some of the major reasons the cost of rent has been increasing. If these issues are addressed, I believe it would be good for residents for the city of Beloit as we are battling a housing crisis. This could be great for small and local businesses. We need to work with state and federal partners to address the housing crisis.

Kevin Day- No report

Nancy V. Forbeck – This last week I used our new rules at the City of Beloit to attend the Appointment Review Committee meeting via phone, and it worked great. I want to encourage people, if you can, come help us and join a committee. When life gets complicated, you can still participate via phone. One of the positive things that came out of COVID was the understanding that you can participate long distance.

President Regina Dunkin – First, thanks to everyone who gave input under public comment today. We really appreciate your concerns and input, and we hear you. Earlier in our meeting, we had a tribute to former Council President David Luebke. Dave was a dedicated board member for Merrill Community Center, and I am grateful that I had the opportunity to know him. When I was on the Beloit School Board, Dave and I went to Florida for a state school conference. I was impressed by his ability to connect with people from all backgrounds. Throughout the state, all the educators knew and respected Dave Luebke. He genuinely cared about children, families, and staff in our schools, and he loved our Beloit community. Dave was also very proud of his own children. He was a person who led by example. Dave will always be remembered for his passion and many contributions to the City of Beloit. He was a true community servant leader. So, let's keep the Luebke family and their loved ones in our thoughts

and prayers. Next for my Councilor activities, I attended the Appointment Review Committee meeting. If you are interested in putting your talent to good use, please consider volunteering to serve on a city commission. You can go to the City of Beloit website for an application, or call Rebecca Wallendal at 608-362-6682. Also, I went to see the fireworks which returned to Riverside Park this year, the GBEDC Realtor's Roundtable, Culver's Annual "Cruisin' for a Cure" car show, along with Chief Sayles, and the Batteries Plus Ribbon Cutting, with Councilor Blakeley. I also did something new and went to the Wednesday at the Library, featuring Ms. Guzman, at the Blender Café. Thanks to everyone who helped to make these wonderful events a success. Also, I made a visit to Community Action and Family Promise. We have great community partners who are working hard to help address homelessness in our Beloit Community. In addition, I met with residents that live on the 2400 block of Shopiere Road. I listened to their concerns and shared them with our City Manager. He has been working with our city staff to assist. That said, there will be two public informational meetings on upcoming road projects. Both meetings will be held at 2400 Springbrook Court. Tuesday, July 18, 5:30 to 6:30 PM, the topic is about Cranston Road between Prairie Avenue and Collingswood Drive, and on Wednesday, July 19, 5:30-6:30 PM the topic is about Henry Avenue between Royce Avenue and Prairie Avenue. These projects are planned with traffic calming measures designed to reduce speed and life-threatening accidents. Construction of these projects is scheduled for 2024. I encourage residents to please attend and participate.

11) CITY MANAGER PRESENTATION

11a. City Manager Jerry Gabrielatos provided an update:

Staff will follow up with the members here tonight regarding the event at Telfer Park. The city was accepted into the Government Alliance on Race and Equity, a group of governments nationwide that help local governments reach their DEI goals, and I'm excited about continuing that work going forward. We are finalizing everything for the Green Tier program, a program that the state offers to help cities reach their sustainability goals.

12) REPORTS FROM BOARDS AND CITY OFFICERS

12a. Resolution 2023-101 adopting the 2024 Community Development Block Grant (CDBG) Local Funding Priorities was presented by Deputy Director Teri Downing was adopted. Councilor Adama recused himself.

Moved by Markese Terrell-second by Nancy V, Forbeck to adopt the resolution as presented. Motion carried.

12b. Resolution 2023-094 awarding Home Investment Partnership (HOME) Program funds to Community Action, Inc. was presented by Director Julie Christensen.

Moved by Markese Terrell- second by Nancy V. Forbeck to adopt the resolution as presented. Motion carried.

13) ADJOURNMENT

Moved by Markese Terrell – second by Nancy V. Forbeck to adjourn at 8:40pm.  
Motion carried.

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Marcy J. Granger, City Clerk-Treasurer

Page 8	MINUTES	July 17, 2023
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[www.beloitwi.gov](http://www.beloitwi.gov)

Date approved by City Council: July 17, 2023



**PROCEEDINGS OF THE BELOIT CITY COUNCIL**  
**100 State Street, Beloit WI 53511**  
**Fourth Floor Conference Room – 6:00 p.m.**  
**July 24, 2023**

- 1) **CALL TO ORDER AND ROLL CALL**  
President Dunkin called the meeting to order at 6:11 p.m.  
Present: Regina Dunkin, Nancy Forbeck, Sherry Blakeley, Kevin Day, Kevin Leavy,  
Markese Terrell  
Absent: Yusuf Adama
- 2) **CLOSED SESSION**  
*The City Council will adjourn into closed session pursuant to section 19.85(1)(c) to consider the employment status of a public employee over which the governmental body has jurisdiction or exercises responsibility namely to meet with the City Manager, Jerry Gabrielatos for a 6-month review of his performance as a new City Manager.*  
  
Moved by Nancy Forbeck – Seconded by Markese Terrell to adjourn into closed session.  
Motion carried 6-0 at 6:12 p.m.
- 3) **ADJOURNMENT**  
Moved by Markese Terrell – Seconded by Nancy Forbeck to adjourn at 7:50 p.m. Motion carried 6-0.

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Marcy J. Granger, City Clerk-Treasurer

[www.beloitwi.gov](http://www.beloitwi.gov)

Date approved by City Council:

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Proposed Resolution Considering the Applications for Alcohol Beverage Operator's (Bartender's) Licenses for license period July 1, 2023- June 30, 2025.		
<b>Date:</b>	August 7, 2023		
<b>Presenter:</b>	Marcy J. Granger	<b>Department:</b>	City Clerk-Treasurer

### Overview/Background Information

Applicants for an Alcohol Beverage Operator's (Bartender's) License must apply (or renew) on a biennial basis. This process requires an application, proof that a responsible beverage server training course was completed, payment of the applicable fee and submission to a background check of the Beloit Police Department.

State law requires the City Council to act on all licenses prior to issuance. The attached resolution includes applicants received from , July 15, 2023- July 31, 2023.

### Key Issues

- The applicants being recommended for approval or denial have completed the following steps:
  - Submitted a complete application and proof of responsible beverage server training, shown ID, paid applicable fees and submitted to a background investigation.
  - Upon completion of the background investigation, the Police Department provides a recommendation for approval or denial to the Clerk-Treasurer.
  - Applications recommended for denial are sent a letter stating the reasons for the recommendation of denial and the opportunity to appeal to the City Council. Applications recommended for approval and those that do not appeal are placed on the master list and submitted to City Council every two weeks for consideration.
  - Upon Council action, City Clerk-Treasurer provides the necessary follow-up by issuing the license or sending a letter to the applicant stating the reason(s) for denial.
- Section 125.17(1), Wis. Stats., requires the governing body to approve qualified applicants prior to issuance of the license.
- This list includes applicants taken between, July 15, 2023- July 31, 2023.
  - Recommended for Approval -32 applicants are recommended for approval.
  - Recommended for Denial - 3 applicants recommended for denial.
- This process is consistent with state statute as well as guidance from the League of Wisconsin Municipalities guidance for Municipal Licensing and Regulation of Alcohol Beverages.

### Conformance with Strategic Plan

Approval of this action would conform with the stated purpose of the following strategic goal:

- ☐ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☒ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☐ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. Write N/A if not applicable

N/A

### Action Required/Recommendation

Staff recommends approval of the resolution.

### Fiscal Note/Budget Impact

Each applicant pays \$50 for a 2-year license ending June 30, 2025.



Attachments
Resolution, List of applicants.

Revised 03-09-2022

**RESOLUTION 2023-116**

**RESOLUTION CONSIDERING THE APPROVAL OF APPLICANTS FOR AN ALCOHOL BEVERAGE  
OPERATOR'S (BARTENDER'S) LICENSE FOR YEARS 2023-2025**

**WHEREAS**, the applicants listed in the attached document, which is incorporated herein by reference, have applied for operator's licenses; and

**WHEREAS**, all of the applicants listed in the attached document are recommended by the Police Department and the City Clerk-Treasurer's Office for approval.

**NOW, THEREFORE, BE IT RESOLVED THAT** the applicants recommended for approval are hereby approved for the period ending June 30, 2025. The City Clerk-Treasurer's Office is directed to issue the license to the applicant(s).

Adopted this 7th day of August, 2023.

**CITY COUNCIL FOR THE CITY OF BELOIT**

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Regina Dunkin, Council President

ATTEST:

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Marcy J. Granger, City Clerk-Treasurer

## Applicants Recommended for Approval Through August 4, 2023

Akbar-Stamper, Dawn	Kwik Trip #1151
Alexander, Fredann T.	Kwik Trip #1151
Bauer, Alisha	Beloit Mobil on the Run
Bittorf, Kloe A.	Grand Ave Pub
Bogan, Latiesha R.	Beloit Mobil on the Run
Buijck, Geoffrey G.	Kwik Trip #1151
Burg, William D.	Carom Room
Castellanos, Sarah E.	Kwik Trip #1151
Cruz, Sarah J.	Kwik Trip #1151
Dobbs, Crystal M.	Kwik Trip #1151
Duffy, Trina R.	Cheez Head Brewing Co.
Farage, Courtney	Kwik Trip #1151
Forrest, Aliza	Road Dawg Pub
Galbrecht, Shianne M.	Applebee's
Hoffman, Austyn	Casey's General Store
Jackson, Shannon L.	n/a
LaMendola, Nathon D.	Maxine's Social
Leech, Ashlee M.	5Bar
Martin, Julianna	Beloit Sky Carp
Martinez, Alyssa E.	Applebee's
McKillips, Charles J.	n/a
Nalan, Blaine M.	Beloit Mobil on the Run
Parrish, Tina M.	Brass Rail
Perez, Aurora	Kwik Trip #1151
Potter, Jamie	Carom Room
Schaitel, Asia L.	Kwik Trip #1151
Smith, Kylie A.	Kwik Trip #1151
Sykes, Doninique	Kwik Trip #1151
Tinder, Samantha	n/a
Turner, Cole	Hatley's Pub
Wilson, Damischa	n/a
Wright, Ashley N.	Kwik Trip #1151

Year to Date: 386

## Applicants recommended for Denial through August 4 2023

Draeving, Heather	Woodman's
Garland, Jeffrey	Woodman's
Yeager, Anna	n/a

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Resolution Awarding Public Works Contract C23-11, Riverside Park Lagoon Pump		
<b>Date:</b>	August 7, 2023		
<b>Presenter:</b>	Bill Frisbee, Public Works Director	<b>Department:</b>	Engineering/Public Works
<b>Overview/Background Information</b>			
This project will install and make ready for use, a system to pump water from the Rock River into the Riverside Park Lagoon to reduce stagnation of the water body, and promote a more appealing recreational area. The system will utilize the existing pump structures footprint, but will adjust mechanical operations to promote a long-term system.			
<b>Key Issues</b>			
<ol style="list-style-type: none"> <li>1. The Riverside Park Lagoon is a central attraction to the Riverside Park in the heart of Beloit.</li> <li>2. The stagnant water in the Lagoon creates a space for algae and insects to thrive.</li> <li>3. The existing pumping system has deteriorated to a point beyond usefulness.</li> <li>4. Two bids were received for this project. The low bid of \$131,222.00 was from Sabel Mechanical LLC</li> <li>5. Sabel Mechanical LLC is considered a responsible bidder for this project.</li> <li>6. The costs for this project are as follows: \$131,222.00 for construction, \$19,683.30 for change orders or extra work, for a total of \$150,905.30.</li> </ol>			
<b>Conformance with Strategic Plan</b>			
Approval of this action would conform with the stated purpose of the following strategic goal:			
<input type="checkbox"/> Goal #1 - Create and Sustain Safe and Healthy Neighborhoods <input type="checkbox"/> Goal #2 - Create and Sustain a High Performing Organization <input type="checkbox"/> Goal #3 - Create and Sustain Economic and Residential Growth <input checked="" type="checkbox"/> Goal #4 - Create and Sustain a High Quality of Life <input type="checkbox"/> Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity <input type="checkbox"/> Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image			
<b>Sustainability</b>			
If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. <b>Write N/A if not applicable</b>			
N/A			
<b>Action Required/Recommendation</b>			
The Engineering Division recommends awarding this Public Works Contract to Sabel Mechanical LLC, in the amount of \$150,905.30.			
<b>Fiscal Note/Budget Impact</b>			
Funding is available through Parks and Recreation accounts.			
<b>Attachments</b>			
Resolution 2023-112, Award Memo, Bid Tab			

Revised 03-09-2022

## RESOLUTION 2023-112

### RESOLUTION AWARDING PUBLIC WORKS CONTRACT C23-11 RIVERSIDE PARK LAGOON PUMP

**WHEREAS**, on July 18, 2023, two bids were received for Contract C23-11, Riverside Park Lagoon Pump, the low bid being from Sabel Mechanical LLC; and

**WHEREAS**, Sabel Mechanical LLC is a qualified bidder.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Beloit that Contract C23-11, Riverside Park Lagoon Pump, be and hereby is, awarded to Sabel Mechanical LLC, Fond Du Lac, WI, in the following amounts:

Sabel Mechanical LLC  
W3150 County Road H  
Fond Du Lac, WI 54937

Base Bid	\$ 131,222.00
<u>Allowance for Change Orders and/or Extra Work</u>	<u>\$ 19,683.30</u>
<b>TOTAL PROJECT COST</b>	<b>\$ 150,905.30</b>

**AND IT IS FURTHER RESOLVED**, that the amount of \$150,905.30, be, and hereby is, funded as follows:

77611998-5511-92081	\$ 63,226.00
P2970843-5240-2022	\$ 5,679.00
<u>P2970843-5511-2022</u>	<u>\$ 82,000.00</u>
<b>TOTAL</b>	<b>\$ 150,905.30</b>

Approved this 7<sup>th</sup> day of August, 2023.

**CITY COUNCIL OF THE CITY OF БЕЛОIT**

\_\_\_\_\_  
Regina Dunkin, City Council President

ATTEST:

\_\_\_\_\_  
Marcy Granger, City Clerk-Treasurer

**Contract C23-11  
Riverside Park Lagoon Pump  
Tabulation of Bids**

Item No.	Bid Item Description	Quantity	Unit	Engineer's OPC		Sabel Mechanical LLC      Fond Du Lac		Mid City Corp      Butler, WI	
				Price	Extended	Price	Extended	Price	Extended
1	Supply and Install Lagoon Pump	1.0	EA	\$6,000.00	\$6,000.00	\$112,000.00	\$112,000.00	\$48,000.00	\$48,000.00
2	Supply and Install Vault Cover	1.0	EA	\$28,000.00	\$28,000.00			\$87,000.00	\$87,000.00
3	Abandon 30" Outlet Pipe	1.0	EA	\$10,000.00	\$10,000.00	\$19,222.00	\$19,222.00	\$26,200.00	\$26,200.00
<b>Total Proposal</b>				<b>\$44,000.00</b>		<b>\$131,222.00</b>		<b>\$161,200.00</b>	

**To: Scot Prindiville, City Engineer**  
**From: Raymond Hill, Project Engineer**  
**Re: Bid Results for Contract C23-11, Riverside Park Lagoon Pump**  
**Date: July 20, 2023**

Pursuant to advertisements placed July 3 and July 10, bids were received until 9:00 AM on July 18, 2023 for contract C23-11, Riverside Park Lagoon Pump. A tabulation of bids is attached.

Three contractors pulled plans for this project. Two bids were received for this project as follows:

1. Sabel Mechanical LLC	Fond Du Lac, WI	\$131,222.00
2. Mid City Corporation	Butler, WI	\$161,200.00
Engineer's Estimate		\$ 44,000.00

Upon review of the Contractor's Proof of Responsibility Statement, Sabel Mechanical LLC. is determined to be a responsible bidder.

Sabel has advised the equipment to be used will take time to receive, and the project completion date will need to be extended beyond October 27<sup>th</sup> for their bid.

After reviewing the bidding details with LW Allen and Sabel Mechanical, it was determined the scope of work proposed is beyond what was determined as necessary with the pre-bid understanding of the project.

The submitted costs appear to be in line with the proposed work, and are unlikely to see a decrease over time. If it is determined this project should be executed, Sabel Mechanical LLC appears to have a reasonable bid submission. The following is a breakdown of the proposed project cost:

#### **COSTS**

Sabel Mechanical LLC Base Bid	\$ 131,222.00
Allowance for Change Orders and/or Extra Work	\$ 19,683.30
<b>TOTAL PROJECT COST</b>	<b>\$ 150,905.30</b>

#### **PROJECT INFORMATION**

This project will replace and make operational the pumping system on the north end of the Riverside Park Lagoon, allowing water to be drawn from the river to refresh the lagoon water.

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



**Topic:** Award of Contract C23-06, Concrete Panel Replacement

**Date:** August 7, 2023

**Presenter:** Bill Frisbee, Public Works Director

**Department:**

Engineering/Public Works

### Overview/Background Information

This project includes the removal and replacement of concrete pavement which has significant failure. Primarily these are areas which have been replaced with high early concrete, but also include some areas which have experienced heat buckling or failing joints.

### Key Issues

1. The project will repair areas of damaged concrete located in key transportation corridors throughout the City.
2. Two bids were received for this project. The low bid of \$493,517.00 was from C.P.R., Inc.
3. C.P.R., Inc. is considered a responsible bidder for this project.
4. The bid is 11% greater than the engineer's total estimate of \$444,713.00.
5. The costs for this project are as follows: \$493,517.00 for construction, \$74,027.55 for change orders or extra work, for a total of \$567,544.55.

### Conformance with Strategic Plan

Approval of this agreement would conform with the stated purpose of the following strategic goal:

- ☒ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☒ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain a Positive Image, Enhance Communications and Engage the Community

### Sustainability

(If applicable, briefly comment on the sustainable long term impact of this policy or program related to how it will impact both the built and natural environment. Consider whether the policy of program will reduce dependence upon fossil fuels, reduce dependence on chemicals and other manufacturing substances that accumulate in nature, reduce dependence on activities that harm life sustaining eco-systems, and/or meet the hierarchy of present and future human needs fairly and efficiently. Write N/A if not applicable)

N/A

### Action Required/Recommendation

The Engineering Division recommends awarding this Public Works Contract to C.P.R., Inc., in the amount of \$567,544.55.

### Fiscal Note/Budget Impact

Funding is available through CIP accounts for Street Resurfacing.

### Attachments

Resolution 2023-113, Award Memo, Project Map



## RESOLUTION 2023-113

### RESOLUTION AWARDING PUBLIC WORKS CONTRACT C23-06 CONCRETE PANEL REPLACEMENT

**WHEREAS**, on July 27, 2023, two bids were received for Contract C23-06, Concrete Panel Replacement, the low bid being from C.P.R. Inc.; and

**WHEREAS**, C.P.R., Inc. is a qualified bidder.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Beloit that Contract C23-06, Concrete Panel Replacement, be and hereby is, awarded to C.P.R., Inc., Brookfield, WI, in the following amounts:

C.P.R., Inc.  
P.O. Box 1177  
Brookfield, WI 53008

Base Bid	\$ 493,517.00
<u>Allowance for Change Orders and/or Extra Work</u>	<u>\$ 74,027.55</u>
<b>TOTAL PROJECT COST</b>	<b>\$ 567,544.55</b>

**AND IT IS FURTHER RESOLVED**, that the amount of \$567,544.55, be, and hereby is, funded as follows:

<u>P2902187-5514-2023</u>	<u>Street Maintenance</u>	<u>\$ 567,544.55</u>
<b>TOTAL</b>		<b>\$ 567,544.55</b>

Approved this \_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY COUNCIL OF THE CITY OF BELOIT**

\_\_\_\_\_  
Regina Dunkin, City Council President

ATTEST:

\_\_\_\_\_  
Marcy Granger, City Clerk-Treasurer

**To: Scot Prindiville, City Engineer**

**From: Raymond Hill, Project Engineer**

**Re: Bid Results for Contract C23-06, Concrete Panel Replacement**

**Date: July 27, 2023**

Pursuant to advertisements placed July 13 and July 20, bids were received until 9:00 AM on July 27, 2023 for contract C23-06, Concrete Panel Replacement. A tabulation of bids is attached.

Five contractors pulled plans for this project. Two bids were received for this project as follows:

1. Engineer's Estimate	Beloit, WI	\$	<b>444,713.00</b>
2. C.P.R., INC.	Brookfield, WI	\$	<b>493,517.00</b>
3. Forward Contractors	Grafton, WI	\$	<b>608,223.00</b>

The Contractor's that did not submit bids indicated they were either too busy to prepare a bid or too busy with work to complete the contract within the designated timeline.

Upon review of the Contractor's Proof of Responsibility Statement, C.P.R., Inc. is determined to be a responsible bidder.

I recommend that the contract base work and the alternate be awarded to C.P.R., Inc. of Brookfield, WI. The following is a breakdown of the proposed project cost:

**COSTS**

C.P.R., Inc Base Bid	\$ 493,517.00
Allowance for Change Orders and/or Extra Work	<u>\$ 74,027.55</u>
<b>TOTAL PROJECT COST</b>	<b>\$ 567,544.55</b>

**PROJECT INFORMATION**

This project includes the removal and replacement of concrete pavement which has significant failure. Primarily these are areas which have been replaced with high early concrete, but also include some areas which have experienced heat buckling or failing joints.



C23-06

Concrete Panel Replacement

Madison & Burton

Madison & Townline

Cranston & Dewey

Hinsdale Ave

3rd St

Pleasant & Bushnell

St Paul Ave

Park Ave

Gateway Ave

Gateway & Colley

Gateway Ave



# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Council Acceptance and Referral to the Plan Commission: Annexation of Two Properties located on the 5000 Block of County Road X from the Town of Turtle.		
<b>Date:</b>	August 7, 2023		
<b>Presenter:</b>	Julie Christensen	<b>Department:</b>	Community Development

### Overview/Background Information

Bradley and Danita Trewyn have submitted a Petition for (Direct) Annexation of two properties they own located in the 5000 block of County Road X (parcel numbers 6-19-177A.1 and 6-19-177A.2) located in the Town of Turtle. The Petition for Annexation and Annexation Plat are attached to this report.

### Key Issues

1. On June 19, 2023, the City Council adopted Ordinance No. 3795 annexing the two properties.
2. Following approval by City Council, an error in the legal description included in the Annexation Ordinance for this petition was discovered. Therefore, we are reprocessing this Annexation Petition..
3. The City Clerk also noted that the ward needed to be updated to 23, instead of 22 as originally identified in the adopted Ordinance.
4. No other changes were made to this annexation plat and the remaining language in the ordinance is identical to the language contained in Ordinance No. 3795.
5. On May 16, 2023, the Wisconsin Department of Administration determined the proposed annexation is in the public interest. The Town of Turtle Clerk has been re-notified of this annexation request.

### Conformance with Strategic Plan

Approval of this agreement would conform with the stated purpose of the following strategic goal:

- ☐ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☒ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☐ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. **Write N/A if not applicable**

The annexation will foster Economic Sustainability to allow for the development of this parcel in the City of Beloit.

### Action Required/Recommendation

- Action on the proposed Resolution Accepting the Petition for Annexation
- Referral of this item to the Plan Commission for the August 9, 2023 meeting
- This item will most likely return to the City Council for a first reading on August 21, 2023

### Fiscal Note/Budget Impact

If approved, the addition of land would increase the City's tax base and allow for the development of this parcel in the City of Beloit.

### Attachments

Resolution 2023-115 Accepting Petition for Direct Annexation, Petition for Annexation, Plat, and State Application

## **RESOLUTION 2023-115**

### **RESOLUTION OF THE CITY COUNCIL ACCEPTING PETITION FOR DIRECT ANNEXATION**

**WHEREAS**, a petition for direct annexation of the following territory of the Town of Turtle, Rock County, Wisconsin, lying contiguous to the City of Beloit, Wisconsin, was filed with the City Clerk on April 21, 2023 for the following described property:

PART OF THE NE ¼ OF THE NW ¼ OF SECTION 22, PART OF THE SE ¼ OF THE SW ¼ AND PART OF THE NE ¼ OF THE SW ¼ OF SECTION 15, T.1N., R.13E., OF THE 4<sup>TH</sup> P.M., TOWN OF TURTLE, ROCK COUNTY, WISCONSIN. INCLUDING LOT 1 OF A CERTIFIED SURVEY MAP RECORDED IN VOLUME 17, PAGE 117 OF CERTIFIED SURVEY MAPS OF ROCK COUNTY, WISCONSIN, AS DOCUMENT NO. 1222656.

DESCRIBED AS FOLLOWS: Commencing at the South ¼ Corner of said Section 15; thence °35'20"E 345.23 feet to the NE Corner of Lot 1 of a Certified Survey Map recorded in Volume 1, Page 148, also being at the place of beginning for the land to be herein described; thence S62°20'16"W 607.30 feet to the NW Corner of Lot 4 of said Certified Survey Map (Vol. 1, Pg. 148); thence N27°14'34"W 35.0 feet to the Centerline of E. County Road "X"; thence S62°40'16"W along said centerline, 160.21 feet; thence S27°35'34"E 33.0 feet to the South Line of E. County Road "X"; thence along said South Line along the following courses: S54°25'01"W 119.36 feet; thence S67°17'33"W 48.05 feet; thence S54°16'54"W 100.50 feet; thence S28°14'59"W 62.67 feet; thence S41°31'W 105.22 feet; thence S67°38'48"W 64.66 feet to the NE Line of Lot 1 of a Certified Survey Map recorded in Volume 15, Pages 212 thru 214 (also being the existing city limit line); thence N27°59'51"W along said NE Line, 86.60 feet to the most Northerly Corner of said Lot; thence N41°06'30"E 200.13 feet to a point on the North Line of C.T.H. "X"; thence N69°09'29"W 60.82 feet; thence N20°40'59"W 70.52 feet; thence N12°38'58"W 114.69 feet; thence N14°43'23"E 78.10 feet; thence along the South Line of Interstate "43" along the following courses: N40°11'27"E 125.28 feet; thence N32°22'54"E 215.03 feet; thence Northeasterly along a curve to the left, 234.48 feet, having a radius of 1235.92 feet and a chord bearing N37°48'48"E 234.13 feet; thence N32°22'42"E 199.99 feet; thence N32°36'13"E 274.73 feet; thence Northeasterly along a curve to the right, 477.54 feet, having a radius of 2217.83 feet and a chord bearing N45°39'44"E 476.61 feet; thence N53°00'29"E 164.82 feet to the NW Corner of Lot 2 of a Certified Survey Map recorded in Volume 36, Pages 376 thru 380; thence S0°26'42"W along the North-South Centerline of said Section, 709.56 feet to the North Line of said Lot 1 of said Certified Survey Map, Volume 17, Page 117; thence S89°25'34"E along said North Line, 1.37 feet to the NE Corner of said Lot; thence S0°38'40"W along the East Line of said Lot, 142.06 feet; thence S0°26'44"W continuing along said East Line and its Southerly extension 286.70 feet to the place of beginning.

**WHEREAS**, the Planning and Building Services Division has investigated the petition and certified to the City Council that it was signed by all of the owners of all the real property in the territory to be annexed, is properly described in the petition and shown on the scale map attached thereto, is contiguous to the City of Beloit, and is unincorporated;

**NOW, THEREFORE, BE IT RESOLVED** that, the City Council of the City of Beloit, Wisconsin, determines that the petition for annexation of the above-described territory is a sufficient and legal petition conforming with the requirements of Section 66.0217(2) of the Wisconsin Statutes; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that, the petition be accepted; and that the City Clerk is directed to notify the Clerk of the Town of Turtle of the resolution of acceptance, in accordance with Section 66.0217 of the Wisconsin Statutes and refer it to the Plan Commission for its consideration.

Adopted this 7<sup>th</sup> day of August, 2023.

**CITY COUNCIL OF THE CITY OF БЕЛОIT**

---

Regina Dunkin, President

ATTEST:

---

Marcy J Granger, City Clerk-Treasurer



# PETITION FOR ANNEXATION AND/OR ATTACHMENT TO THE CITY OF BELOIT

Address of Property: 5037 E. COUNTY ROAD X BELOIT, WI.

Property is located in (circle one): Town of Turtle Town of Beloit

If applicable, please circle the Town of Turtle island in which the property is located:

Lindale Place

Turtle Ridge

Sherwood Drive

(N/A)

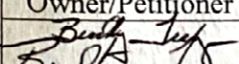
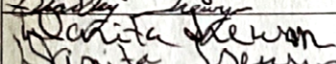
If this property is located within the Town of Turtle, is it located within the **Boundary Adjustment Area** as outlined in the Cooperative Boundary Agreement between the City of Beloit and Town of Turtle? (If you are not sure, please leave blank for Planning staff to answer.) YES NO

The current population or territory to be annexed and/or attached is 2 persons.

We the undersigned, constituting all of the owners of the real property in Rock County, Wisconsin, lying contiguous to the City of Beloit, or lying in a town island, respectfully petition the City Council of the City of Beloit to annex the territory described and shown on the attached scale map to the City of Beloit, Rock County, Wisconsin. (Plat of Annexation or Attachment must include a legal description of the subject property.)

We the undersigned, elect that this annexation shall take effect to the full extent consistent with outstanding priorities of other annexation, incorporation or consolidation proceedings, if any.

We further respectfully request that this property be zoned COMMERCIAL / C-3.

Owner/Petitioner Signature:	Print Name:	Address:	Date:
	BRADLEY TREWYN	5037 E. COUNTY X BELOIT, WI. 53511	4-20-2023
	Danita Trewyn	5037 E. CO. X BELOIT WI 53511	4-20-2023

Personally came before me this 21<sup>st</sup> day of April, 2023, the above named,  
Danita Trewyn  
Bradley Trewyn to me known to be the persons who executed the foregoing instrument and acknowledged the same.



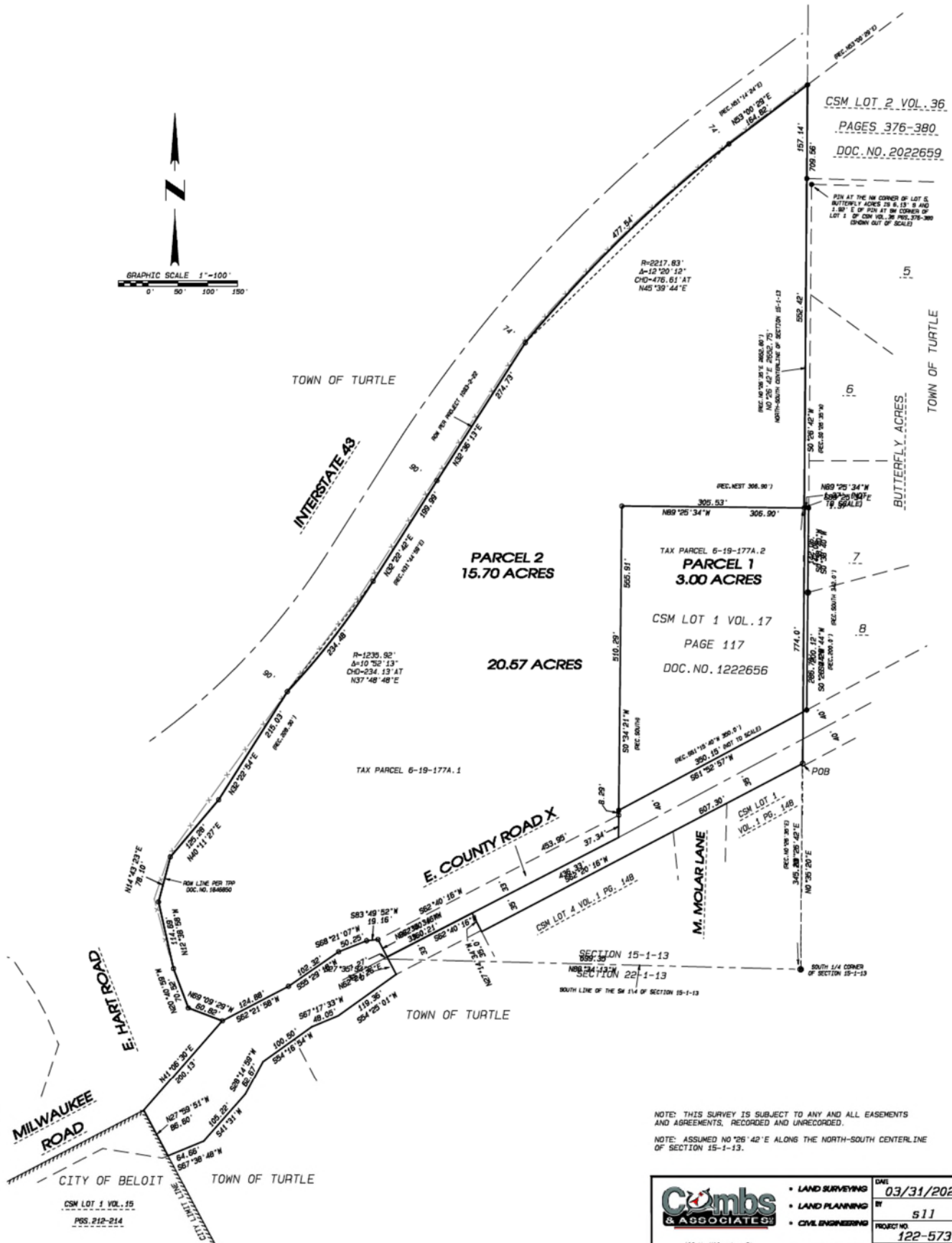


Notary Public, Rock County, Wisconsin (SEAL)

My Commission is permanent or expires on: 7.9.23



# ANNEXATION MAP



<b>Crabbs &amp; Associates</b> 109 N. Milwaukee St. Janesville, WI 53548 www.crabbsurvey.com	• LAND SURVEYING	DATE
	• LAND PLANNING	03/31/2023
	• CIVIL ENGINEERING	BY
		511
	PROJECT NO.	122-573
	CLIENT	TREWYN



# Request for Annexation Review

Wisconsin Department of Administration

WI Dept. of Administration  
Municipal Boundary Review  
PO Box 1645, Madison WI 53701  
608-264-6102  
[wimunicipalboundaryreview@wi.gov](mailto:wimunicipalboundaryreview@wi.gov)  
<https://doa.wi.gov/municipalboundaryreview>

## Petitioner Information

Name: Bradley & Danita Trewyn

Phone: 608 290 0620

Email:

### Contact Information if different than petitioner:

Representative's Name: Jeff Garde

Phone: 608 752 0575

E-mail: [jgarde@combssurvey.com](mailto:jgarde@combssurvey.com)

**RECEIVED**

**April 26, 2023**

Municipal Boundary Review  
Wisconsin Dept. of Admin.

1. Town(s) where property is located: Town of Turtle

2. Petitioned City or Village: City of Beloit

3. County where property is located: Rock County

4. Population of the territory to be annexed: 2

5. Area (in acres) of the territory to be annexed: 20.57 acres

6. Tax parcel number(s) of territory to be annexed (if the territory is part or all of an existing parcel):  
6-19-177A.1 and 6-19-177A.2.

### Include these required items with this form:

- ☒ Legal Description meeting the requirements of s.66.0217 (1) (c) [see attached annexation guide]
- ☒ Map meeting the requirements of s. 66.0217 (1) (q) [see attached annexation guide]
- ☒ Signed Petition or Notice of Intent to Circulate [see attached annexation guide]
- ☒ Check or money order covering review fee [see next page for fee calculation]

(2021)

## ANNEXATION SUBMITTAL GUIDE

### s. 66.0217 (5) THE PETITION

- ☒ State the purpose of the petition:
  - Direct annexation by unanimous approval; OR
  - Direct annexation by one-half approval; OR
  - Annexation by referendum.
- ☒ Petition must be signed by:
  - All owners and electors, if by unanimous approval.
  - See 66.0217 (3)(a), if by one-half approval.
  - See 66.0217 (3)(b), if by referendum.
- ☒ State the population of the land to be annexed.

*[It is beneficial to include Parcel ID or Tax numbers, the parcel area, and identify the annexee (Town) and annexor (Village or City) in the petition.]*

### s. 66.0217 (1)(c) THE DESCRIPTION

- ☒ The annexation petition must include a legal description of the land to be annexed. The land must be described by reference to the government lot, private claim, quarter-section, section, town and range in which the land lies. The land must be further described by metes and bounds commencing from a monumented corner of the section or quarter-section, or the monumented end of a private claim or federal reservation, in which the land lies; OR
- ☐ If the land is wholly and entirely within a lot or lots, or all of a block or blocks of a recorded subdivision plat or certified survey map, it must be described by reference to the lot (s) and/or block (s) therein, along with the name of the plat or the number, volume, page, and County of the certified survey map.
- ☐ The land may NOT be described only by:
  - Aliquot part;
  - Reference to any other document (plat of survey, deed, etc.);
  - Exception or Inclusion;
  - Parcel ID or tax number.

### s. 66.0217 (1)(g) THE MAP

- ☒ The map shall be an *accurate reflection* of the legal description of the parcel being annexed. As such, it must show:
  - A tie line from the parcel to the monumented corner of the section or quarter-section, or the monumented end of a private claim or federal reservation, in which the parcel lies. The corner and monument must be identified.
  - Bearings and distances along all parcel boundaries as described.
  - All adjoiners as referenced in the description.
- ☒ The map must include a **graphic scale**.
- ☒ The map must show and identify the existing municipal boundary, in relation to the parcel being annexed.

*[It is beneficial to include a North arrow, and identify adjacent streets and parcels on the map.]*

### s. 66.0217 FILING

- ☒ The petition must be filed with the Clerk of the annexing City or Village and with the Clerk of the Town in which the land is located.
- ☐ If the annexation is by one-half approval, or by referendum, the petitioner must post notice of the proposed annexation as required by s. 66.0217 (4).

# Annexation Review Fee Schedule

A Guide for Calculating the Fee Required by ss.16.53 (4) and 66.0217, Wis. Stats.

## Required Fees

There is an initial filing fee and a variable review fee

\$ 350 **Initial Filing Fee** (required with the first submittal of all petitions)  
\$200 – 2 acres or less  
\$350 – 2.01 acres or more

\$ 800 **Review Fee** (required with all annexation submittals except those that consist ONLY of road right-of-way)  
\$200 – 2 acres or less  
\$600 – 2.01 to 10 acres  
\$800 – 10.01 to 50 acres  
\$1,000 – 50.01 to 100 acres  
\$1,400 – 100.01 to 200 acres  
\$2,000 – 200.01 to 500 acres  
\$4,000 – Over 500 acres

\$ 1150 **TOTAL FEE DUE** (Add the Filing Fee to the Review Fee)

**Include** check or money order, payable to: **Department of Administration**

**DON'T attach the check with staples, tape, ...**

**THE DEPARTMENT WILL NOT PROCESS  
AN ANNEXATION PETITION THAT IS NOT ACCOMPANIED  
BY THE REQUIRED FEE.**

**THE DEPARTMENT'S 20-DAY STATUTORY REVIEW PERIOD  
COMMENCES UPON RECEIPT OF THE PETITION AND REVIEW FEE**

Shaded Area for Office Use Only

Date fee & form received: 4-26-23

Payer: Bradley & Danita Trewyn

Check Number: 4597

Check Date: 4-21-23

Amount: \$1150.00

## UNANIMOUS PETITION FOR ANNEXATION

This petition is made for the purpose of annexing by unanimous approval to the City of Beloit, Rock County, Wisconsin, by detaching from the Town of Turtle, Rock County, Wisconsin, the following described territory:

*PART OF THE NE ¼ OF THE NW ¼ OF SECTION 22, PART OF THE SE ¼ OF THE SW ¼ AND PART OF THE NE ¼ OF THE SW ¼ OF SECTION 15, T.1N., R.13E., OF THE 4<sup>TH</sup> P.M., TOWN OF TURTLE, ROCK COUNTY, WISCONSIN. INCLUDING LOT 1 OF A CERTIFIED SURVEY MAP RECORDED IN VOLUME 17, PAGE 117 OF CERTIFIED SURVEY MAPS OF ROCK COUNTY, WISCONSIN, AS DOCUMENT NO. 1222656.*

*DESCRIBED AS FOLLOWS: Commencing at the South ¼ Corner of said Section 15; thence N0°35'20"E 345.23 feet to the NE Corner of Lot 1 of a Certified Survey Map recorded in Volume 1, Page 148, also being at the place of beginning for the land to be herein described; thence S62°20'16"W 607.30 feet to the NW Corner of Lot 4 of said Certified Survey Map (Vol. 1, Pg. 148); thence N27°14'34"W 35.0 feet to the Centerline of E. County Road "X"; thence S62°40'16"W along said centerline, 160.21 feet; thence S27°35'34"E 33.0 feet to the South Line of E. County Road "X"; thence along said South Line along the following courses: S54°25'01"W 119.36 feet; thence S67°17'33"W 48.05 feet; thence S54°16'54"W 100.50 feet; thence S28°14'59"W 62.67 feet; thence S41°31'W 105.22 feet; thence S67°38'48"W 64.66 feet to the NE Line of Lot 1 of a Certified Survey Map recorded in Volume 15, Pages 212 thru 214 (also being the existing city limit line); thence N27°59'51"W along said NE Line, 86.60 feet to the most Northerly Corner of said Lot; thence N41°06'30"E 200.13 feet to a point on the North Line of C.T.H. "X"; thence N69°09'29"W 60.82 feet; thence N20°40'59"W 70.52 feet; thence N12°38'58"W 114.69 feet; thence N14°43'23"E 78.10 feet; thence along the South Line of Interstate "43" along the following courses: N40°11'27"E 125.28 feet; thence N32°22'54"E 215.03 feet; thence Northeasterly along a curve to the left, 234.48 feet, having a radius of 1235.92 feet and a chord bearing N37°48'48"E 234.13 feet; thence N32°22'42"E 199.99 feet; thence N32°36'13"E 274.73 feet; thence Northeasterly along a curve to the right, 477.54 feet, having a radius of 2217.83 feet and a chord bearing N45°39'44"E 476.61 feet; thence N53°00'29"E 164.82 feet to the NW Corner of Lot 2 of a Certified Survey Map recorded in Volume 36, Pages 376 thru 380; thence S0°26'42"W along the North-South Centerline of said Section, 709.56 feet to the North Line of said Lot 1 of said Certified Survey Map, Volume 17, Page 117; thence S89°25'34"E along said North Line, 1.37 feet to the NE Corner of said Lot; thence S0°38'40"W along the East Line of said Lot, 142.06 feet; thence S0°26'44"W continuing along said East Line and its Southerly extension 286.70 feet to the place of beginning.*

Attached hereto and incorporated herein by reference is a map of the area to be annexed.

The undersigned, who are the owners of and electors in all of the above-described property, hereby petition the City Council of the City of Beloit, Rock County, Wisconsin, to accept the above-described property and to annex it to the City of Beloit. The area described above has two residents.

It is respectfully requested that the City Council accept this annexation by ordinance and as otherwise as may be required by state statute as promptly after receipt of this petition.

Name	Date	Elector (voting age individual)	Owner	Parcel No.	Acres
Bradley Trewyn				6-19-177A.1	20.57 ac
(1) Print Name: <u>BRADLEY TREWYN</u>		<u>yes</u>	<u>yes</u>	6-19-177A.2	
Signature: <u>[Signature]</u>					
Danita Trewyn				6-19-177A.1	20.57 ac
(2) Print Name: <u>Danita Trewyn</u>		<u>yes</u>	<u>yes</u>	6-19-177A.2	
Signature: <u>[Signature]</u>					

STATE OF WISCONSIN ) ss.  
COUNTY OF ROCK )

Personally came before me this 21<sup>st</sup> day of April, 2023, the above named Bradley & Danita Trewyn to me known to be the persons who executed the foregoing instrument and acknowledged the same.



[Signature]

Notary Public, State of Wisconsin  
My Commission expires 7.9.23

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



**Topic:** Resolution approving the Board of Appeals Rules of Procedure

**Date:** August 7, 2023

**Presenter:** Julie Christensen

**Department:**

Community Development

### Overview/Background Information

Section 1.77 of the Code of General Ordinances indicates that the Board of Appeals may adopt Rules of Procedure and then shall submit them to City Council for approval. The Rules of Procedure were last updated in 2000 and need modifications due to changes in local and state law since that time.

### Key Issues

1. The proposed Rules of Procedure outline how the board will operate, members will be appointed, and how applications should be processed. The proposed Rules comply with the State law and local ordinances that deal with matters of the Board of Appeals. Attached to the staff report is the proposed Rules of Procedure as recommended by the Board of Appeals as well the 2000 Rules of Procedure.
2. The Amendment Section of the current (2000) Rules of Procedure states that the rules may be amended or revoked by a majority vote of the Board at any meeting, provided written notice of the proposed amendment or changes is given to each member at least ten days before the meeting. The amended Rules were sent to the Board more than ten days prior to the Board of Appeals meeting, and at its July 11, 2023 meeting, the Board made minor amendments to the Rules presented at the meeting and adopted the amended Rules by a majority vote.
3. Section 1.77(11) of the Code of General Ordinances requires the Rules of Procedure to be submitted to City Council for approval. They are attached to this report.

### Conformance with Strategic Plan

Approval of this action would conform with the stated purpose of the following strategic goal:

- ☐ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☒ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☐ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. **Write N/A if not applicable**

NA

### Action Required/Recommendation

Staff recommends approval of the resolution.

### Fiscal Note/Budget Impact

Not Applicable

### Attachments

Resolution 2023-114, Proposed 2023 Rules of Procedure, and 2000 Rules of Procedure

Revised 03-09-2022

**RESOLUTION 2023-114**

**RESOLUTION APPROVING AN AMENDMENT TO  
THE RULES OF PROCEDURE OF THE BOARD OF APPEALS**

**WHEREAS**, the City Council of the City of Beloit adopted an Ordinance which created the Board of Appeals (BOA) pursuant to §62.23(7)(e), Wis. Stats; and

**WHEREAS**, the Ordinance provided that the BOA could adopt Rules of Procedure and submit them to the City Council for approval; and

**WHEREAS**, on July 11, 2023, the Board of Appeals adopted the updated Rules of Procedure.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Beloit, Rock County, Wisconsin, does hereby approve the Rules of Procedure of the Board of Appeals, as amended.

Adopted this 7th day of August, 2023

**CITY COUNCIL OF THE CITY OF БЕЛОIT**

---

Regina Dunkin, President

ATTEST:

---

Marcy J Granger, City Clerk-Treasurer



## **BOARD OF APPEALS**

## **RULES OF PROCEDURE**

Revised \_\_\_\_, 2023



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**I. GENERAL GOVERNING RULES**

The Board of Appeals (Board) of the City of Beloit, Wisconsin shall be governed by the Zoning Law as contained in section 62.23 of the Wisconsin Statutes and the Zoning Ordinances of the City of Beloit, as amended, and by the Rules of Procedure hereinafter set forth. Whenever any conflict shall exist between these Rules and the laws of the State or the ordinances of the City, the State laws and local Ordinances shall prevail.

**II. MEMBERSHIP**

The Board shall consist of seven members (five regular with two alternates as outlined in State law) appointed by the President of the City Council, subject to the confirmation of the City Council. The members term shall be for a period of three years beginning on June 1 of the first year and ending on May 31 of the third year. The Council President shall designate alternate members. Vacancies shall be filled for the unexpired term of a former member of the Board the same as appointments for a full term.

**III. OFFICERS AND DUTIES**

**A. Selection of Officers**

The board shall elect a chair, a vice chair and second vice chair annually at the board's first meeting in June. The board shall submit the chair's name to the City Clerk immediately after selection.

**B. Duties**

The chair shall preside over all meetings of the board. The vice chair shall preside over the meetings in the chair's absence and the second vice chair shall preside in the absence of both the chair and vice chair. In the absence of the chair, vice chair and second vice chair, a president pro tem shall be chosen from those present and shall preside. The presiding officer may compel the attendance of witnesses and administer oaths.

**C. Staff Support**

The Community Development Department shall provide staff support services to the board. The staff support person shall conduct all correspondence of the Board; receive, file, and docket all appeals, applications, papers and records; prepare, publish, and mail all notices required by law, ordinance, rule or request of the Board or Chair; prepare and keep calendars, minutes of Board proceedings; and, generally, attend to all administrative work of the Board. The minutes shall include the vote of the Board upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Community Development Department. The staff person shall transmit a written copy of the minutes and records of the board to the City Clerk. The City Clerk shall be the custodian of the records of the board.

The Director of Planning and Building Services or designee shall attend all meetings for the purpose of providing technical assistance when requested by the Board. Such technical assistance shall include a staff report setting forth the position of the Director

of Planning and Building Services or designee in relation to each appeal or application listed on the agenda for consideration by the Board. Said staff report shall be available for the examination of the appellant or applicant and all interested parties.

**D. Oaths of Office**

Official oaths shall be taken by all members in accordance with section 19.01 of Wisconsin Statutes. A Statement of Economic Interest must be filed in accordance with section 1.12(3) City of Beloit Code of General Ordinances.

**IV. MEETINGS**

**A. Regular Meetings**

Regular meetings of the Board shall be held on the second Tuesday of each month.

**B. Special Meetings**

Special meetings may be called by the Chair, or at the request of two Board members. Notice of a special meeting must be sent to each member at least 48 hours prior to the time set for the meeting. Electronic mail shall be the method of communication.

**C. Annual Meeting**

The first regular meeting in June shall be the Board's annual meeting at which its officers shall be elected.

**D. Open to the Public**

All meetings of the Board shall be open to the public, except that the Board may go into closed session, pursuant to Section 19.85(1)(a), Wisconsin Statutes, to discuss cases and arrive at its decision. The decision and vote shall be announced in open session.

**E. Cancellation of Regular Meetings**

Whenever there are no cases or other business to be considered at any regular meeting, other than the annual meeting, the meeting may be cancelled by notifying each member by electronic mail after the deadline to file for the meeting.

**F. Hearings**

Hearings may be held at any regular or special meeting, at any time set by the Chair.

**G. Quorum**

A quorum for any meeting shall consist of three members.

**H. Order of Business**

The order of business at regular meetings shall be substantially as follows:

1. Call to Order and Roll Call
2. Minutes

3. Variances
4. Appeals
5. Such Other Matters as May be Authorized by Law
6. Adjournment.

#### **I. Voting**

1. Personal Interest. No Board member shall take any official action, including participating in and voting upon, any matter in which the Board member, or a member of his or her immediate family, or an organization, with which the Board member is associated, has a substantial financial interest. Nor shall any member use their position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the Board member, or a member of his or her immediate family, or an organization with which the Board member is associated.

In the event a Board member cannot serve, the Chair shall direct the alternate member to act in his or her stead. Disqualification of a member for interest shall not decrease the number of votes required for action upon any matter, but such member may be counted in determining whether a quorum is present for the transaction of business. If three financially disinterested Board members are not available to transact business, the business shall be adjourned until such time as three financially disinterested Board members are available. Any issue of financial interest shall be brought to the attention of the Chair prior to the hearing of the appeal in question. In the event a Board member has a possible conflict, the Chair shall be asked to make a determination. If the Chair has an issue of a possible conflict, it shall be referred to the Vice-Chair, or to the Board if no Vice-Chair has been approved.

2. Record of Vote. A record of the vote of each member on every question shall be recorded in the minutes, or, if the member is absent or fails to vote, shall indicate such fact in the record of the proceedings.

### **V. APPEALS AND APPLICATIONS**

#### **A. Time of Appeal**

Appeals shall be filed within 30 days after the date of receipt of the written decision or order from which the appeal is taken. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal. Saturdays, Sundays and holidays shall be counted, except if the last day falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day.

#### **B. Who May Appeal**

Appeals or applications to the Board may be made by:

1. Any person aggrieved by an order, requirement, decision or determination of an administrative official of the City in the Administration of the Zoning Code.

2. Any officer, department, board, or bureau of the City affected by a decision of an administrative official of the City in the Administration of the Zoning Code.

**C. Appeal/Application Forms**

Every appeal or application shall be made upon forms furnished by and available from the Community Development Department. A scale drawing shall accompany each application for a variance showing the location and size of the property, existing improvements, all abutting properties and improvements thereon and change or addition requested. The applicant or appellant shall provide all information requested on the form and any additional information requested in writing by the Chair which is necessary to inform the Board of the facts of the appeal. Failure to supply such information shall be grounds for dismissal of the appeal or application. The Board may waive these requirements where it is felt that such information is not necessary in order to reach a determination.

**D. Filing Appeal/Application**

All appeals/applications shall be filed with the Community Development Department.

**E. Fee**

Appeals and applications filed with the Community Development Department shall be accompanied by the required filing fee. No fee shall be refunded after the appeal has been filed except that in the event of an error by Board staff.

**VI. HEARINGS**

**A. Notice of Hearing**

Notice of the time, date and place of the hearing of an appeal or application shall be given in the following manner:

1. To the appellant/applicant by electronic mail or personal service not less than five days prior to the date of the hearing. The notice shall contain a listing of the date, time, and place of the hearing. A copy of the City's staff report shall be electronically mailed to the appellant/applicant no less than five days prior to the date of hearing.
2. In every case involving a variance, city staff shall mail notice to the owners of record of all land within 150 feet of any part of the proposed building or premises not less than seven days prior to the date of the hearing.
3. A Class I notice of the hearing shall be published in the official newspaper not less than seven days prior thereto. The Beloit Daily News shall be considered the official newspaper.
4. Notice of all appeals and petitions for variances under the Flood Plain District

of the Zoning Ordinance and a copy of all decisions by the Board of Appeals shall be mailed to the Southern District office of the Wisconsin Department of Natural Resources at least ten days in advance of the hearing and within ten days after the decision.

**B. Time of Hearing, Docketing**

Each appeal or application properly filed shall be numbered serially, and put on the Board calendar. Cases docketed 25 or more days preceding a regular meeting shall be set for hearing at such meeting. Cases docketed less than 25 days prior to a regular meeting shall be set for hearing on the next regular meeting day thereafter.

**C. Appearance**

The appellant or applicant may appear in person or by his agent or attorney. In the absence of an appearance for or against an application, the Board may dismiss the appeal or may dispose of the matter on the records before it.

**D. Oath**

Witnesses may be sworn before testifying at the direction of the presiding officer.

**E. Compelling Attendance of Witnesses**

The presiding officer may compel the attendance of witnesses by subpoena. Written request for subpoenas must be filed with the staff support for the Board not less than five days prior to the hearing, except by special permission of the presiding officer.

**F. Order of Hearing**

Appeals and applications shall be heard in numerical order, except by order of the Board on good cause shown.

**G. Order of Business**

The order of business shall generally be as follows:

1. Calling of the case by the presiding officer
2. Statement of the case and presentation of the City's side of the case
3. Questions by Board members
4. Applicant's side of the case
5. Questions by Board members
6. Statements by interested persons
7. Questions by Board members
8. Applicant's, staff, and interested persons rebuttal

The presiding officer may determine an alternate order of business depending upon the facts of a particular hearing.

**H. Evidence and Official Notice**

The Board shall not be bound by strict rules of evidence, not limited to consideration

of such evidence as would be admissible in a court of law, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The presiding officer shall rule on all questions relating to the admissibility of evidence, but may be overruled by a majority of the Board members present. Written and oral testimony will be received. The presiding officer shall rule on cross-examination of any witnesses.

The Board may take official notice of the ordinances of the municipality, the zoning and location of the subject property and geographical features or other facts, which are common knowledge in the municipality or can be verified by reference to public record.

**I. Adjournments**

When all appeals cannot be disposed of on the day set, the Board may adjourn from day to day or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of such adjournment shall be given to the absent members of the Board.

**J. Withdrawal**

An appellant may withdraw an appeal at any time prior to decision thereon, but if a motion is pending to grant or dismiss the appeal, such motion shall have precedence. Withdrawal of the appeal shall not entitle the applicant or appellant to remission of the filing fee.

**VII. DECISION AND DISPOSITION OF CASES**

**A. Time of Decision**

The Board shall render its decision either at the termination of the hearing or within 30 days thereafter. Staff support to the Board shall notify the parties in interest in writing of the Board's decision.

**B. Form of Decision**

The final disposition of an appeal or application shall be in the form of a written decision or order signed by the presiding officer. Such decision shall state the reasons for the Board's determination, with findings of fact and conclusions of law, and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal or grant or deny the variance requested.

**C. Vote Required**

All orders or decisions of the Board granting a variance or affirming or reversing any action or order of an administrative officer shall require the affirmative vote of the majority of members present, including alternates empowered to act in the absence of regular members.



**D. Conditions**

Conditions imposed as part of approval of any application considered by the Board shall be stated in the decision or order embodying the Board's decision and shall be set forth in the applicable permit issued. A permit shall be valid only as long as the conditions upon which it is granted are observed. Appeals or applications approved by the Board shall expire six months after issuance if the performance of work is required and substantial work has not commenced.

**E. Filing of Decision**

Every order or decision of the Board shall be immediately filed with and maintained in the Community Development Department. Staff Support for the Board shall mail a copy of the decision to the applicant or appellant and to the applicable administrative official. Copies of decision granting variances in a floodplain ordinance shall be mailed to the Southern District office of the Wisconsin Department of Natural Resources.

**F. Appeal From Decision of the Board**

A decision of the Board of Appeals may within 30 days after the filing of the decision in the office of the Board of Appeals commence an action seeking to remedy available by certiorari as provided by Wisconsin Statutes.

**VIII. RECONSIDERATION AND REHEARING**

**A. Resubmission**

No appeal or application which has been dismissed or denied shall be considered again without material alteration or revision within one year of the Board's decision except pursuant to court order or by motion to reconsider made by a member voting with the majority or as provided in subparagraph (B).

**B. Rehearing**

No rehearing shall be held except upon the affirmative vote of four or more members of the Board upon finding that substantial, new evidence is submitted which could not reasonably have been presented at the previous hearing. Requests for a rehearing shall be in writing, shall state the reasons for the request and shall be accompanied by necessary data and diagrams.

**C. Notice**

Any resubmission or rehearing shall be subject to the same notice requirements as original hearings.

**D. Fees**

In the event that the request for resubmission or rehearing shall come from a member of the Board, there shall be no filing fee required. In the event the request for resubmission or rehearing shall come from any other person, not a member of the Board, a filing fee as required for original applications shall accompany the request.

**IX. AMENDMENTS**

These rules may be amended or revoked by a majority vote of the Board at any meeting, provided written notice of the proposed amendment or change is given to each member at least ten days before such meeting. Suspension of the rules may be ordered at any meeting by a majority vote of the members present, including alternates empowered to act in the absence of regular members.

## CITY OF BELOIT, WISCONSIN

### ARTICLE I      GENERAL GOVERNING RULES

1. The board shall be governed by the following laws and ordinances:
  - a. The zoning law of the State of Wisconsin, Section 62.23, Wisconsin Statutes.
  - b. Section 1.32 of the Code of General Ordinance relating to the creation of the Board of Appeals.
  - c. The City of Beloit Housing-Property Maintenance Code, Chapter 7 of the Code of General Ordinances.
  - d. The City of Beloit Building Code, Chapter 9 of the Code of General Ordinances.
  - e. Section 11.23(7) of the Code of General Ordinances relating to driveway permits.
  - f. Section 12.24 (8) of the Code of General Ordinances relating to building permits within official right-of-way lines.
  - g. Section 15.25 of the Code of General Ordinances relating to the Land Management Plan.
  - h. The City of Beloit Zoning Ordinance, Chapter 19 of the Code of General Ordinances.
  - i. The City of Beloit Floodplain District of the Zoning Ordinance, Chapter 19 of the Code of General Ordinances.
  - j. The City of Beloit Sign Control Regulations, Chapter 30 of the Code of General Ordinances.
  - k. The Rules of Procedure hereinafter set forth.
  - l. Such other codes as may be authorized by law.
2. Whenever any conflict exists between these Rules of Procedure and the laws of the State or City, State laws and local ordinances shall prevail in that order.
3. All references are to the current Wisconsin State Statutes and City of Beloit municipal ordinances.

**ARTICLE II      MEMBERSHIP**

1. The Board shall consist of seven members appointed by the President of the City Council, subject to the confirmation of the City Council. The members term shall be for a period of three years, except that of those first appointed, two shall serve for one year, two for two years, and three for three years. The members shall serve without compensation.
2. The officers and duties of the Board shall be as follows:
  - a. Chair: Shall be appointed by the President of the City Council, subject to the confirmation of the City Council. The Chair shall preside at all meetings of the Board, supervise the work of the Secretary, and decide all points of procedure unless otherwise directed by a majority vote of the Board.
  - b. Vice-Chair: Shall be selected by a majority vote of the Board at the Board's annual meeting and shall preside at meetings in the absence of the Chair.
  - c. Second Vice-Chair: Shall be selected by a majority vote of the Board at the Board's annual meeting and shall preside at meetings in the absence of the Chair and Vice-Chair.
3. Ex-officio members of the Board are as follows:
  - a. Secretary: Shall be the Director of Community Development or his/her designee. The Secretary shall attend to all clerical work of the Board including but not limited to the following:
    1. Receive, file, and docket all appeals and applications.
    2. Receive and file all papers and records plus conduct all correspondence for the Board.
    3. Prepare, publish, and mail all notices required.
    4. Prepare and keep all minutes and records of the Board's proceedings.
    5. Prepare and keep the Board's calendar.
  - b. The Planning Director or his/her Designee: Shall attend all meetings for the purpose of providing technical assistance when requested by the Board. Such technical assistance shall include a staff report setting forth the position of the Planning Director or his/her designee in relation to each appeal or application listed on the agenda for consideration by the Board. Said staff report shall be available for the examination of the appellant or applicant and all interested parties.
4. Official oaths shall be taken by all members in accordance with Section 19.01 of Wisconsin Statutes. A Statement of Economic Interest must be filed in accordance with Section 1.46(3) City of Beloit Code of General Ordinances.
5. Vacancies shall be filled for the unexpired term of a former member of the Board the same as appointments for a full term.

### ARTICLE III      MEETINGS

1. Regular Meetings: Regular meetings of the Board shall be held on the second and fourth Tuesday of each month, except for the months of November and December when meetings will be scheduled for the second Tuesday only, and at times as the Board may determine.
2. Special Meetings: Special meetings may be called by the Chair, or by the Secretary at the request of two members. Notice of a special meeting must be mailed to each member at least 48 hours prior to the time set for the meeting, or announcement of the meeting must be made at any meeting at which all members are present.
3. Annual Meeting: The first regular meeting in June shall be the Board's annual meeting at which its officers shall be elected.
4. Open to the Public: All meetings of the Board shall be open to the public, except that the Board may go into closed session, pursuant to Section 19.85(1)(a), Wisconsin Statutes, to discuss cases and arrive at its decision. The decision and vote shall be announced in open session.
5. Cancellation of Regular Meetings: Whenever there are no cases or other business to be considered at any regular meeting, other than the annual meeting, the Secretary may cancel such meeting by notifying each member by mail after the deadline to file for the meeting.
6. Hearings: Hearings may be held at any regular or special meeting, at any time set by the Chair.
7. Quorum: A quorum for any meeting shall consist of four members; but a lesser number may meet and adjourn to a specified time.
8. Order of Business: The order of business at regular meetings shall be substantially as follows:
  - a. Roll call and declaration of a quorum.
  - b. Consideration and approval of minutes from the previous meeting.
  - c. Unfinished cases or business.
  - d. Hearing of new cases.
  - e. Previously noticed closed session to deliberate on cases heard by the Board.
  - f. Previously noticed reconvened open session to vote on cases considered in closed session.
  - g. New business.
  - h. Communications and miscellaneous business.
  - i. Adjournment.
9. Voting:
  - a. Personal Interest: No Board member shall participate in the decision of, or vote upon, any case in which the member is financially interested, directly or indirectly. Disqualification of a member for interest shall not decrease the number of votes required for action upon any matter, but such member may be counted in determining whether a quorum is present for the transaction of business.
  - b. Record of Vote: The Secretary shall record the vote of each member on every question in the minutes, or, if the member is absent or fails to vote, shall indicate such fact in the record of the proceedings.

**ARTICLE IV      APPEALS AND APPLICATIONS**

1. Time of Appeal: Appeals shall be filed within 30 days after the date of receipt of the written decision or order from which the appeal is taken, except in the case of appeals from the Housing-Property Maintenance Code in which case the appeal must be filed within 10 days after date of receipt. The appeal shall be filed with the Secretary. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal. Saturdays, Sundays and holidays shall be counted, except if the last day falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day.
2. Who May Appeal: Appeals or applications to the Board may be made by:
  - a. The owner, mortgagee, purchaser under a land contract, optionee or occupant under a written lease for one year or more of the property for which relief is sought.
  - b. Any officer, department, board, or bureau of the City affected by a decision of the administrative official.
  - c. Any person aggrieved and whose use and enjoyment of property within the city is directly and adversely affected by a decision or order of the administrative official.
3. Appeal and Application Forms: Every appeal or application shall be made upon forms furnished by the Secretary and available from the City Building Inspections Division, which have been approved by the Board. A scale drawing shall accompany each form showing the location and size of the property, existing improvements, all abutting properties and improvements thereon and change or addition requested. The applicant or appellant shall provide all information requested on the form and any additional information requested in writing by the Chair or Secretary which is necessary to inform the Board of the facts of the appeal. Failure to supply such information shall be grounds for dismissal of the appeal or application. The Board may waive these requirements where it is felt that such information is not necessary in order to reach a determination.
4. Filing Appeal or Application: The appellant or applicant shall file the required appeal form with the Building Inspections Division. Upon receipt of an appeal form, the Building Inspections Division shall transmit to the Secretary of the Board all papers constituting the record upon which the appeal is being taken.
5. Election to Have Appeal or Application Handled as a Contested Case: The applicant or appellant may elect to have the appeal or application handled as a contested case. The appeal or application form shall explain that a contested case includes the right of all parties to cross-examine witnesses, to object to improper evidence, and to have a record of the proceedings made by a court reporter, qualified stenographer, or by tape recording. Election to have the matter treated as a contested case must be made in writing at the time of filing of the appeal or application.
6. Fee: All appeals and applications filed with the Secretary shall be accompanied by a receipt from the City treasurer showing payment of the filing fee. If the appellant or applicant elects the contested case method, he/she shall also pay the amount determined by the Board to cover the additional administrative costs involved.
7. Insufficient Notice: No appeal or application shall be considered by the Board unless it is made on the required form. Upon receipt of any communication purporting to be an appeal or application, the Building Inspections Division shall supply the applicant with the proper forms, which must be filed within 10 days in addition to the time for appeals in order to be considered by the Board.

ARTICLE V        HEARINGS

1. Notice of Hearing: Notice of the time, date and place of the hearing of an appeal or application shall be given in the following manner:
  - a. The appellant or applicant shall receive a copy of the completed application, which they are required to submit. The application shall contain a listing of the date, time, and place of the hearing. Also, a second notice of the meeting and copy of the City's staff report shall be mailed to the appellant or applicant at least five days prior to the date of the hearing.
  - b. In every case involving an appeal, the Secretary shall mail notice to the owners of record of all land within 100 feet of any part of the proposed building or premises not less than 10 days prior to the date of the hearing.
  - c. A notice of the hearing shall be published in the official newspaper not less than ten days prior thereto. The Beloit Daily News shall be considered the official newspaper.
  - d. Notice of an application for construction of a building in the bed of a future street, highway, or parkway shall be published in the official newspaper not less than 15 days prior to the hearing.
  - e. Notice of all appeals and petitions for variances under the Flood Plain District of the Zoning Ordinance and a copy of all decisions by the Board of Appeals shall be mailed to the Southern District office of the Wisconsin Department of Natural Resources at least 10 days in advance of the hearing and within 10 days after the decision.
2. Time of Hearing, Docketing: Each appeal or application properly filed shall be numbered serially, docketed in a special book provided therefor and placed upon the calendar by the Secretary. Cases docketed 14 or more days preceding a regular meeting shall be set for hearing at such meeting. Cases docketed less than 14 days prior to a regular meeting shall be set for hearing on the second regular meeting day thereafter.
3. Appearance: The appellant or applicant may appear in person or by his agent or attorney. In the absence of an appearance for or against an application, the Board may dismiss the appeal or may dispose of the matter on the records before it.
4. Oath: Witnesses may be sworn before testifying by the Chair or Vice-Chair.
5. Compelling Attendance of Witnesses: The Chair may compel the attendance of witnesses by subpoena. Written request for subpoenas must be filed with the Secretary not less than 2 days prior to the hearing, except by special permission of the Chair.
6. Order of Hearing: Appeals and applications shall be heard in numerical order, except by order of the Board on good cause shown.

ARTICLE V        HEARINGS (continued)7. Order of Business:a. General Hearing: At a general hearing, the order of business shall be as follows:

1. Calling of the case by the Chair.
2. Statement of the case and presentation of the City's side of the case by the staff.
3. Questions by Board members.
4. Applicant's side of the case.
5. Questions by Board members.
6. Statements by interested persons.
7. Questions by Board members.
8. Applicant's, staff, and interested persons rebuttal.

b. Contested Cases: If the applicant of appellant elects to have the appeal or application treated as a contested case, the order of business shall be as follows:

1. Call to order by the Chair.
2. Staff's opening statement.
3. Appellant or applicant's opening statement.
4. Opening statement of persons aggrieved and other interested parties. The right to make an opening statement is limited to persons who will present evidence.
5. City staff's case-in-chief.
6. Questions by Board members.
7. Cross-examination. No more than one person for each party shall cross-examine witnesses. The Chair may limit the number of parties who may cross-examine.
8. Applicant's or appellant's case-in-chief.
9. Questions by Board members.
10. Cross-examination as under 7.
11. Case-in-chief of other parties.
12. Questions by Board members.
13. Cross-examination as under 7.
14. Rebuttal by appellant or applicant and City staff. Rebuttal is limited to matters raised by the adverse parties by way of evidence or argument.
15. Statements of opinion of neighbors or abutting landowners (not subject to cross-examination).
16. Closing statements of those who made or waived opening statements.

8. Evidence and Official Notice: The Board shall not be bound by strict rules of evidence, not limited to consideration of such evidence as would be admissible in a court of law, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The Chair shall rule on all questions relating to the admissibility of evidence, but may be overruled by a majority of the Board members present.

Except in contested case hearings, written and oral testimony will be received. In contested case hearings, no hearsay evidence will be allowed or relied upon as the sole evidence of any factual determination. The Board may take official notice of the ordinances of the municipality, the zoning and location of the subject property and geographical features or other facts, which are common knowledge in the municipality or can be verified by reference to public record. In contested case hearings, all witnesses shall be sworn and no person shall be permitted to testify unless he/she submits to cross-examination.



**ARTICLE V        HEARINGS (continued)**

9. Adjournments: When all appeals cannot be disposed of on the day set, the Board may adjourn from day to day or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of such adjournment shall be given to the absent members of the Board.
10. Withdrawal: An appellant may withdraw an appeal at any time prior to decision thereon, but if a motion is pending to grant or dismiss the appeal, such motion shall have precedence. Withdrawal of the appeal shall not entitle the applicant or appellant to remission of the filing fee.

**ARTICLE VI        DECISION AND DISPOSITION OF CASES**

1. Time of Decision: The Board shall render its decision either at the termination of the hearing or within 30 days thereafter. The Secretary shall notify the parties in interest in writing of the Board's decision.
2. Form of Decision: The final disposition of an appeal or application shall be in the form of a written decision or order signed by the Chairman and Secretary. Such decision shall state the reasons for the Board's determination, with findings of fact and conclusions of law, and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal or grant or deny the variance requested.
3. Vote Required: All orders or decisions of the Board granting a variance or reversing any action or order of an administrative officer shall require the affirmative vote of four members. Whenever only four members of the Board are present and the vote stands 3 to 1 in favor of the appellant or applicant, the matter shall be laid over for consideration and final determination at the next regular meeting of the Board or a special meeting called for that purpose. Failure to obtain a vote of four members in favor of the appellant or applicant upon a second presentation shall be deemed a denial.
4. Conditions: Conditions imposed as part of approval of any application considered by the Board shall be stated in the decision or order embodying the Board's decision and shall be set forth in the applicable permit issued. A permit shall be valid only as long as the conditions upon which it is granted are observed. Appeals or applications approved by the Board shall expire 6 months after issuance if the performance of work is required and substantial work has not commenced.
5. Filing of Decision: Every order or decision of the Board shall be immediately filed with and maintained in the Housing Services Division. The Secretary shall mail a copy of the decision to the applicant or appellant and to the applicable administrative official. Copies of decision granting variances in a floodplain ordinance shall be mailed to the Southern District office of the Wisconsin Department of Natural Resources.
6. Appeal From Decision of the Board: Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the City may within 30 days after the filing of the decision in the office of the Board of Appeals commence an action seeking to remedy available by certiorari as provided by Wisconsin Statutes.

**ARTICLE VII RECONSIDERATION AND REHEARING**

1. Resubmission: No appeal or application which has been dismissed or denied shall be considered again without material alteration or revision within one year of the Board's decision except pursuant to court order or by motion to reconsider made by a member voting with the majority or as provided in subparagraph (2).
2. Rehearing: No rehearing shall be held except upon the affirmative vote of 4 or more members of the Board upon finding that substantial, new evidence is submitted which could not reasonably have been presented at the previous hearing. Requests for a rehearing shall be in writing, shall state the reasons for the request and shall be accompanied by necessary data and diagrams. Any rehearing shall be subject to the same notice requirements as original hearings.
3. Notice: Any resubmission or rehearing shall be subject to the same notice requirements as original hearings.
4. Fees: In the event that the request for resubmission or rehearing shall come from a member of the Board, there shall be no filing fee required. In the event the request for resubmission or rehearing shall come from any other person, not a member of the Board, a filing fee as required for original applications shall accompany the request.

**ARTICLE VIII AMMENDMENTS**

These rules may be amended or revoked by a majority vote of the Board at any meeting, provided written notice of the proposed amendment or change is given to each member at least 10 days before such meeting. Suspension of the rules may be ordered at any meeting by a vote of not less than four members. No suspension or amendment of rules shall be permitted in any contested case without consent of the applicant or appellant or his/her counsel.

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Development Agreement between the City of Beloit and NorthStar Medical Radioisotopes, LLC for installation of a water main on property located at 1800 Gateway Boulevard		
<b>Date:</b>	August 7, 2023		
<b>Presenter:</b>	Julie Christensen	<b>Department:</b>	Community Development

### Overview/Background Information

The NorthStar site currently has four buildings onsite. A Planned Unit Development (PUD) Master Land Use Plan was approved by the City Council on April 17, 2023 which included the construction of up to eight stand-alone buildings and two additions on the property located at 1800 Gateway Boulevard. A Certified Survey Map was approved by Plan Commission on March 22, 2023 which included additional land purchased by NorthStar from an adjacent property owner and the vacated right-of-way adjacent to 1800 Gateway Boulevard.

### Key Issues

1. This project includes the construction of a water main on the property owned by NorthStar; therefore, a development agreement which outlines the roles and responsibilities related to the installation of this public infrastructure is needed. The Development Agreement is attached to the staff report.
2. This agreement outlines the process for the acceptance and guarantee of improvements and provides for the payments of inspection costs related to this project. It also requires that the developer provide the City with a security instrument in the amount of 110 percent of the estimated cost of the project, and it outlines additional legal and insurance requirements.
3. Once this agreement is approved and executed, NorthStar and its contractors may proceed with the water main project. Other Site Improvements and Footing and Foundations are permitted prior to this agreement, as they have Site Plan approval and building plan approval for Footings and Foundations. The full set of Building Plans has been submitted to EPlan Exam, the City's plan reviewer.

### Conformance with Strategic Plan

Approval of this action would conform with the stated purpose of the following strategic goal:

- ☐ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☒ Goal #2 - Create and Sustain a High Performing Organization
- ☒ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☒ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. **Write N/A if not applicable**

Approval of this project supports economic sustainability by allowing a business to grow.

### Action Required/Recommendation

City Council consideration and action on the proposed Resolution

### Fiscal Note/Budget Impact

The proposed improvements will be constructed at the developer's cost, and an easement will be provided over the new public improvements.

### Attachments

Resolution 2023-118 and Draft Development Agreement

Revised 03-09-2022

**RESOLUTION 2023-118**

**RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF BELOIT AND NORTHSTAR MEDICAL RADIOISOTOPES, LLC**

The City Council of the City of Beloit, Rock County, Wisconsin, hereby resolves that the attached Development Agreement between the City of Beloit and NorthStar Medical Radioisotopes, LLC. is hereby accepted and approved.

**BE IT FURTHER RESOLVED** that the City Manager of the City of Beloit be, and is hereby, authorized to execute the Development Agreement on behalf of the City of Beloit and to execute any other documents necessary to carry out the terms and conditions of this resolution.

Adopted this 7th day of August, 2023.

**CITY COUNCIL OF THE CITY OF BELOIT**

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Regina Dunkin, President

ATTEST:

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Marcy J Granger, City Clerk-Treasurer

## DEVELOPMENT AGREEMENT

### (NorthStar Planned Unit Development)

This Development Agreement (the “Agreement”) is made as of the 23th day of June 2023 (the “Effective Date”), by and between NorthStar Medical Radioisotopes, LLC, a Wisconsin corporation (the "Developer"), and the City of Beloit, a Wisconsin municipal corporation (the "City").

#### RECITALS

- A. Project Description (hereinafter the “Project”): The Developer is proposing to construct eight buildings on the site located at 1800 Gateway Boulevard. There are currently four buildings onsite, and this will allow for additions on current buildings and four new buildings. The Improvements (as defined below) pertain to watermains and laterals associated with the Project.
- B. On April 17, 2023, the City Council approved the Planned Unit Development (hereinafter “PUD”) Master Land Use Plan and rezoning the Project property to PUD. The project site includes a public water main over Developer’s property that necessitates the execution of a development agreement, payment of required fees, and submittal of all required documents as provided by the Agreement. On March 22, 2023, the City of Beloit Plan Commission approved a Certified Survey Map for this site and the adjacent unnamed street proposed to be vacated.
- C. Chapter 12 of the City of Beloit’s Code of General Ordinances requires that provisions be made for the installation of public improvements, including but not limited to, streets, street lighting, sanitary sewers and water mains and appurtenances thereto, storm sewer, and stormwater management facilities, greenways, walkways, and erosion controls, and that such improvements be constructed by Developer without cost to the City.
- D. The City's purposes in entering into the Agreement are, among others, to provide for the installation of required improvements, to require Developer to pay the direct and indirect costs related to the required improvements, and to avoid the harmful effects of substandard land divisions, including premature land division which leaves property underdeveloped and unproductive.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the City agree as follows:

RETURN TO:  
City Attorney’s Office  
City of Beloit  
100 State Street  
Beloit, WI 53511

P.I.N.  
206 2281-0005

## ARTICLE I - REQUIRED IMPROVEMENTS

### A. General Conditions.

#### 1. *Improvements.*

Developer shall construct and install those on-site and off-site improvements needed to serve the Project, described herein (the "Improvements"). Developer's obligation to complete the Improvements will arise once all of the following have occurred: (a) execution of this Agreement; (b) approval pursuant to a written letter from the City Engineer of Developer's plans and specifications prepared for use by Developer in bidding and constructing Improvements required to serve the Project (hereinafter "Plans and Specifications"); and (c) the City approving Developer's PUD Final Plan and issuing a Certificate of Zoning Compliance. Developer's obligation will be independent of any obligations of the City contained herein, and will not be conditioned on the commencement of construction or sale of any lots or Improvements.

#### 2. *City Approval of Starting Dates.*

No construction work on the Project property shall begin until a Certificate of Zoning Compliance is issued by the Director of Planning and Building Services. Following that approval, the Developer shall submit a starting date and schedule to the City Engineer for his approval a minimum of seven (7) days before work is scheduled to begin. A starting date will not be approved until the Letter of Credit or performance bond required by this Agreement has been furnished to the City. Notwithstanding the foregoing, the City Engineer may authorize commencement of clearing and grading activities prior to approval of a start date if an erosion control plan has been approved, and erosion control measures are in place. Any grading work commenced prior to approval of a start date is at Developer's risk, and may need to be changed based on final approved development plans. No early commencement of land disturbing activities will be valid unless issued in writing by the City Engineer.

#### 3. *Time of Completion.*

All Improvements shall be completed within eighteen (18) months after the approved start date set forth above in Subsection 2. Any work that is not completed within eighteen (18) months of commencement may be completed by the City at the City's option and charged to the Developer's bond or letter of credit.

#### 4. *Costs of Project.*

The Improvements will be designed, constructed, and installed by the Developer at Developer's sole expense. The City shall not be responsible for any costs or charges relating to the Project, the Improvements or this Agreement, except those specifically enumerated and agreed upon in this or subsequent written, signed agreements between the Developer and the City.

5. *Contractors Engaged by Developer.*

Developer shall perform all work to the standards of the City, and shall comply with every requirement of the City's Code of General Ordinances and standards of construction in performing such work. Developer shall furnish the City Engineer with the names of all known contractors and subcontractors, with the classification of work they will perform, at or before a preconstruction meeting between Developer and the City, and shall update such information as construction progresses.

B. Specifications for Improvements.

1. *Water Distribution.*

- a. Developer shall furnish, construct and install water mains and laterals in accordance with Plans and Specifications prepared by Developer in accordance with City Standards, and conformance with the PUD Final Plan.
- b. Developer shall install water service laterals to serve the development.
- c. No installation of water main shall commence until Plans and Specifications have been approved by the City Engineer and the Wisconsin Department of Natural Resources ("WI DNR") as it requires.
- d. If the City requires that any water main must be larger than 8-inches in diameter, then the City shall reimburse Developer the difference between the material cost of the larger water main and the cost of an 8-inch diameter water main.

2. *Easements and Utility Service.*

All utilities serving the Project including, but not limited to, electric power, natural gas, communications facilities, telephone and cable, shall be installed underground. Except as otherwise provided in this section, all utility equipment, appurtenances, conduits, lines and structures, electrical power, cable, communications facilities and telephone shall be installed within the right of way or within easements along side or rear lot lines and shall not be permitted in the front yard without written approval by the City. City utilities are permitted to be constructed within the City Utility Easement located in the front yard of certain lots if approved by the City Engineer.

3. *Fencing and Debris Removal.*

Developer shall remove all interior fences and posts on the Project property and shall remove all man-made debris on lands to be dedicated to the public, or which are public at this time.

4. *Excess Fill Materials.*

If excavations result in excess fill, and Developer uses such fill materials on lots within the Project, then Developer shall be solely responsible for the location and method of placement of such material. Although such fill materials shall be leveled and graded as



required by the Agreement, neither the City, the City Engineer, nor the employees or agents of either, shall be responsible for the location, method of placement, type, or degree of compaction of any materials placed on private property.

## ARTICLE II - PAYMENT OF FEES AND COSTS

### A. Developer to Reimburse City Costs.

Developer shall reimburse the City for its actual reasonable cost of design, inspection, testing, construction and associated legal, engineering and other fees for the required Improvements. Inspection costs will be billed at the rate of \$80 per hour for straight time and \$120 per hour for overtime, if City staff conducts inspections. The City will attempt to complete City staff inspections during regular work hours. In the event that the City must contract with a qualified third party to complete inspections, those inspection costs will be billed at the customary rates charged to the City for such inspections.

## ARTICLE III - ACCEPTANCE AND GUARANTEE OF IMPROVEMENTS

### A. Acceptance.

After the required Improvements have been installed and completed, and within forty-five (45) days after receiving written notice that Developer desires the City to inspect such Improvements, the City Engineer shall inspect the Improvements. If the Improvements comply with all state and City requirements, then the City Engineer may accept the Improvements on behalf of the City. Before obtaining certification of any such Improvements, Developer shall: (1) present to the City valid lien waivers from all persons providing materials or performing work on the Improvements for which certification is sought; (2) provide as built drawings to the City Engineer in .pdf, .dwg, and .shp file formats; (3) provide to the City all information regarding such Improvements that the City requests to comply with GASB 34. Certification by the City Engineer does not constitute a waiver by the City of the right to draw funds under a letter of credit or invoke its rights under a performance bond because of defects in or failure of any Improvements that are detected or which occur following such certification.

Developer understands and acknowledges that the required Improvements will not be accepted by the City until they have been inspected and approved by the City Engineer and furthermore until all outstanding City costs, including engineering and inspection charges, have been paid in full and lien waivers are received by the City indicating that the contractors and their suppliers have been paid in full for all work and materials furnished under the Agreement. The water main and the respective service laterals shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by the Developer is submitted to the City Engineer. In addition, the water system installation shall not be accepted until two bacteriologically safe samples, taken 24-hours apart, are obtained and tested by a certified agency. Developer shall be responsible to flush the mains, obtain the samples, and have all tests completed as may be required for the City's acceptance, under the direct supervision of the City's Water Utility personnel. Upon completion of the mains, hydrants, valves, appurtenances, and service laterals and acceptance of the system by the City, ownership and control of the system (excepting sewer laterals and the private part of water laterals that shall remain private property) shall be turned over without any restrictions to the City. Developer shall provide for maintenance and repair of all required Improvements until such Improvements are formally accepted by the City.

B. Improvement Guarantee.

Developer guarantees all Improvements against defects that appear within a period of one (1) year from the date of acceptance by the City as herein provided and shall pay for any damages resulting therefrom to City property. If any defect appears during the guarantee period, then Developer shall upon written notice and, at its expense, install replacements or perform repairs to the standard provided in the approved Plans and Specifications. The Developer shall have sixty (60) days from the issuance of such notice (or such longer period as may be acceptable to the City Engineer or as may be required due to weather or climatic conditions) to cure the defect. The City shall not declare a default under this Agreement during the 60-day cure period on account of any such defect unless the City determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat. All guarantees or warranties for materials or workmanship that extend beyond the above guarantee period shall be assigned by the Developer to the City (as beneficiary). Unless defects have appeared and have not been repaired, the City will release the surety to the Developer upon expiration of the one (1) year guarantee period.

C. Remedies.

The remedies provided in this Article III are not exclusive. The City may use any other remedies available to it under the Agreement or in law or equity in addition to, or in lieu of the remedies provided above.

#### ARTICLE IV - SURETY

A. Surety.

Before a starting date will be approved, Developer shall provide the City with a security instrument in a form acceptable to the City in the amount of 110 percent of the estimated cost of constructing the Improvements pursuant to this Agreement. If a letter of credit is provided, then it shall have an initial term of not less than 12 months. Any letter of credit or performance bond shall be acceptable to the City Attorney, in both form and substance.

B. Letter of Credit Procedures.

1. *Payment under Letters of Credit.*

A letter of credit shall be payable to the City at any time upon presentation of: (1) a sight draft drawn on the issuing Bank in the amount to which the City is entitled to draw pursuant to the terms of this Agreement; (2) an affidavit executed by an authorized City official stating that the Developer is in default under this Agreement; and (3) the original Letter of Credit.

2. *Reduction of Letters of Credit.*

As work progresses on installation of the Improvements, the City Engineer, upon written request from the Developer from time to time, is authorized to recommend a reduction in the amount of the letter of credit as hereinafter provided. When portions of the Improvements are completed by Developer, and determined acceptable by the City Engineer, the City Engineer is authorized to reduce the amount of the required Letter of Credit after receiving: (1) copies of pay requests approved by Developer's Engineer; (2) a statement from

Developer's Engineer certifying the estimated cost of the total amount of work remaining to complete the Improvements, including all approved or anticipated change orders; and, (3) partial lien waivers from the general contractor, subcontractors and material suppliers for the total amount paid to date. The amount of the reduced letter of credit shall be not less than 110% of the estimated cost of the total work remaining to complete the Improvements, including approved and anticipated change orders, plus 10 percent of the cost of the completed improvements, and including the cleaning of stormwater management measures prior to acceptance of such measures, as certified by Developer's Engineer, and approved by the City Engineer.

3. *Reduction after Acceptance.*

Upon acceptance by the City of all Improvements, the City agrees to reduce the surety to ten (10) percent of the total cost of the Improvements. The City shall return any remaining letter of credit to Developer or the institution that provided the letter of credit after Developer's guarantee obligations under Article III, Section B of this Agreement have been satisfied.

4. *Accounting.*

Developer may inspect the City records of payments made using a letter of credit upon request at reasonable times. However, the City retains the exclusive right to determine, among other things, questions of design, specifications, construction cost, performance, contract compliance, and payment in connection with this work. In the absence of fraud on the part of the City, the City's decisions on all such matters shall control and shall be final.

5. *Insufficient Letter of Credit Amount.*

If the amount provided by a letter of credit is not sufficient to secure Developer's performance of the Agreement, then the City shall notify Developer of the necessary increase in the letter of credit, or the additional amounts due, and Developer shall increase the Letter of Credit or pay the City for such additional costs within thirty (30) days of receipt of notification.

6. *Notice of Expiration.*

Developer shall provide written notice of the expiration of any letter of credit or replacement letter of credit provided for herein not less than sixty (60) days before its expiration by sending written notice to the City. The Letter of Credit shall be renewed at least thirty (30) days before its expiration date, or any renewal date, until the completion of the guarantee period specified in III B.

C. *Preservation of Assessment Rights.*

1. Any work that is not completed within 18 months of the City approving the PUD Final Plan may be completed by the City at the City's option and charged to lots in the Project as a special assessment.
2. In addition to other remedies provided to the City by the Agreement, the City shall have the right, without notice or hearing, to impose special assessments or special charges on the Project site for any amount to which the City is entitled by virtue of the Agreement. This

Provision constitutes Developer's acknowledgment of special benefit and Developer's consent to, and waiver of notice and hearing on all proceedings imposing such special assessments or special charges.

D. Remedies Not Exclusive.

The remedies provided in this Article IV are not exclusive. The City may use any other remedies available to it under the Agreement or in law or equity in addition to, or in lieu of, the remedies provided above.

#### ARTICLE V - PERMITS AND FEES

A. Required Permits.

Developer is responsible for obtaining all licenses, permits and authority necessary to perform its obligations under this agreement.

B. Processing of Permits.

The City agrees to promptly process Developer's applications for permits and approvals, provided such applications are properly completed and accompanied by the appropriate fees.

#### ARTICLE VI - LEGAL REQUIREMENTS AND PUBLIC RESPONSIBILITY

A. Laws to be Observed.

Developer shall at all times observe and comply with all federal, state and local laws, regulations and ordinances which are in effect or which may be placed in effect which may affect the construction of the Improvements to be accomplished under this Agreement. Developer shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to the lawful prosecution of the Improvements to be completed under the Agreement.

B. Other Laws Apply.

All applicable provisions of City's Code of General Ordinances, and any other applicable laws shall be adhered to with respect to the design, construction and installation of required Improvements for the Project except as variances to or waivers of those requirements have not been granted. Where standards and/or specifications have not been established by the City, all work shall be made in accordance with established engineering practices.

C. Public Protection and Safety.

During its construction of the Improvements, Developer shall be responsible for all damage, bodily injury or death arising out of the Improvements whether from maintaining an "attractive nuisance" or otherwise. Where apparent or potential hazards occur incident to its conduct of construction and installation of Improvements, the Developer shall provide reasonable safeguards.

D. Developer's Responsibility for Work.

Construction and installation of Improvements shall be under the charge and care of the Developer until all Improvements have been accepted by the City. If prior to acceptance, then the City is required to take any measure to maintain, protect, or guard any completed Improvements that have not yet been accepted by the City, the costs of doing so shall be paid by Developer.

E. Insurance Requirements.

1. *General.*

Developer shall obtain insurance acceptable to the City as required under this Section. Developer shall maintain all required insurance under this section until Improvements have been accepted and during any subsequent period in which Developer does work under the Agreement pursuant to the Improvement guarantee or otherwise.

2. *Certificates of Insurance.*

Certificates of Insurance on all policies specified shall be filed with the City Engineer, which shall include a thirty (30) day prior written notice of material change or cancellation to the City and which clearly state that liability insurance is provided and, if applicable to work under the Agreement, explosion, collapse, and underground coverage. Explosion, collapse, and underground coverage may be provided by Developer's contractor.

3. *Insurance.*

Before commencing construction of the Public Facilities, Developer shall provide the City with a certificate of insurance coverage required by the Agreement. The certificate shall name the City as an additional insured and shall provide that the policies of insurance shall not be cancelled without 30 days prior written notice to the City. Developer shall, at Developer's expense, procure the following insurance policies from insurance companies licensed to do business in the State of Wisconsin, in the amounts and coverages hereinafter set forth. All insurance companies and required endorsements shall be approved by the City prior to execution of the contract, which approval will not be unreasonably withheld, conditioned, or delayed. The following must be named as additional insureds on all Liability Policies for liability arising out of project work – City of Beloit, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04 and also include Products — Completed Operations additional insured coverage per ISO form CG 20 37 07 04 or their equivalents for a minimum of two (2) years after acceptance of work. This does not apply to Workers Compensation Policies.

- a. Workers Compensation Insurance. The Developer shall provide a workers compensation policy with the statutory limits.
- b. Commercial General Public Liability Insurance. The Developer shall maintain commercial general public liability insurance with the following standard limits:



General Aggregate Limit (other than Products/Completed Operations)	\$2,000,000
Products/Completed Operations/Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Medical Expense Limit/Any One Person	\$10,000

The Commercial General Liability policy will include protection for:

1. Bodily Injury and Property Damage Liability arising from premises, operations, products, and completed operations.
  2. Contract Liability coverage for this Agreement and related agreements, including sub-agreements.
  3. Coverage for bodily injury or personal injury.
- c. Automobile Liability. Developer shall provide Commercial Automobile Liability insurance covering all licensed vehicles and equipment owned by Developer and all drivers employed by Developer in the amount of \$1,000,000.

The policy shall cover:

1. All non-owned or hired vehicles.
  2. Uninsured/Underinsured Motorist Liability coverage at least equal to the statutory minimum requirement in the State of Wisconsin.
  3. Cross-suits.
  4. Bodily injury and property damage for the transportation of mobile equipment by a vehicle owned or operated by the Contractor or rented or leased to the Contractor.
  5. Automobile medical payment coverage of at least \$10,000.
  6. Coverage for injuries caused by fellow employees.
  7. Contractual liability coverage for the Agreement and related agreements, including sub-agreements.
- d. Umbrella Coverage. Coverage shall protect Developer and any subcontractor during the performance of work covered by the Agreement with limits of \$2,000,000 for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of this Section.
- e. Additional Insured Requirements. The following must be named as additional insureds on all Liability Policies for liability arising out of project work – City of Beloit, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured

coverage must be ISO form CG 20 10 07 04 and also include Products — Completed Operations additional insured coverage per ISO form CG 20 37 07 04 or their equivalents for a minimum of 2 years after acceptance of work. This does not apply to Workers Compensation Policies.

F. Indemnification.

Developer shall indemnify and hold harmless the City, its officers, agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the construction and installation of the Improvements, provided, however, that such indemnification shall not extend to directions by the City or its employees to perform acts if the acts are performed in accordance with such direction. In any and all claims against the City, its officers, agents and employees, by any employee of Developer, its Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Developer, its Contractor or any Subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

G. Personal Liability of Public Officials.

In carrying out any of the provisions of the Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the City's officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the City.

## ARTICLE VII - MISCELLANEOUS PROVISIONS

A. Title.

Developer warrants that it is the owner of all property within the Project, that it has full right and authority to make the agreements, warranties, consents and waivers in the Agreement and that upon recording the City shall have good, indefeasible title to all interests in property dedicated or conveyed to the City by the Agreement or other instruments required by the Agreement. Developer shall defend, indemnify and hold the City harmless from any claims, suits or damages related to the City's acquisition or ownership of interests in the property including, but not limited to, claims for inverse condemnation or relocation benefits under Chapter 32, Stats.

B. Developer's Project Manager.

Developer shall designate, by written notice to the City, a project manager who shall: (i) act as Developer's representative during the construction of the Improvements; (ii) be available during construction hours on the job site or by telephone; and (iii) be available to respond to emergencies by telephone during non-construction hours.

C. Survey Monuments.

Developer shall install all survey monuments for the lands within the Project in the manner required by law within the time required by law. Any monuments disturbed during construction of Improvements shall be restored.

D. Written Notice.

Any written notification required under the Agreement shall be deemed to be served if it is personally delivered or sent by first class mail to the following:

To the City of Beloit as follows: Jerry Gabrielatos, City Manager  
City of Beloit  
100 State Street  
Beloit, WI 53511  
[gabrielatosj@beloitwi.gov](mailto:gabrielatosj@beloitwi.gov)

*With a copy to:* Elizabeth A. Krueger, City Attorney  
100 State Street  
Beloit, WI 53511  
[kruegere@beloitwi.gov](mailto:kruegere@beloitwi.gov)

To Developer as follows: Chris Skillin, Senior Facilities Project Manager  
NorthStar Medical Radioisotopes  
1800 Gateway Boulevard  
Beloit, WI 53511  
[cskillin@northstarnm.com](mailto:cskillin@northstarnm.com)

*With a copy to:* Legal Department  
NorthStar Medical Radioisotopes  
1800 Gateway Blvd.  
Beloit, WI 53511  
[asiman@northstarnm.com](mailto:asiman@northstarnm.com)

E. Inspections.

Developer grants the right of entry on the lands within the Project to personnel or agents of the City to conduct inspections and monitor compliance with the provisions of the Agreement.

F. Access.

The City shall, to the extent it already owns or has access easements over offsite lands, permit reasonable access for Developer's construction of offsite Improvements required under the Agreement. The City shall not, however, be required to exercise, for the benefit of Developer, its power of eminent domain or exercise any other municipal authority to obtain access over any property which it does not currently own or over which it does not have access rights. Nor shall the City be required to expend any time or money to stake, for Developer's benefit, the location of any dedicated lands or easements over which it will furnish Developer access for construction of offsite Improvements.

G. Public Easements.

All easements dedicated to the City or the public grant the City the right to construct, install, maintain, inspect, repair, and replace the designated Improvements in, on, over or under such easements. Lots within the Project shall not be used in a manner that interferes with the City's easement rights. The City's only obligation to restore the property after any use by the City of its easements shall be to grade the soil, replace topsoil, and plant grass seed.

H. Default and Notice of Default.

Any party seeking to enforce its rights hereunder may do so only after giving advance written notice to the other party reasonably identifying the alleged breach and giving the breaching party 30 days in which to cure the alleged breach. If the alleged breach cannot be remedied within 30 days, then the party required to remedy shall undertake to commence within such 30-day period and shall diligently pursue the cure until completion. If any party institutes an action to enforce its rights hereunder, then the prevailing party in such action shall be entitled to recover all costs, including reasonable attorney's and professional fees which may have been incurred in bringing such action. Each of the parties to the Agreement expressly waive and disclaim any right to recover indirect or other consequential damages arising out of the breach by another party to the Agreement. In the event of a material breach by either party, the non-breaching party retains as an available remedy, the remedy of rescission of the Agreement. The exercise of the remedy of rescission shall not cause the return of any monies previously paid by the City to Developer hereunder.

I. No Vested Rights Created.

Except as provided by law, or as expressly provided in the Agreement, no vested right in connection with this project shall inure to Developer. The City does not warrant by the Agreement that Developer is entitled to any required approvals.

J. Successors Bound.

The Agreement shall be binding upon Developer, its grantees, personal representatives, heirs, successors, and assigns, including the owners of all lots in within the Project.

K. Assignment.

The benefits of the Agreement to Developer are personal and shall not be assigned without the express written consent of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. There is no prohibition on the right of the City to assign its rights under the Agreement.

L. No Release.

Nothing set forth in the Agreement shall be construed as, nor is intended to be, a waiver or release of any obligations imposed upon the Developer by the City's Code of General Ordinances or any other applicable state statute, or administrative rule. No waiver of any provision of the Agreement shall be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to the Agreement signed by both the City and Developer, nor shall the waiver of any default under the Agreement be deemed

a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under the Agreement shall not constitute approval of any wrongful act by Developer or the acceptance of any Improvements.

M. Amendment.

The Agreement only may be amended by a written amendment instrument approved and executed by the City and Developer.

N. Severability.

Any illegal or unenforceable provision of the Agreement will be severed and will not render invalid any remaining portions of the Agreement.

O. Entire Agreement.

This written agreement, and written amendments, shall constitute the entire agreement between Developer and the City as of the Effective Date of the Agreement.

P. Recording.

The City may record a copy of the Agreement with the Register of Deeds. All costs of recording shall be paid by Developer.

Q. Affirmative Action.

Developer has adopted a plan to increase in its partners, associates, and employees, members of under-represented groups in all of its departments, job classifications, and salary categories. Developer will require its general contractor to adopt an affirmative action plan. This provision is inserted herein in compliance with Section 1.09 of the Code of General Ordinances of the City of Beloit, and shall be interpreted so as to carry out the intent of that ordinance.

R. Non-Discrimination.

In connection with its obligations hereunder, Developer will not discriminate against any qualified employee or qualified applicant for employment because of race, color, national origin, ancestry, religion, age, marital status, disability, sex, or sexual orientation. Developer shall require its building contractor not to discriminate against any employee or applicant for employment because of race, color, national origin, ancestry, religion, age, marital status, disability, sex, or sexual orientation. This provision is inserted herein in compliance with Section 1.09 of the Code of General Ordinances of the City of Beloit, and shall be interpreted consistent therewith.

S. Force Majeure.

No party shall be responsible to the other party for any losses if a party's fulfillment of any of the terms of the Agreement is delayed or prevented by civil disorders, wars, strikes, floods, fires, acts of God, viruses, pandemics, or by any other cause not within the control of the party whose performance was interfered with or which, by the exercise of reasonable diligence, such party is unable to prevent such delay, including whether or not the reason is included in the class of causes enumerated above (each, a "Force Majeure Event"). The time for performance by a party in all instances shall be extended for the period of delay occasioned by any Force Majeure Event. Notwithstanding the



foregoing, should any such delay extend for longer than sixty (60) days, either party may terminate the Agreement upon thirty (30) days written notice based on such delay occasioned by the Force Majeure Event with no further obligations or liability for any party beyond the date of such written notice.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the Effective Date.

**CITY OF BELOIT**

By: \_\_\_\_\_  
Jerry Gabrielatos, City Manager

By \_\_\_\_\_  
Marcy J Granger, City Clerk

I hereby certify that there are sufficient funds available to pay the liability incurred by the City of Beloit pursuant to this Agreement.

By: \_\_\_\_\_  
Eric. R. Miller, City Comptroller

Approved as to Form:

By: \_\_\_\_\_  
Elizabeth A. Krueger, City Attorney

**STATE OF WISCONSIN**

**COUNTY OF ROCK**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, the above named Jerry Gabrielatos, and Marcy J Granger, to me known to be the City Manager and City Clerk of Beloit, and the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Print name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission \_\_\_\_\_  
(SEAL)

**DEVELOPER  
NORTHSTAR MEDICAL RADIOISOTOPES, LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WISCONSIN

COUNTY OF ROCK

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, the above named \_\_\_\_\_, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Print name: \_\_\_\_\_

Notary Public, State of Wisconsin

My Commission \_\_\_\_\_

(SEAL)

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Referral to Plan Commission: Ordinance No. 3806 amending the Zoning District Map for a property located on the 5000 Block of E. County Road X and the property located at 5037 E. County Road X		
<b>Date:</b>	August 7, 2023		
<b>Presenter:</b>	Julie Christensen	<b>Department:</b>	Community Development

### Overview/Background Information

Julie Christensen, Community Development Director and Secretary of the Plan Commission on behalf of the City of Beloit Plan Commission, has initiated an application for a Zoning Map Amendment to assign a zoning classification of C-3, Community Commercial to the 15.70-acre parcel located on the 5000 Block of E. County Road X, and R-1A, Single Family Residential to the 3-acre parcel located at 5037 E. County Road X.

### Key Issues

- Bradley and Danita Trewyn have submitted a Petition for (Direct) Annexation of two properties they own located in the 5000 block of County Road X (parcel numbers 6-19-177A.1 and 6-19-177A.2) in the Town of Turtle.
- If the annexation is approved (currently scheduled for City Council review and action on September 5, 2023), a City of Beloit zoning classification needs to be assigned to the newly annexed land. Planning staff recommends R-1A, Single Family Residential District zoning for the 3-acre parcel that currently includes the Trewyn residence, and C-3, Community Commercial District zoning for the adjacent 15.70-acre vacant property given its size and proximity to the I-43/Hart Road interchange and WI-81/Milwaukee Road to foster commercial development.
- Because the future land use designation of these parcels is identified as *Long-Range Urban Growth Area* and agricultural land uses in the Comprehensive Plan, a Comprehensive Plan Amendment will also be needed in order to approve this Zoning Map Amendment. Plan Commission will also review a Comprehensive Plan Amendment on August 9, 2023 to ensure consistency with the proposed zoning.
- The Zoning Map Amendment and Comprehensive Plan Amendment are currently scheduled for City Council Review and action on October 2, 2023 following public hearings on September 18, 2023.

### Conformance with Strategic Plan

Approval of this agreement would conform with the stated purpose of the following strategic goal:

- ☐ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☒ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☐ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. **Write N/A if not applicable**

Rezoning the vacant land to C-3 will foster Economic Sustainability by allowing for the development of new commercial business in the City of Beloit.

### Action Required/Recommendation

- Referral to the Plan Commission for the August 9, 2023 meeting
- This item will likely return to the City Council for a public hearing on September 18, 2023 and possible action on October 2, 2023.

### Fiscal Note/Budget Impact

Establishing zoning will aid in the property's development which will increase the City's tax base.

### Attachments

Application and Ordinance

# CITY of BELOIT

## PLANNING & BUILDING SERVICES DIVISION

100 State Street, Beloit, WI 53511

Phone: (608) 364-6700

Fax: (608) 364-6609

### Zoning Map Amendment Application Form

(Please Type or Print)

File No.: ZMA-2023-07

1. Address of subject property: 5037 E. Canterbury Road X

2. Legal description: Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_

(If property has not been subdivided, attach a copy of the complete legal description from deed.)

Property dimensions are: \_\_\_\_\_ feet by \_\_\_\_\_ feet = \_\_\_\_\_ square feet.

If more than two acres, give area in acres: 18.7 acres acres.

3. Tax Parcel Number(s): 6-19-177A.1 and 6-19-177A.2.

4. Owner of record: Bradley + Danita Tremey Phone: 608-290-0620

5037 E. Canterbury Road X

(Address)

(City)

(State)

(Zip)

5. Applicant's Name: Planning + Building Services as staff to Plan Commission

100 State Street Beloit

WI 53511

(Address)

(City)

(State)

(Zip)

(Office Phone #)

(Cell Phone #)

(E-mail Address)

6. **THE FOLLOWING ACTION IS REQUESTED:**

Change zoning district classification from: 15.10 acres AG TDT to: C-3 Community Commercial

All existing uses on this property are: Single-family residence  
and agricultural land

7. All the proposed uses for this property are:

Principal use(s): Single-family residence + agricultural  
land

Secondary use(s): \_\_\_\_\_

Accessory use(s): \_\_\_\_\_

8. I/we represent that I/we have a vested interest in this property in the following manner:

( ) Owner

( ) Leasehold, Length of lease: \_\_\_\_\_

( ) Contractual, Nature of contract: \_\_\_\_\_

(X) Other, explain: Government

9. Individual(s) responsible for compliance with conditions (if any), if request is granted:

Name(s): Bradley + Danita Trewyn Phone: 608-290-0620  
5037 E. Canterbury Road x Beloit WI 53511  
 (Address) (City) (State) (Zip)

The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

I/we, the undersigned, do hereby respectfully make application for and petition the City Plan Commission and City Council to grant the requested action for the purpose stated herein. I/we represent that the granting of the proposed request will not violate any of the required standards of the Zoning Ordinance of the City of Beloit. I/we also agree to abide by all applicable federal, state and local laws, ordinances, rules, and regulations.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 (Signature of Owner) (Print name) (Date)  
Julie Christensen | Julie Christensen | 7/25/23  
 (Signature of Applicant, if different) (Print name) (Date)

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Division for acceptance by the filing deadline date prior to a scheduled Plan Commission meeting. This application must be submitted with the \$300.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, and it is typically between \$5.00 and \$20.00.

**To be completed by Planning Staff**

Filing Fee: \$300.00 Amount Paid: N/A Meeting Date: 8/9/23  
 Number of notices: \_\_\_\_\_ x mailing cost (\$0.50) = cost of mailing notices: \$ \_\_\_\_\_  
 Application accepted by: Nilony Bottmann Date: \_\_\_\_\_  
 Date Notice Published: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_



**ORDINANCE NO. 3806**

**AN ORDINANCE AMENDING THE  
ZONING DISTRICT MAP OF THE CITY OF БЕЛОIT**

The City Council of the City of Beloit, Rock County, Wisconsin do ordain as follows:

**Section 1.** The Zoning District Map of the City of Beloit, mentioned in the Zoning Code, Chapter 19 of the Code of General Ordinances of the City of Beloit, is amended as follows:

The following described land is hereby assigned a zoning classification of C-3, Community Commercial District:

PART OF THE NE ¼ OF THE NW ¼ OF SECTION 22 PART OF THE SE ¼ OF THE SW ¼ AND PART OF THE NE ¼ OF THE SW ¼ OF SECTION 15, ALL IN T.1N., R.13E., OF THE 4<sup>TH</sup> P.M., TOWN OF TURTLE, ROCK COUNTY, WISCONSIN.

DESCRIBED AS FOLLOWS: Commencing at an iron pipe at the South ¼ Corner of said Section; thence N0°26'42"E along the North-South Centerline of said Section, 774.0 feet to an iron pin on the North Line of Lot 1 of a Certified Survey Map recorded in Volume 17, Page 117, also being at the place of beginning for the land to be herein described; thence N89°25'34"W along said North Line, 305.53 feet to the NW Corner of said Lot 1; thence S0°34'21"W 555.91 feet to the SW Corner of said Certified Survey Map; thence S62°40'16"W along the Centerline of E. County Road "X", 436.33 feet; thence N27°35'34"W 33.0 feet to the North Line of said E. County Road "X"; thence along said North Line along the following courses: S83°49'52"W 19.16; thence S68°21'07"W 50.25 feet; thence S55°29'18"W 102.32 feet; thence S62°21'58"W 124.88 feet; thence N69°09'29"W 60.82 feet to the East Line of E. Hart Road; thence N20°40'59"W along said East Line, 70.52 feet; thence N12°38'58"W continuing along said East Line, 114.69 feet to the South Line of Interstate 43; thence along said South Line, along the following courses: N14°43'23"E 78.10 feet; thence N40°11'27"E 125.28 feet; thence N32°22'54"E 215.03 feet to an iron pin; thence Northeasterly along a curve to the left, 234.48 feet, having a radius of 1235.92 feet and a chord bearing N37°48'48"E 234.13 feet to an iron pin; thence N32°22'42"E 199.99 feet to an iron pin; thence N32°36'13"E 274.73 feet to an iron pin; thence Northeasterly along a curve to the right, 477.54 feet, having a radius of 2217.83 feet and a chord bearing N45°39'44"E 476.61 feet to an iron pin; thence N53°00'29"E 164.82 feet to an iron pin at the NW Corner of Lot 2 of a Certified Survey Map recorded in Volume 36, Pages 376 thru 380; thence S0°26'42"W along said North-South Centerline of said Section, 709.56 feet to the place of beginning.

(ALSO KNOWN AS PARCEL 6-19-177A.1) SAID PARCEL CONTAIN 15.70 ACRES, MORE OR LESS.

The following described land is hereby assigned a zoning classification of R-1A, Single-Family Residential District:

LOT 1 OF A CERTIFIED SURVEY MAP RECORDED IN VOLUME 17, PAGE 117 OF CERTIFIED SURVEY MAPS OF ROCK COUNTY, WISCONSIN, AS DOCUMENT NO. 1222656 AND LOCATED IN THE SE ¼ OF THE SW ¼ OF SECTION 15, T.1N., R.13E., OF THE 4<sup>TH</sup> P.M., TOWN OF TURTLE, ROCK COUNTY, WISCONSIN. (ALSO KNOWN AS PARCEL 6-19-177A.2). SAID PARCELS CONTAIN 3 ACRES, MORE OR LESS.

**Section 2.** This Ordinance shall take effect and be in force upon its passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**City Council of the City of Beloit**

\_\_\_\_\_  
Regina Dunkin, Council President

Attest:

\_\_\_\_\_  
Marcy J Granger, City Clerk-Treasurer

Published this \_\_\_\_ day of \_\_\_\_\_, 2023

Effective this \_\_\_\_ day of \_\_\_\_\_, 2023

01-611100-5231-\_\_\_\_\_

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	AN ORDINANCE TO CREATE 18.02 (15)(aa) OF THE CODE OF GENERAL ORDINANCES OF THE CITY OF BELOIT AUTHORIZING OUTDOOR VENDING BY BALET FOLKLORICO JUVENIL SANGRE MEXICANA DE BELOIT, INC		
<b>Date:</b>	8/07/2023		
<b>Presenter:</b>	Matt Amundson, Director of Parks & Recreation	<b>Department:</b>	Public Works
<b>Overview/Background Information</b>			
<p>Balet Folklorico Juvenil Sangre Mexicana De Beloit is requesting to host “Festival Lationamericano” on September 9th at Riverside Park from 6am-11pm. The event will include food vendors, live music, local businesses selling merchandise, and a beauty pageant. Current city code prohibits outdoor vending in City parks unless it is permitted by exception to the ordinance. Event organizers anticipate 1000 attendees.</p> <p>Balet Folklorico Juvenil Sangre Mexicana De Beloit is requesting to host “Festival de dia de el Grito” on September 15th at Riverside Park from 11am-11pm. This festival will celebrate Mexico’s Independence Day. The event will include food vendors, live music, local businesses selling merchandise, and traditional dances. Current city code prohibits outdoor vending in City parks unless it is permitted by exception to the ordinance. Event organizers anticipate 1000 attendees.</p>			
<b>Key Issues</b>			
<ol style="list-style-type: none"> <li>1. An exception to the municipal code to allow outdoor vending at Riverside Park or Telfer Park is being requested by Balet Folklorico Juvenil Sangre Mexicana de Beloit</li> <li>2. The events are open to the public.</li> <li>3. Event sponsors will be responsible for all vendors at the events and provide appropriate insurance coverage.</li> <li>4. Both events intends to sell alcohol, event organizers have not yet completed the Temporary Class B License from the City Clerk’s office.</li> </ol>			
<b>Conformance with Strategic Plan</b>			
<p>Approval of this action would conform with the stated purpose of the following strategic goal:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Goal #1 - Create and Sustain Safe and Healthy Neighborhoods</li> <li><input type="checkbox"/> Goal #2 - Create and Sustain a High Performing Organization</li> <li><input type="checkbox"/> Goal #3 - Create and Sustain Economic and Residential Growth</li> <li><input checked="" type="checkbox"/> Goal #4 - Create and Sustain a High Quality of Life</li> <li><input type="checkbox"/> Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity</li> <li><input checked="" type="checkbox"/> Goal #6 - Create and Sustain a Positive Image, Enhance Communications and Engage the Community</li> </ul>			
<b>Sustainability</b>			
<p>(If applicable, briefly comment on the sustainable long term impact of this policy or program related to how it will impact both the built and natural environment. Consider whether the policy or program will reduce dependence upon fossil fuels, reduce dependence on chemicals and other manufacturing substances that accumulate in nature, reduce dependence on activities that harm life sustaining eco-systems, and/or meet the hierarchy of present and future human needs fairly and efficiently. Write N/A if not applicable)</p> <p>N/A</p>			
<b>Action Required/Recommendation</b>			
Staff recommends approval of ordinance.			
<b>Fiscal Note/Budget Impact</b>			
No budgetary impact			
<b>Attachments</b>			
Proposed Ordinance			

**ORDINANCE NO. 3805**

**AN ORDINANCE TO CREATE 18.02 (15)(aa) OF THE CODE OF  
GENERAL ORDINANCES OF THE CITY OF БЕЛОIT AUTHORIZING  
OUTDOOR VENDING BY BALET FOLKLORICO JUVENIL SANGRE  
MEXICANA DE БЕЛОIT INC FOR TWO ANNUAL COMMUNITY  
EVENTS IN RIVERSIDE PARK OR TELFER PARK**

The City Council of the City of Beloit, Rock County, Wisconsin, do ordain as follows:

**Section 1.**     **Section 18.02(15)(aa) of the Code of General Ordinances of the City of Beloit is hereby created to read as follows:**

“(aa) Two annual community events sponsored by Balet Folklorico Juvenil Sangre Mexicana de Beloit, Inc. in Riverside Park or Telfer Park.”

**Section 2.**     **This ordinance shall be in force and take effect upon passage and publication.**

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY COUNCIL FOR THE CITY OF БЕЛОIT**

By: \_\_\_\_\_  
Regina Dunkin, President

**ATTEST:**

By: \_\_\_\_\_  
Marcy J. Granger, City Clerk-Treasurer

PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
01-611100-5231- \_\_\_\_\_

18.02(15)(aa) = ORD 20230720 (23-1122)

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	AN ORDINANCE TO AMEND 18.02 (15)(w) OF THE CODE OF GENERAL ORDINANCES OF THE CITY OF BELOIT AUTHORIZING OUTDOOR VENDING FOR AN EVENT SPONSORED BY HISPANOS UNIDOS ROMPIENDO FRONTERAS, INC		
<b>Date:</b>	7/3/2023		
<b>Presenter:</b>	Matt Amundson, Director of Parks & Recreation	<b>Department:</b>	Public Works
<b>Overview/Background Information</b>			
Hispanos Unidos Rompiendo Fronteras Inc, is requesting to host a Hispanic Heritage Festival at Telfer Park on September 9 <sup>th</sup> from 2:00-10:00pm at Telfer Park and Pohlman Field. Current city code prohibits outdoor vending in City parks unless it is permitted by exception to the ordinance. The event will include consumption of alcohol with sales occurring in a designated area, vendor booths, food trucks, children's activities and games, a DJ and a total of 4 bands. Event organizers anticipate 1500 attendees.			
<b>Key Issues</b>			
1. An exception to the municipal code to allow outdoor vending at Telfer Park is being requested by Hispanos Unidos Rompiendo Fronteras Inc. 2. The event is open to the public. 3. Event sponsors will be responsible for all vendors at the event and provide appropriate insurance coverage.			
<b>Conformance with Strategic Plan</b>			
Approval of this action would conform with the stated purpose of the following strategic goal: <input type="checkbox"/> Goal #1 - Create and Sustain Safe and Healthy Neighborhoods <input type="checkbox"/> Goal #2 - Create and Sustain a High Performing Organization <input type="checkbox"/> Goal #3 - Create and Sustain Economic and Residential Growth <input checked="" type="checkbox"/> Goal #4 - Create and Sustain a High Quality of Life <input type="checkbox"/> Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity <input checked="" type="checkbox"/> Goal #6 - Create and Sustain a Positive Image, Enhance Communications and Engage the Community			
<b>Sustainability</b>			
(If applicable, briefly comment on the sustainable long term impact of this policy or program related to how it will impact both the built and natural environment. Consider whether the policy or program will reduce dependence upon fossil fuels, reduce dependence on chemicals and other manufacturing substances that accumulate in nature, reduce dependence on activities that harm life sustaining eco-systems, and/or meet the hierarchy of present and future human needs fairly and efficiently. Write N/A if not applicable) N/A			
<b>Action Required/Recommendation</b>			
Staff recommends approval of ordinance.			
<b>Fiscal Note/Budget Impact</b>			
No budgetary impact.			
<b>Attachments</b>			
Proposed Ordinance.			

Revised 05-24-2018

**ORDINANCE NO. 3798**

**AN ORDINANCE TO AMEND SECTION 18.02 (15)(w) OF THE CODE OF GENERAL ORDINANCES OF THE CITY OF БЕЛОIT AUTHORIZING OUTDOOR VENDING BY HISPANOS UNIDOS ROMPIENDO FRONTERAS, INC. FOR HISPANIC HERITAGE FESTIVAL IN RIVERSIDE PARK OR TELFER PARK**

The City Council of the City of Beloit, Rock County, Wisconsin, do ordain as follows:

**Section 1.** Section 18.02(15)(w) of the Code of General Ordinances of the City of Beloit is hereby amended to read as follows:

“(w) “Hispanic Heritage Festival” annual event sponsored by Hispanos Unidos Rompiendo Fronteras Inc. in Riverside Park or Telfer Park.”

**Section 2.** This ordinance shall be in force and take effect upon passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**CITY COUNCIL FOR THE CITY OF БЕЛОIT**

By: \_\_\_\_\_  
Regina Dunkin, President

**ATTEST:**

By: \_\_\_\_\_  
Marcy J. Granger, City Clerk-Treasurer

PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
01-611100-5231- \_\_\_\_\_



# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



Topic:	<b>AN ORDINANCE TO AMEND SECTION 2.02(2)(c) OF THE CODE OF GENERAL ORDINANCES OF THE CITY OF BELOIT PERTAINING TO LEGAL HOLIDAYS FOR CITY COUNCIL MEETINGS</b>		
Date:	July 17, 2023		
Presenter:	Attorney Elizabeth Krueger	Department:	City Attorney

### Overview/Background Information

The City Council has requested the attached proposed ordinance for their consideration.

In 2021, the federal holiday for Juneteenth was enacted into law. The City Council has historically not met on federal holidays when those holidays fall on a Monday of a regular council meeting. As you know, regular city council meetings occur on the first and third Mondays of the month.

Other examples of holidays where the city council meetings are moved include New Year's Day, Martin Luther King, Jr. Holiday, Fourth of July, Labor Day, Christmas Eve Day, and Christmas Day.

The proposed ordinance will add the Juneteenth federal holiday to those other federal holidays where the council meeting will move to the following Tuesday.

### Conformance with Strategic Plan

Approval of this action would conform with the stated purpose of the following strategic goal:

- ☐ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☒ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☐ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. Write N/A if not applicable

N/A

### Action Required/Recommendation

City Council should consider the attached proposed ordinance and take action for approval or denial

### Fiscal Note/Budget Impact

No direct budgetary impact

### Attachments

Proposed ordinance

Revised 03-09-2022

**ORDINANCE NO. 3802**

**AN ORDINANCE TO SECTION 2.02(2)(c) OF THE CODE OF GENERAL ORDINANCES OF THE CITY OF BELOIT PERTAINING TO LEGAL HOLIDAYS FOR CITY COUNCIL MEETINGS**

The City Council of the City of Beloit, Rock County, Wisconsin, do ordain as follows:

Section 1. Section 2.02(2)(c) of the Code of General Ordinances of the City of Beloit is hereby amended to read as follows:

“(c) Legal Holidays. If the date for the regular meeting of the City Council is a legal holiday, or if the immediately preceding Saturday or Sunday is a legal holiday, then the regular meeting of the City Council shall be held on the following Tuesday. In this paragraph, legal holiday means New Year's Day, Martin Luther King, Jr.'s birthday (to be observed on the third Monday in January), [Juneteenth National Independence Day](#), the 4th of July and Labor Day (first Monday in September).”

Section 2. This ordinance shall be in force and take effect upon passage and publication.

Adopted this \_\_\_\_ day of August, 2023.

**CITY COUNCIL FOR THE CITY OF BELOIT**

By: \_\_\_\_\_  
Regina Dunkin, President

**ATTEST:**

By: \_\_\_\_\_  
Marcy J. Granger, City Clerk-Treasurer

PUBLISHED: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

01-611100-5231-\_\_\_\_\_

2.02(2)(c) = ORD 20230629 (23-1118)

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Ordinance No. 3793 Amending the Zoning District Map for 2000 Gateway Boulevard		
<b>Date:</b>	August 7, 2023		
<b>Presenter:</b>	Julie Christensen	<b>Department:</b>	Community Development
<b>Overview/Background Information</b>			
Julie Christensen, Community Development Director and Secretary of the Plan Commission on behalf of the City of Beloit Plan Commission has submitted an application for a Zoning Map Amendment from M-1, Limited Manufacturing District, to C-3, Community Commercial District, for the property located at 2000 Gateway Boulevard in the City of Beloit.			
<b>Key Issues</b>			
<ol style="list-style-type: none"> <li>1. The future land use designation for this parcel in the Comprehensive Plan is Community Commercial, which is most compatible with the C-3, Community Commercial Zoning District.</li> <li>2. 2000 Gateway Boulevard is along the extension of Milwaukee Road east of the new I-39/90 and I-43 interchange, and is ideal for community commercial uses as an extension of the Milwaukee Road commercial corridor.</li> <li>3. Prior to this item on the June 5, 2023 agenda, City Council held a public hearing on a Zoning Map Amendment from M-1, Limited Manufacturing District, to C-3, Community Commercial District, for the property located at 2001 Gateway Boulevard. The intent is to also rezone the property at 2000 Gateway Boulevard to create a larger commercial district along this portion of Milwaukee Road.</li> <li>4. The Plan Commission reviewed this application on June 7, 2023, and voted (5-0) to recommend approval of the Zoning Map Amendment.</li> </ol>			
<b>Conformance with Strategic Plan</b>			
Approval of this agreement would conform with the stated purpose of the following strategic goal:			
<input type="checkbox"/> Goal #1 - Create and Sustain Safe and Healthy Neighborhoods <input type="checkbox"/> Goal #2 - Create and Sustain a High Performing Organization <input checked="" type="checkbox"/> Goal #3 - Create and Sustain Economic and Residential Growth <input checked="" type="checkbox"/> Goal #4 - Create and Sustain a High Quality of Life <input type="checkbox"/> Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity <input type="checkbox"/> Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image			
<b>Sustainability</b>			
If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. <b>Write N/A if not applicable</b>			
C-3 zoning will foster Economic Sustainability by allowing a new commercial business in the City of Beloit.			
<b>Action Required/Recommendation</b>			
<ul style="list-style-type: none"> <li>• City Council consideration and 2<sup>nd</sup> reading of the proposed Ordinance.</li> </ul>			
<b>Fiscal Note/Budget Impact</b>			
Development of the parcels once rezoned will increase the City's tax base.			
<b>Attachments</b>			
Ordinance No. 3793 and Staff Report to the Plan Commission			

**ORDINANCE NO. 3793**

**AN ORDINANCE AMENDING THE  
ZONING DISTRICT MAP OF THE CITY OF БЕЛОIT**

The City Council of the City of Beloit, Rock County, Wisconsin do ordain as follows:

**Section 1.** The Zoning District Map of the City of Beloit, mentioned in the Zoning Code, Chapter 19 of the Code of General Ordinances of the City of Beloit, is amended as follows:

The following described land is hereby changed from M-1, Limited Manufacturing District to C-3, Community Commercial District:

PT E 1/2 SEC 5 OF MILW RD COM AT INTERSEC C/L SEC 21 & NWLY LE CM ST P RY TH N 54 DEG 46 MIN E 1229.12 FT, NW 1856.7 FT TO C/L MILW RD, SW 1115.73 FT O C/L SEC, S 2083.43 FT TO POB EXC V 523 P 262 & V 378 P 516, 42 A & EXC 6.21 AC M/L FOR HWY EXC THAT PART DEEDED TO CITY OF БЕЛОIT IN DOC 1866270 1.5 AC ALSO EXCEPTING THAT PART DEEDED TO WISCONSIN DEPARTMENT OF TRANSPORTATION PROJECT PLAT DOC 2070509 5.837 AC M/L, CITY OF БЕЛОIT, ROCK COUNTY, WISCONSIN. SAID PARCEL CONTAINING 28.794 ACRES MORE OR LESS. A/K/A 2000 GATEWAY BOULEVARD.

**Section 2.** This Ordinance shall take effect and be in force upon its passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**City Council of the City of Beloit**

\_\_\_\_\_  
Regina Dunkin, Council President

Attest:

\_\_\_\_\_  
Marcy J Granger, City Clerk-Treasurer

Published this \_\_\_\_ day of \_\_\_\_\_, 2023

Effective this \_\_\_\_ day of \_\_\_\_\_, 2023

01-611100-5231-\_\_\_\_\_



## **REPORT TO THE PLAN COMMISSION**

**Plan Commission Meeting Date:** June 7, 2023

**Agenda Item:** 4.c.

**File Number:** ZMA-2023-04

### **General Information**

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**Applicant:** Julie Christensen on behalf of the City of Beloit Plan Commission

**Owner:** City of Beloit

**Address/Location:** 2000 Gateway Boulevard

**Applicant's Request/Proposal:** City staff has submitted an application for a Zoning Map Amendment from M-1, Limited Manufacturing District to C-3, Community Commercial District for the property located at 2000 Gateway Boulevard in the City of Beloit. This Zoning Map Amendment was previously referred by City Council to the Plan Commission on May 1, 2023 for the May 3, 2023 Plan Commission meeting. However, because of a clerical issue, the property owner was not individually notified prior to Plan Commission review. As such, the item was not reviewed by Plan Commission. The owner has since been individually notified.

### **Staff Analysis**

---

**Existing Site Conditions:** 2000 Gateway Boulevard (28.8 acres) is currently zoned M-1 – Limited Manufacturing District. The future land use designation for this parcel in the Comprehensive Plan is Community Commercial, which is most compatible with the C-3, Community Commercial Zoning District.

2000 Gateway Boulevard is along the extension of Milwaukee Road east of the new I-39/90 and I-43 interchange, and is ideal for community commercial uses as an extension of the Milwaukee Road commercial corridor. On June 5, 2023, the City Council held a public hearing on a Zoning Map Amendment from M-1, Limited Manufacturing District, to C-3, Community Commercial District, for the property located at 2001 Gateway Boulevard just across Gateway Boulevard from the subject property. The intent is to also rezone the property at 2000 Gateway Boulevard to create a larger commercial district along this portion of Milwaukee Road.

**Surrounding Land Use and Zoning:** To the east of the subject property is vacant land (2001 Gateway Boulevard) which is also proposed to be rezoned to C-3. To the north is Interstate 43 with C-1, Office District and R-1A, Single Family Residential District in the Lathers Woods area. To the south is Wisconsin Power and Light (WP&L) property zoned M-1, Limited Manufacturing District. To the west is Kerry Ingredients zoned M-1, Limited Manufacturing District and a

WisDOT parcel zoned DH, Development Holding District.

**City of Beloit Comprehensive and Strategic Plan:** The Comprehensive Plan's Future Land Use Map recommends Community Commercial for this parcel. The rezoning is consistent with the Comprehensive Plan's recommendation and supports Strategic Goal #3 - Create and Sustain Economic and Residential Growth and Strategic Goal #4 - Create and Sustain a High Quality of Life.

**Zoning Map Amendment Findings of Fact:** Based on Section 2-304 of the Zoning Ordinance, the Plan Commission shall make a recommendation based on the following considerations:

1. **The existing use of property within the general area of the subject property.**  
The existing land use is vacant land, but existing and planned developments surrounding the property are compatible with Community Commercial uses. The location along Gateway Boulevard, a highly visible minor arterial, is ideal for commercial development. Nearby connections to the existing Milwaukee Road commercial corridor, the I-39/90/WI-81 interchange and the I-43/Hart Road interchange further lend this property to commercial development along this highly visible traffic corridor.
2. **The zoning classification of property within the general area of the subject property.**  
Existing and planned developments surrounding the property along 2000 Gateway Boulevard and the adjacent Milwaukee Road include compatible industrial and office uses, and an opportunity to extend the Milwaukee Road commercial corridor further east.
3. **The suitability of the subject property for the uses permitted under the existing zoning classification.**  
The existing zoning classification is M-1, Limited Manufacturing District along Gateway Boulevard and Milwaukee Road east of I-39/90. While some commercial uses are permitted or conditional in the M-1 and M-2 manufacturing districts, some are less compatible with C-3, Community Commercial districts and highly travelled and visible locations such as this. Likewise, some uses only permitted in M-1 and M-2 make this parcel less suitable for a manufacturing zoning classification given that same high visibility and compatibility with the adjacent land uses.
4. **The trend of development and zoning map amendments in the general area of the subject property.**  
There has not been much if any need for zoning map amendments in these areas until now. Gateway Boulevard/Milwaukee Road have been partially developed with high quality manufacturing and office uses. However, with the extension of Milwaukee Road east of I-39/90, which allows the extension of commercial uses along the interstates, staff believes the timing is appropriate to rezone this parcel for commercial uses consistent with Comprehensive Plan.

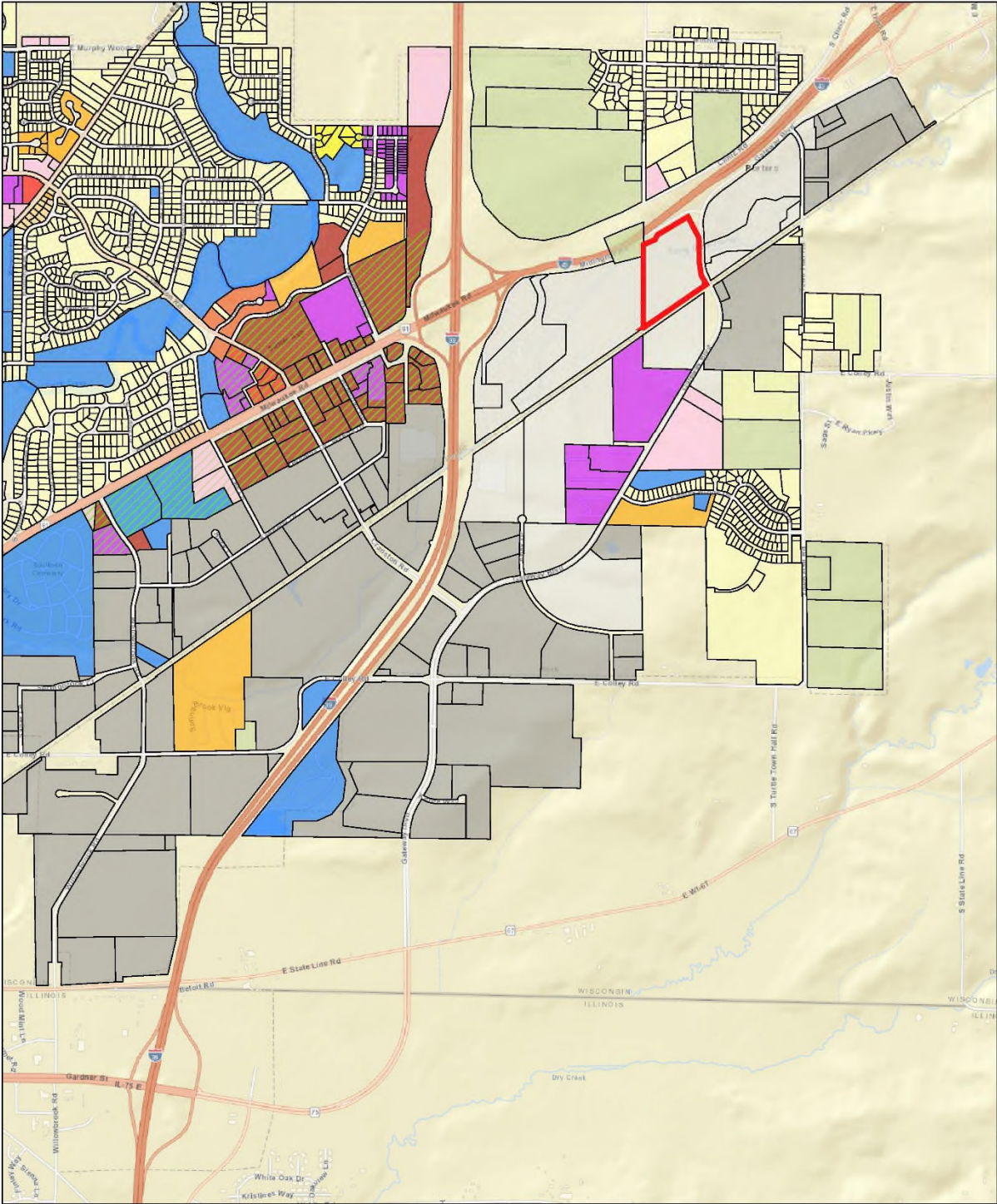
**STAFF RECOMMENDATION – ZONING MAP AMENDMENT:**



The Planning and Building Services Division recommends **approval** of a Zoning Map Amendment to change the zoning district classification from M-1, Limited Manufacturing District, to C-3, Community Commercial District, for the property located at 2000 Gateway Boulevard in the City of Beloit.

**ATTACHMENTS:** Zoning Map, Location Map, Application, Public Notice, Mailing List, and Ordinance.

# Zoning Map



5/19/2023

- Zoning Districts

DH

MRO

C-1

C-2

C-3

M-1

M-2

PLI

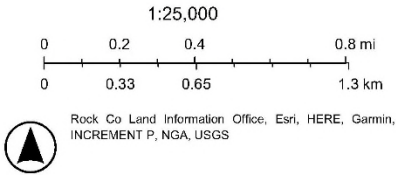
PUD

R-1A

R-1B

R-2

R-3
- World Street Map





Location Map



2000 Gateway Boulevard

Web Print: 05/19/2023

0 1,562 Feet

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

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# CITY of BELOIT

## PLANNING & BUILDING SERVICES DIVISION

100 State Street, Beloit, WI 53511

Phone: (608) 364-6700

Fax: (608) 364-6609

### Zoning Map Amendment Application Form

(Please Type or Print)

File No.: \_\_\_\_\_

1. Address of subject property: 2300 COLLEY, 2000 GATEWAY, 2001 GATEWAY

2. Legal description: Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_

(If property has not been subdivided, attach a copy of the complete legal description from deed.)

Property dimensions are: \_\_\_\_\_ feet by \_\_\_\_\_ feet = \_\_\_\_\_ square feet.

If more than two acres, give area in acres: 38.3, 24.8, 30.0 acres.

3. Tax Parcel Number(s): 23120100, 22120200, 22120700

4. Owner of record: CITY OF BELOIT Phone: 608-364-6703

100 STATE ST. BELOIT, WI 53511  
(Address) (City) (State) (Zip)

5. Applicant's Name: JULIE CHRISTENSEN, COMMUNITY DEV. DIR. / SEC. OF THE PLAN  
COMMISSION

100 STATE ST. BELOIT WI 53511  
(Address) (City) (State) (Zip)

608-364-6703 1 JCHRISTENSEN@BELLOITWI.GOV  
(Office Phone #) (Cell Phone #) (E-mail Address)

6. **THE FOLLOWING ACTION IS REQUESTED:**

Change zoning district classification from: M-2 (COLLEY)  
M-1 (GATEWAY) to: C-3

All existing uses on this property are: AGRICULTURAL / VACANT

7. All the proposed uses for this property are:

Principal use(s): COMMERCIAL

Secondary use(s): \_\_\_\_\_

Accessory use(s): \_\_\_\_\_



8. I/we represent that I/we have a vested interest in this property in the following manner:

(X) Owner

( ) Leasehold, Length of lease: \_\_\_\_\_

( ) Contractual, Nature of contract: \_\_\_\_\_

( ) Other, explain: \_\_\_\_\_

9. Individual(s) responsible for compliance with conditions (if any), if request is granted:

Name(s): JULIE CHRISTENSEN Phone: 608-364-6703

100 SCHE ST. BELOIT WI 53511  
(Address) (City) (State) (Zip)

The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

I/we, the undersigned, do hereby respectfully make application for and petition the City Plan Commission and City Council to grant the requested action for the purpose stated herein. I/we represent that the granting of the proposed request will not violate any of the required standards of the Zoning Ordinance of the City of Beloit. I/we also agree to abide by all applicable federal, state and local laws, ordinances, rules, and regulations.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
(Signature of Owner) (Print name) (Date)  
Julie Christensen JULIE CHRISTENSEN 4/17/23  
(Signature of Applicant, if different) (Print name) (Date)

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Division for acceptance by the filing deadline date prior to a scheduled Plan Commission meeting. This application must be submitted with the \$300.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, and it is typically between \$5.00 and \$20.00.

#### To be completed by Planning Staff

Filing Fee: **\$300.00** Amount Paid: \_\_\_\_\_ Meeting Date: 5-3-23 (PC)  
Number of notices: \_\_\_\_\_ x mailing cost (\$0.50) = cost of mailing notices: \$ \_\_\_\_\_  
Application accepted by: [Signature] Date: 4-17-23  
Date Notice Published: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_



CITY HALL • 100 STATE STREET • BELOIT, WI 53511

Office: 608/364-6700 • Fax: 608/364-6609

[www.beloitwi.gov](http://www.beloitwi.gov)

*Equal Opportunity Employer*

## **NOTICE TO THE PUBLIC**

May 19, 2023

To Whom It May Concern:

The City of Beloit has submitted an application for review and consideration for a Zoning Map Amendment to rezone 2000 Gateway Boulevard from M-1, Limited Manufacturing to C-3, Community Commercial District.

The following public hearings will be held regarding these applications:

**City Plan Commission:** Wednesday, June 7, 2023 at 7:00 PM, or as soon thereafter as the matter can be heard in The Forum, Beloit City Hall, 100 State Street.

**City Council:** Monday, July 17, 2023 at 7:00 PM, or as soon thereafter as the matter can be heard in The Forum, Beloit City Hall, 100 State Street.

**We are interested in your opinion. \***

**Anyone bringing handouts to the Plan Commission meeting must bring 10 copies and submit them to City staff before the meeting begins. You may also mail your comments to the attention of TJ Nee at 100 State Street or via email to [planning@beloitwi.gov](mailto:planning@beloitwi.gov). You may also call (608) 364-6711 to provide your comments over the phone.**



2000 GATEWAY

MORA REVOCABLE TRUST  
199 QUEENSLAND CIRCLE  
PONTE VEDRA, FL 32081

KERRY INC.  
3400 MILLINGTON RD  
BELOIT WI 53511

WP&L, ATTN REAL ES  
4902 N BILTMORE LN STE 1000  
MADISON, WI 53718-2148

NORTHSTAR FACILITY DEV LLC  
1800 GATEWAY BLVD  
BELOIT WI 53511

WISDOT  
111 INTERSTATE BLVD  
EDGERTON WI 53534-9399

**ORDINANCE NO. 3793**

**AN ORDINANCE AMENDING THE  
ZONING DISTRICT MAP OF THE CITY OF БЕЛОIT**

The City Council of the City of Beloit, Rock County, Wisconsin do ordain as follows:

**Section 1.** The Zoning District Map of the City of Beloit, mentioned in the Zoning Code, Chapter 19 of the Code of General Ordinances of the City of Beloit, is amended as follows:

The following described land is hereby changed from M-1, Limited Manufacturing District to C-3, Community Commercial District:

PT E 1/2 SEC S OF MILW RD COM AT INTERSEC C/L SEC 21 & NWLY LE CM ST P RY TH N 54 DEG 46 MIN E 1229.12 FT, NW 1856.7 FT TO C/L MILW RD, SW 1115.73 FT O C/L SEC, S 2083.43 FT TO POB EXC V 523 P 262 & V 378 P 516, 42 A & EXC 6.21 AC M/L FOR HWY EXC THAT PART DEEDED TO CITY OF БЕЛОIT IN DOC 1866270 1.5 AC ALSO EXCEPTING THAT PART DEEDED TO WISCONSIN DEPARTMENT OF TRANSPORTATION PROJECT PLAT DOC 2070509 5.837 AC M/L, CITY OF БЕЛОIT, ROCK COUNTY, WISCONSIN. SAID PARCEL CONTAINING 28.794 ACRES MORE OR LESS. A/K/A 2000 GATEWAY BOULEVARD.

**Section 2.** This Ordinance shall take effect and be in force upon its passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**City Council of the City of Beloit**

\_\_\_\_\_  
Regina Dunkin, Council President

Attest:

\_\_\_\_\_  
Marcy J Granger, City Clerk-Treasurer

Published this \_\_\_\_ day of \_\_\_\_\_, 2023

Effective this \_\_\_\_ day of \_\_\_\_\_, 2023

01-611100-5231-\_\_\_\_\_

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Ordinance No. 3804 amending the Future Land Use Map of the City of Beloit Comprehensive Plan for 1006 Park Avenue		
<b>Date:</b>	August 7, 2023		
<b>Presenter:</b>	Julie Christensen	<b>Department:</b>	Community Development

### Overview/Background Information

Lori Rhead on behalf of the Board of Trustees of Beloit College has submitted an application to amend the Future Land Use Map (Map 10) of the City of Beloit Comprehensive Plan for the property located at 1006 Park Avenue.

### Key Issues

1. The applicant has proposed the following amendment to the Future Land Use Map (Map 10) of the City's Comprehensive Plan: 1006 Park Avenue - From *Office* to *Institutional and Community Services*.
2. As part of the Morse Library Renovation project, Beloit College would like to relocate the maintenance garage located at 732 Church Street to their property located at 1006 Park Avenue (formerly Geri's Hamburgers) and continue to use it as a campus maintenance building.
3. 1006 Park Avenue is currently zoned C-1, Office District. A maintenance building for Beloit College is not permitted in the C-1, Office District, but is permitted in the PLI, Public Lands and Institutions District, which is the most appropriate zoning for college and related accessory buildings and uses.
4. Because the Comprehensive Plan's Future Land Use Map recommends *Office* for this parcel, a Comprehensive Plan Amendment to *Institutional and Community Services* is needed in order to rezone the parcel to PLI, Public Lands and Institutions to be consistent with the Comprehensive Plan and allow the proposed use.
5. The Plan Commission reviewed the Comprehensive Plan Amendment application and Zoning Map Amendment application on June 7, 2023, and voted (5-0) to recommend approval of both the Comprehensive Plan Amendment and the Zoning Map Amendment.

### Conformance with Strategic Plan

Approval of this agreement would conform with the stated purpose of the following strategic goal:

- ☒ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☐ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. Write N/A if not applicable

Once rezoned, redeveloping a property that has been vacant since 2006 will help create and sustain safe and healthy neighborhoods through community revitalization.

### Action Required/Recommendation

- City Council consideration and 2<sup>nd</sup> reading of the proposed Ordinance.

### Fiscal Note/Budget Impact

N/A

### Attachments

Ordinance No. 3804 and Staff Report to the Plan Commission

**ORDINANCE NO. 3804**

**AN ORDINANCE AMENDING THE FUTURE LAND USE MAP OF  
THE CITY OF BELOIT COMPREHENSIVE PLAN**

The City Council of the City of Beloit, Rock County, Wisconsin do ordain as follows:

**Section 1.** The Future Land Use Map (Map 10) of the City of Beloit Comprehensive Plan adopted in §12.015 of the Code of General Ordinances of the City of Beloit, is hereby amended as follows:

The future land use category of the following described land is hereby changed from Office to Institutional and Community Services:

LOTS 1, 2 AND 3, BLOCK 2, PEET AND SALMON'S ADDITION, CITY OF BELOIT, ROCK COUNTY, WISCONSIN. SAID PARCELS CONTAINING 0.64 ACRES MORE OR LESS. A/K/A 1006 PARK AVENUE.

**Section 2.** This Ordinance shall take effect and be in force upon its passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**City Council of the City of Beloit**

\_\_\_\_\_  
Regina Dunkin, Council President

Attest:

\_\_\_\_\_  
Marcy J Granger, City Clerk-Treasurer

Published this \_\_\_\_ day of \_\_\_\_\_, 2023

Effective this \_\_\_\_ day of \_\_\_\_\_, 2023

01-611100-5231-\_\_\_\_\_



## **REPORT TO THE PLAN COMMISSION**

**Plan Commission Meeting Date:** June 7, 2023

**Agenda Items:** 3.c. and 4.a.

**File Number:** RPB-2023-04 and ZMA-2023-05

### **General Information**

---

**Applicant:** Lori Rhead on behalf of the Board of Trustees of Beloit College

**Owner:** Beloit College Board of Trustees

**Address/Location:** 1006 Park Avenue

**Applicant's Request/Proposal:** Lori Rhead on behalf of the Board of Trustees of Beloit College has submitted applications for a Comprehensive Plan Amendment from *Office* to *Institutional and Community Services*, and a Zoning Map Amendment from C-1, Office District to PLI, Public Lands and Institutions District for the property located at 1006 Park Avenue in the City of Beloit. This property is also located in the Wellhead Protection Overlay District.

In February 2022, Governor Evers awarded Beloit College a Neighborhood Investment Fund grant for the development of a Community Outreach and Engagement Center at the Morse Library on campus located at 735 Church Street. Site plans have subsequently been received and are under review for the Morse Library Renovation project and related site improvements, including removal and potential relocation of an existing maintenance garage located at 732 Church Street adjacent to the Morse Library.

Beloit College would like to relocate the maintenance garage to their property located at 1006 Park Avenue (formerly Geri's Hamburgers) and continue to use it as a campus maintenance building.

### **Staff Analysis**

---

**Existing Site Conditions:** 1006 Park Avenue (0.64 acres) is currently vacant, is zoned C-1, Office District, and is within the WPO, Wellhead Protection Overlay District. The future land use designation for this parcel in the Comprehensive Plan is *Office*. As such, if the proposed maintenance facility for Beloit College is to be allowed, a Comprehensive Plan Amendment and rezoning are both needed.

**Surrounding Land Use and Zoning:** To the east of the subject property is a mixture of a C-1, Office use, including a real estate office, and R-1B, Single family Residential uses. To the south is property zoned R-3, Low Density Multifamily Residential District with single-family residential

uses. To the west is vacant land owned by Beloit College zoned R-2, Two-Family Residential District and R-1B, Single-Family Residential uses. To the north is R-1B, Single-Family Residential uses.

**City of Beloit Comprehensive and Strategic Plan:** Wisconsin's Comprehensive Planning Law, §66.1001 of the Wisconsin Statutes, was signed into law in 1999. The Comprehensive Planning law requires all cities, towns, and villages that regulate land use through land use ordinances (e.g. zoning) to adopt a Comprehensive Plan. This plan is intended to guide development and redevelopment over a 20-year timeframe. The law also requires that land use decisions be consistent with the plan. All land use decisions made by the City of Beloit, including any actions regarding official mapping, local subdivision regulation, and zoning regulations, must be consistent with the plan.

Because the Comprehensive Plan's Future Land Use Map recommends *Office* for this parcel, a Comprehensive Plan Amendment to *Institutional and Community Services* would be needed in order for this proposed rezoning to PLI, Public Lands and Institutions to be consistent with the Comprehensive Plan. If rezoned, redeveloping a property that has been vacant since 2006 will help create and sustain safe and healthy neighborhoods through community revitalization in support of Strategic Goal #1 - Create and Sustain Safe and Healthy Neighborhoods.

#### **Land Use Analysis:**

As noted, Beloit College would like to relocate the maintenance garage (900 square feet) currently located at 732 Church Street to their property located at 1006 Park Avenue (formerly Geri's Hamburgers) and continue to use it as a campus maintenance building. A maintenance building for Beloit College is not permitted in the existing C-1, Office District, but is permitted in the PLI, Public Lands and Institutions District, which is the most appropriate zoning for college and related accessory buildings and uses. The property has a future land use designation of *Office* and so in order to ensure consistency between the zoning amendment and the Comprehensive Plan, an amendment to the Comprehensive Plan would be needed to change the future land use to *Institutional and Community Services*, which is consistent with the PLI, Public Lands and Institutions zoning district. If both the Comprehensive Plan Amendment and Zoning Map Amendment are approved, redevelopment of the property will be subject to Site Plan Review requirements as well as the Architectural Review and Landscaping code, which require staff review and approval.

**Zoning Map Amendment Findings of Fact:** Based on Section 2-304 of the Zoning Ordinance, the Plan Commission shall make a recommendation based on the following considerations:

- 1. The existing use of property within the general area of the subject property.**

The existing land use is vacant land (since 2006), but existing development surrounding the property is compatible with the Public Lands and Institutions District, which is most appropriate for college and related accessory buildings and uses.



2. **The zoning classification of property within the general area of the subject property.**

Existing development surrounding 1006 Park Avenue includes compatible residential and office uses. Generally, the Public Lands and Institutions District is compatible with and integrated among other zoning districts to accommodate public and quasi-public land uses throughout the City, including the Beloit College campus.

3. **The suitability of the subject property for the uses permitted under the existing zoning classification.**

The existing zoning classification is C-1, Office District. Uses permitted in C-1 may be compatible with this location, but the property has been vacant since 2006. Prior to that it was a commercial use (Geri's Hamburgers). The proposed maintenance building for Beloit College is not permitted in the existing C-1, Office District, but is permitted in the PLI, Public Lands and Institutions District. Staff believes PLI is also a compatible zoning district for this property.

4. **The trend of development and zoning map amendments in the general area of the subject property.**

There has not been much need for zoning map amendments in this area as it is a developed area of the City. However, the development of a Community Outreach and Engagement Center at the Morse Library on campus involves significant investment, and necessitates relocation of the college maintenance facility. Staff believes it is appropriate to rezone this parcel for Public Lands and Institutions uses provided a Comprehensive Plan amendment is approved to accommodate College and related accessory buildings and uses allowed under the *Institutional and Community Services* future land use designation.

**STAFF RECOMMENDATION – COMPREHENSIVE PLAN AMENDMENT AND ZONING MAP AMENDMENT:**

The Planning and Building Services Division recommends approval of a Comprehensive Plan Amendment to change the future land use classification from *Office* to *Institutional and Community Services* for the property located at 1006 Park Avenue in the City of Beloit and also recommends approval of a Zoning Map Amendment to change the zoning district classification from C-1, Office District, to PLI, Public Lands and Institutions District, for the property located at 1006 Park Avenue in the City of Beloit.

Resolutions for approval and denial of the Comprehensive Plan Amendment are included in this agenda packet. The Plan Commission will need to make a motion to approve one of the resolutions, as the policy regarding amendments requires Plan Commission to make a recommendation by resolution.

**ATTACHMENTS:** Zoning Map, Location Map, Application, Zoning Public Notice, Zoning Mailing List, Ordinance, Existing Site, Proposed Site, Comprehensive Plan Future Land Use Map, Application and Resolutions.

# Zoning Map



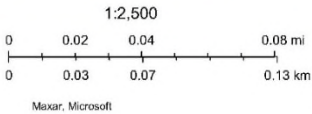
5/30/2023

Zoning Districts

- C-1
- C-2
- M-2
- PLI
- PUD
- R-1B
- R-2
- R-3

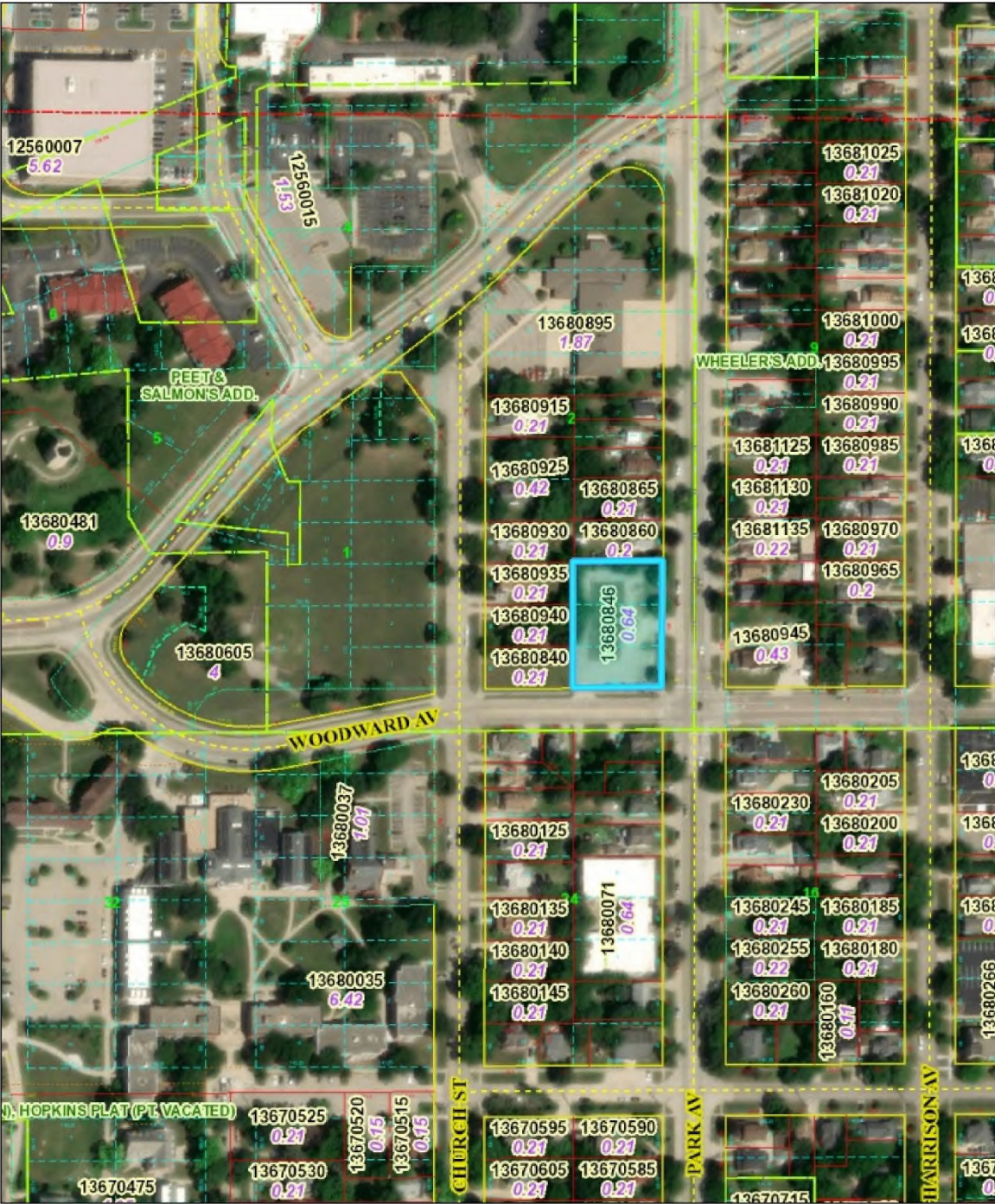
World Imagery

- Low Resolution 15m Imagery
- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations
- 60cm Resolution Metadata





Location Map



1006 Park Avenue  
Web Print: 05/30/2023

0 200  
Feet

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# CITY of BELOIT

## PLANNING & BUILDING SERVICES DIVISION

100 State Street, Beloit, WI 53511

Phone: (608) 364-6700

Fax: (608) 364-6609

### Zoning Map Amendment Application Form

(Please Type or Print)

File No.: \_\_\_\_\_

1. Address of subject property: 1006 Park Ave. Beloit, WI 53511

2. Legal description: Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_

LOTS 1, 2 & 3 PEET & SALMONS ADD

(If property has not been subdivided, attach a copy of the complete legal description from deed.)

Property dimensions are: 198 feet by 140.08 feet = 27,736 square feet.

If more than two acres, give area in acres: \_\_\_\_\_ acres.

3. Tax Parcel Number(s): 13680846

4. Owner of record: Board of Trustees of Beloit College Phone: 608-363-2631

700 College St. Beloit WI 53511  
(Address) (City) (State) (Zip)

5. Applicant's Name: Lori Rhead

735 College St. Beloit WI 53511  
(Address) (City) (State) (Zip)

608-363-2631 / rheadl@beloit.edu  
(Office Phone #) (Cell Phone #) (E-mail Address)

6. **THE FOLLOWING ACTION IS REQUESTED:**

Change zoning district classification from: C-1 to: PLI - Public Lands  
and Institutions. All existing uses on this property are: Vacant land

7. All the proposed uses for this property are:

Principal use(s): New relocation of existing Beloit College maintenance building, new parking,  
new privacy fencing, new utility services to building from existing tie ins to mains.

Secondary use(s): \_\_\_\_\_

Accessory use(s): \_\_\_\_\_



8. I/we represent that I/we have a vested interest in this property in the following manner:

(x) Owner

( ) Leasehold, Length of lease: \_\_\_\_\_

( ) Contractual, Nature of contract: \_\_\_\_\_

( ) Other, explain: \_\_\_\_\_

9. Individual(s) responsible for compliance with conditions (if any), if request is granted:

Name(s): Lori Rhead Phone: 608-363-2631

735 College St.  
(Address)

Beloit  
(City)

WI  
(State)

53511  
(Zip)

The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

I/we, the undersigned, do hereby respectfully make application for and petition the City Plan Commission and City Council to grant the requested action for the purpose stated herein. I/we represent that the granting of the proposed request will not violate any of the required standards of the Zoning Ordinance of the City of Beloit. I/we also agree to abide by all applicable federal, state and local laws, ordinances, rules, and regulations.

Lori Rhead , Lori Rhead , 5-10-2023  
(Signature of Owner) (Print name) (Date)  
[Signature] , Joseph J. Stadelman , 5-10-23  
(Signature of Applicant, if different) (Print name) (Date)

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Division for acceptance by the filing deadline date prior to a scheduled Plan Commission meeting. This application must be submitted with the \$300.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, and it is typically between \$5.00 and \$20.00.

**To be completed by Planning Staff**

Filing Fee: \$300.00 Amount Paid: \$200.00 Meeting Date: \_\_\_\_\_

Number of notices: \_\_\_\_\_ x mailing cost (\$0.50) = cost of mailing notices: \$ \_\_\_\_\_

Application accepted by: [Signature] Date: 5/16/23

Date Notice Published: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_



CITY HALL • 100 STATE STREET • BELOIT, WI 53511  
Office: 608/364-6700 • Fax: 608/364-6609  
www.beloitwi.gov  
Equal Opportunity Employer

## **NOTICE TO THE PUBLIC**

May 19, 2023

To Whom It May Concern:

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The following public hearings will be held regarding these applications:

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**We are interested in your opinion. \***

**Anyone bringing handouts to the Plan Commission meeting must bring 10 copies and submit them to City staff before the meeting begins. You may also mail your comments to the attention of TJ Nee at 100 State Street or via email to [planning@beloitwi.gov](mailto:planning@beloitwi.gov). You may also call (608) 364-6711 to provide your comments over the phone.**



JOSE HERNANDEZ  
1031 PARK AVENUE  
BELOIT, WI 53511

DEISY REYES  
1011 CHURCH STREET  
BELOIT, WI 53511

MARK ENDRESS  
1003 PARK AVENUE  
BELOIT, WI 53511

R M R RNETALS LLC  
1425 E WILLIAMS DRIVE  
BELOIT, WI 53511

CLIFFORD PHEN  
1025 CHURCH STREET  
BELOIT, WI 53511

TUANGPORN FITZGERALD  
1028 PARK AVENUE  
BELOIT, WI 53511

NATHAN WASSER  
949 PARK AVENUE  
BELOIT, WI 53511

GABRIEL ORONA  
1543 WASHBURN STREET  
BELOIT, WI 53511

360 DEGREES LLC  
7245 N 12<sup>TH</sup> PLACE  
PHOENIX, AZ 85020

JUAN MEDINA VEGA  
1034 PARK AVENUE  
BELOIT, WI 53511

GUADALUPE SCHULTZ  
1023 PARK AVENUE  
BELOIT, WI 53511

ARTUNRO CARDENAS  
1019 PARK AVENUE  
BELOIT, WI 53511

BELOIT COLLEGE BOARD OF  
TRUSTEES  
700 COLLEGE STREET  
BELOIT, WI 53511

WISCONSIN INVESTMENT HOMES  
LLC  
12 S PONTIAC ADR  
JANESVILLE, WI 53545-2266

MANUEL VILLEGAS  
945 CHURCH STREET  
BELOIT, WI 53511

JESSE CONNORS  
1020 PARK AVENUE  
BELOIT, WI 53511

**ORDINANCE NO. 3794**

**AN ORDINANCE AMENDING THE  
ZONING DISTRICT MAP OF THE CITY OF БЕЛОIT**

The City Council of the City of Beloit, Rock County, Wisconsin do ordain as follows:

**Section 1.** The Zoning District Map of the City of Beloit, mentioned in the Zoning Code, Chapter 19 of the Code of General Ordinances of the City of Beloit, is amended as follows:

The following described land is hereby changed from C-1, Office District to PLI, Public Lands and Institutions District:

LOTS 1, 2 & 3 PEET & SALMONS ADDITION, CITY OF БЕЛОIT, ROCK COUNTY, WISCONSIN. SAID PARCELS CONTAINING 0.64 ACRES MORE OR LESS. A/K/A 1006 PARK AVENUE.

**Section 2.** This Ordinance shall take effect and be in force upon its passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**City Council of the City of Beloit**

\_\_\_\_\_  
Regina Dunkin, Council President

Attest:

\_\_\_\_\_  
Marcy J Granger, City Clerk-Treasurer

Published this \_\_\_\_ day of \_\_\_\_\_, 2023

Effective this \_\_\_\_ day of \_\_\_\_\_, 2023

01-611100-5231-\_\_\_\_\_

Existing Site



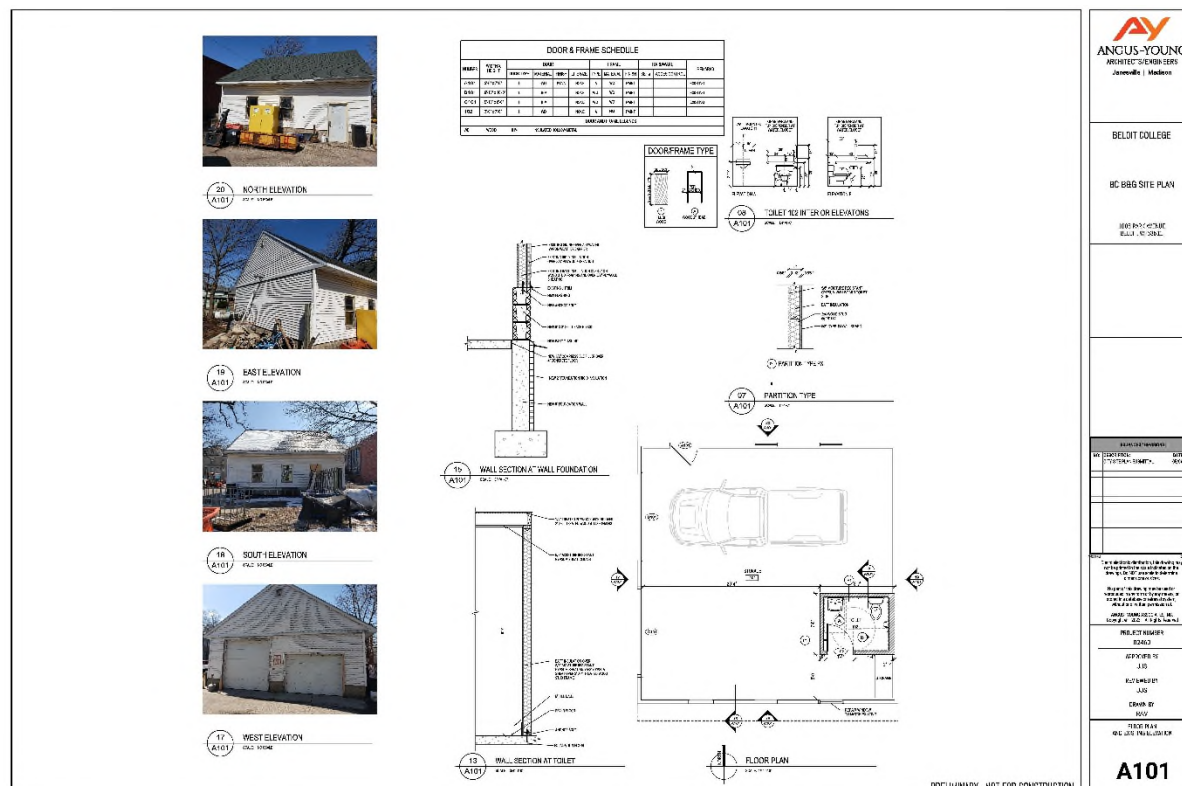
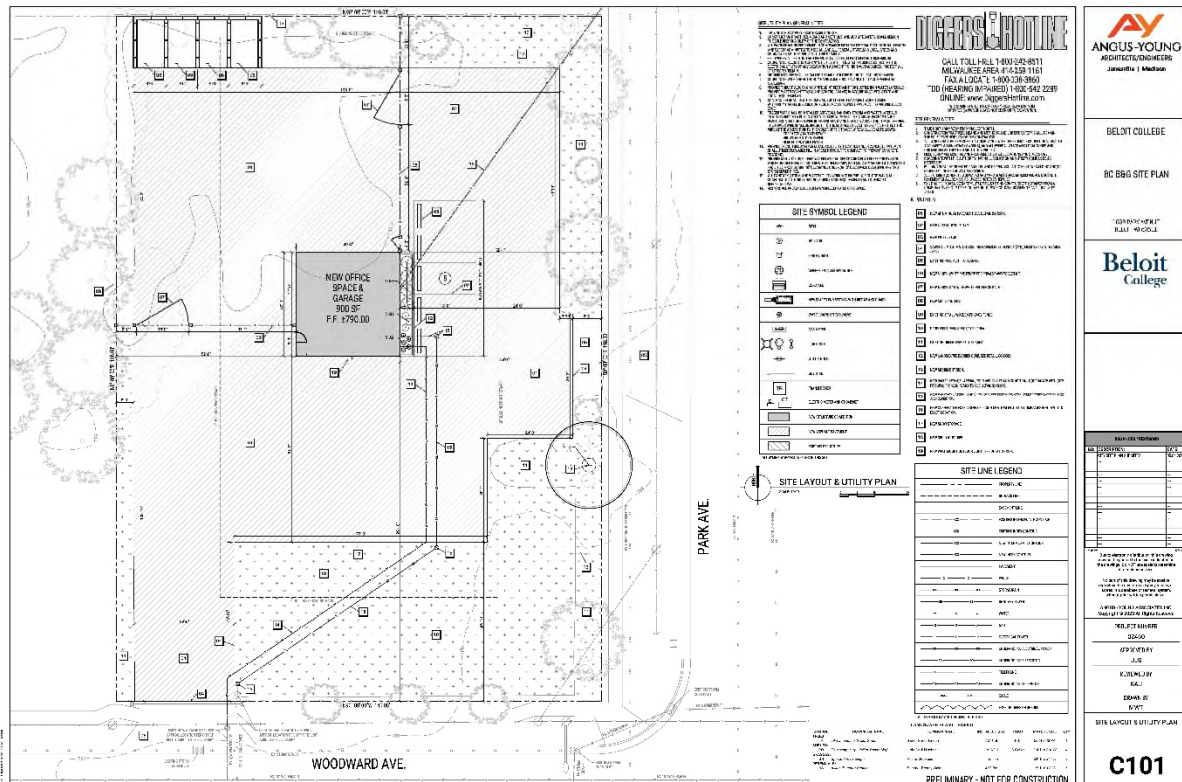
1006 Park Avenue  
Web Print: 05/30/2023

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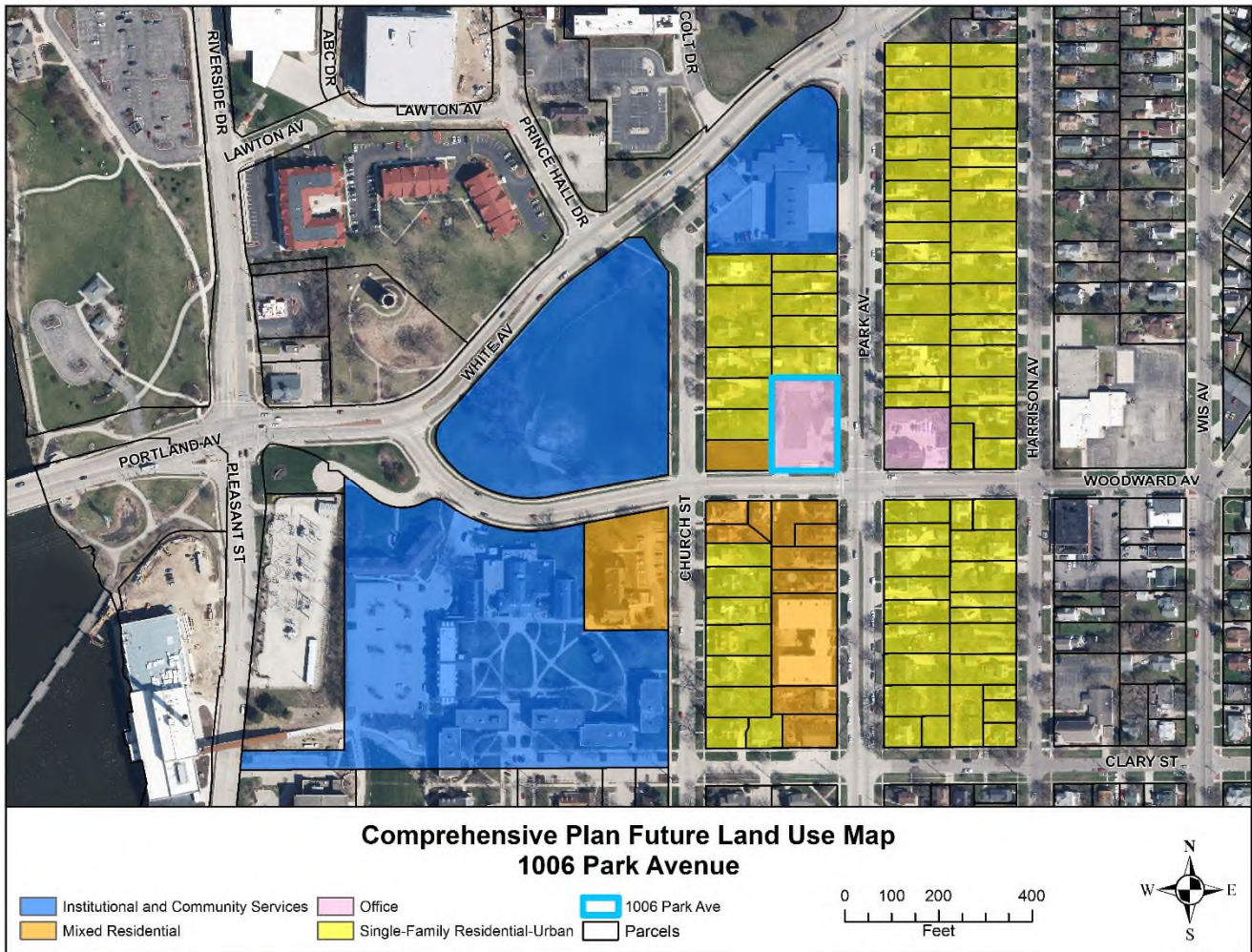
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## Proposed Site





# Comprehensive Plan Future Land Use Map



# CITY of BELOIT

## PLANNING & BUILDING SERVICES DIVISION

100 State Street, Beloit, WI 53511

Phone: (608) 364-6700

Fax: (608) 364-6609

### Comprehensive Plan Amendment Application Form

(Please Type or Print)

File No.: \_\_\_\_\_

1. Applicant's Name: Lori Rhead

735 College St.  
(Address)

Beloit  
(City)

WI  
(State)

53511  
(Zip)

608-363-2631

(Office Phone #)

/ (Cell Phone #)

/ rheadl@beloit.edu

(E-mail Address)

2. Type: Text Amendment

x Map Amendment

3. The following Text Amendment is requested:

Chapter:       , Section:       , Subsection(s):       

Proposed Amendment:       

4. The following Map Amendment is requested:

Map No. & Title:       

Address of Affected Property: 1006 Park Ave, Beloit WI 53511

Tax Parcel Number(s): 13680846

Owner of record: Board of Trustees of Beloit College Phone: 608-363-2631

700 College St.  
(Address)

Beloit  
(City)

WI  
(State)

53511  
(Zip)

Proposed Amendment:       

5. I/we represent that I/we have a vested interest in this property in the following manner:

☒ Owner

☐ Leasehold, Length of lease:       

☐ Contractual, Nature of contract:       

☐ Other, explain:



The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

I/we, the undersigned, do hereby respectfully make application for and petition the City Plan Commission and City Council to grant the requested action for the purpose stated herein. I/we also agree to abide by all applicable federal, state and local laws, ordinances, rules, and regulations.

Lori Rhead , Lori Rhead , 5-10-2023  
 (Signature of Owner) (Print name) (Date)  
VP for HR & Operations , Joseph J STADELMAN 5-10-23  
 (Signature of Applicant, if different) (Print name) (Date)

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Planning & Building Services Division. This application must be submitted with the \$275.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, and it is typically between \$5.00 and \$20.00.

#### To be completed by Planning Staff

Filing Fee: \$275.00 Amount Paid: \_\_\_\_\_ Meeting Date: \_\_\_\_\_  
 Number of notices: \_\_\_\_\_ x mailing cost (\$0.50) = cost of mailing notices: \$ 275  
 Application accepted by: [Signature] Date: 5/16/23  
 Date Notice Published: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_

**RESOLUTION 2023-025**  
**RECOMMENDING APPROVAL OF AN AMENDMENT TO THE**  
**CITY OF BELOIT COMPREHENSIVE PLAN**

**WHEREAS**, the Plan Commission of the City of Beloit recommended approval of the Comprehensive Plan of the City of Beloit (the Plan) on September 5, 2018, and the City Council of the City of Beloit approved an Ordinance adopting the Plan on November 5, 2018; and

**WHEREAS**, the Plan may be amended and changed in the years following adoption, particularly in instances where the Plan is becoming irrelevant or contradictory to emerging policies or trends, or does not provide specific advice or guidance on an emerging issue; and

**WHEREAS**, “Amendments” are generally defined as minor changes to the Plan’s maps or text; and

**WHEREAS**, the City Council of the City of Beloit approved a Resolution to Adopt a Process for Amending the City of Beloit Comprehensive Plan on February 1, 2010; and

**WHEREAS**, the approved process directs the Plan Commission to hold a public meeting on the proposed amendment, and following said public meeting, make a recommendation by Resolution to the City Council by majority vote of the entire Commission.

**NOW, THEREFORE, BE IT RESOLVED** that the Plan Commission of the City of Beloit, Rock County, Wisconsin, hereby recommends approval of the following amendment to the Future Land Use Map (Map 10) of the City of Beloit Comprehensive Plan:

1006 Park Avenue - From *Office to Institutional and Community Services*.

Adopted this 7<sup>th</sup> day of June, 2023.

**Plan Commission**

\_\_\_\_\_  
Mike Ramsden, Chairperson

ATTEST:

\_\_\_\_\_  
Julie Christensen,  
Community Development Director

**RESOLUTION 2023-026**  
**RECOMMENDING DENIAL OF AN AMENDMENT TO THE**  
**CITY OF BELOIT COMPREHENSIVE PLAN**

**WHEREAS,** the Plan Commission of the City of Beloit recommended approval of the Comprehensive Plan of the City of Beloit (the Plan) on September 5, 2018, and the City Council of the City of Beloit approved an Ordinance adopting the Plan on November 5, 2018; and

**WHEREAS,** the Plan may be amended and changed in the years following adoption, particularly in instances where the Plan is becoming irrelevant or contradictory to emerging policies or trends, or does not provide specific advice or guidance on an emerging issue; and

**WHEREAS,** “Amendments” are generally defined as minor changes to the Plan’s maps or text; and

**WHEREAS,** the City Council of the City of Beloit approved a Resolution to Adopt a Process for Amending the City of Beloit Comprehensive Plan on February 1, 2010; and

**WHEREAS,** the approved process directs the Plan Commission to hold a public meeting on the proposed amendment, and following said public meeting, make a recommendation by Resolution to the City Council by majority vote of the entire Commission.

**NOW, THEREFORE, BE IT RESOLVED** that the Plan Commission of the City of Beloit, Rock County, Wisconsin, hereby recommends denial of the following amendment to the Future Land Use Map (Map 10) of the City of Beloit Comprehensive Plan:

1006 Park Avenue - From *Office to Institutional and Community Services*.

Adopted this 7<sup>th</sup> day of June, 2023.

**Plan Commission**

\_\_\_\_\_  
Mike Ramsden, Chairperson

ATTEST:

\_\_\_\_\_  
Julie Christensen,  
Community Development Director

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Ordinance No. 3794 amending the Zoning District Map for 1006 Park Avenue		
<b>Date:</b>	August 7, 2023		
<b>Presenter:</b>	Julie Christensen	<b>Department:</b>	Community Development

### Overview/Background Information

Lori Rhead on behalf of the Board of Trustees of Beloit College has submitted an application for a Zoning Map Amendment from C-1, Office District to PLI, Public Lands and Institutions District for the property located at 1006 Park Avenue in the City of Beloit.

### Key Issues

1. In February 2022, Governor Evers awarded Beloit College a Neighborhood Investment Fund grant for the development of a Community Outreach and Engagement Center at the Morse Library on campus located at 735 Church Street. Site plans have subsequently been received and are under review for the Morse Library Renovation project and related site improvements, including removal and potential relocation of an existing maintenance garage located at 732 Church Street adjacent to the Morse Library.
2. Beloit College would like to relocate the maintenance garage to their property located at 1006 Park Avenue (formerly Geri's Hamburgers) and continue to use it as a campus maintenance building.
3. A maintenance building for Beloit College is not permitted in the existing C-1, Office District, but is permitted in the PLI, Public Lands and Institutions District, which is most appropriate for College and related accessory buildings and uses.
4. Because the future land use designation for 1006 Park Avenue in the Comprehensive Plan is Office, a Comprehensive Plan Amendment is also needed in order to approve this zoning map amendment request. Lori Rhead on behalf of the Board of Trustees of Beloit College has submitted an application for a Comprehensive Plan Amendment.
5. The Plan Commission reviewed the Comprehensive Plan Amendment application and Zoning Map Amendment application on June 7, 2023, and voted (5-0) to recommend approval of both the Comprehensive Plan Amendment and the Zoning Map Amendment.

### Conformance with Strategic Plan

Approval of this agreement would conform with the stated purpose of the following strategic goal:

- ☒ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☐ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. **Write N/A if not applicable**

Once rezoned, redeveloping a property that has been vacant since 2006 will help create and sustain safe and healthy neighborhoods through community revitalization.

### Action Required/Recommendation

- City Council consideration and 2nd reading of the proposed Ordinance.

### Fiscal Note/Budget Impact

N/A

### Attachments

Ordinance No. 3794 and Staff Report to the Plan Commission

**ORDINANCE NO. 3794**

**AN ORDINANCE AMENDING THE  
ZONING DISTRICT MAP OF THE CITY OF БЕЛОIT**

The City Council of the City of Beloit, Rock County, Wisconsin do ordain as follows:

**Section 1.** The Zoning District Map of the City of Beloit, mentioned in the Zoning Code, Chapter 19 of the Code of General Ordinances of the City of Beloit, is amended as follows:

The following described land is hereby changed from C-1, Office District to PLI, Public Lands and Institutions District:

LOTS 1, 2 AND 3, BLOCK 2, PEET AND SALMON'S ADDITION, CITY OF БЕЛОIT, ROCK COUNTY, WISCONSIN. SAID PARCELS CONTAINING 0.64 ACRES MORE OR LESS. A/K/A 1006 PARK AVENUE.

**Section 2.** This Ordinance shall take effect and be in force upon its passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**City Council of the City of Beloit**

\_\_\_\_\_  
Regina Dunkin, Council President

Attest:

\_\_\_\_\_  
Marcy J Granger, City Clerk-Treasurer

Published this \_\_\_\_ day of \_\_\_\_\_, 2023

Effective this \_\_\_\_ day of \_\_\_\_\_, 2023

01-611100-5231-\_\_\_\_\_



## **REPORT TO THE PLAN COMMISSION**

**Plan Commission Meeting Date:** June 7, 2023

**Agenda Items:** 3.c. and 4.a.

**File Number:** RPB-2023-04 and ZMA-2023-05

### **General Information**

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**Applicant:** Lori Rhead on behalf of the Board of Trustees of Beloit College

**Owner:** Beloit College Board of Trustees

**Address/Location:** 1006 Park Avenue

**Applicant's Request/Proposal:** Lori Rhead on behalf of the Board of Trustees of Beloit College has submitted applications for a Comprehensive Plan Amendment from *Office* to *Institutional and Community Services*, and a Zoning Map Amendment from C-1, Office District to PLI, Public Lands and Institutions District for the property located at 1006 Park Avenue in the City of Beloit. This property is also located in the Wellhead Protection Overlay District.

In February 2022, Governor Evers awarded Beloit College a Neighborhood Investment Fund grant for the development of a Community Outreach and Engagement Center at the Morse Library on campus located at 735 Church Street. Site plans have subsequently been received and are under review for the Morse Library Renovation project and related site improvements, including removal and potential relocation of an existing maintenance garage located at 732 Church Street adjacent to the Morse Library.

Beloit College would like to relocate the maintenance garage to their property located at 1006 Park Avenue (formerly Geri's Hamburgers) and continue to use it as a campus maintenance building.

### **Staff Analysis**

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**Existing Site Conditions:** 1006 Park Avenue (0.64 acres) is currently vacant, is zoned C-1, Office District, and is within the WPO, Wellhead Protection Overlay District. The future land use designation for this parcel in the Comprehensive Plan is *Office*. As such, if the proposed maintenance facility for Beloit College is to be allowed, a Comprehensive Plan Amendment and rezoning are both needed.

**Surrounding Land Use and Zoning:** To the east of the subject property is a mixture of a C-1, Office use, including a real estate office, and R-1B, Single family Residential uses. To the south is property zoned R-3, Low Density Multifamily Residential District with single-family residential



uses. To the west is vacant land owned by Beloit College zoned R-2, Two-Family Residential District and R-1B, Single-Family Residential uses. To the north is R-1B, Single-Family Residential uses.

**City of Beloit Comprehensive and Strategic Plan:** Wisconsin's Comprehensive Planning Law, §66.1001 of the Wisconsin Statutes, was signed into law in 1999. The Comprehensive Planning law requires all cities, towns, and villages that regulate land use through land use ordinances (e.g. zoning) to adopt a Comprehensive Plan. This plan is intended to guide development and redevelopment over a 20-year timeframe. The law also requires that land use decisions be consistent with the plan. All land use decisions made by the City of Beloit, including any actions regarding official mapping, local subdivision regulation, and zoning regulations, must be consistent with the plan.

Because the Comprehensive Plan's Future Land Use Map recommends *Office* for this parcel, a Comprehensive Plan Amendment to *Institutional and Community Services* would be needed in order for this proposed rezoning to PLI, Public Lands and Institutions to be consistent with the Comprehensive Plan. If rezoned, redeveloping a property that has been vacant since 2006 will help create and sustain safe and healthy neighborhoods through community revitalization in support of Strategic Goal #1 - Create and Sustain Safe and Healthy Neighborhoods.

#### **Land Use Analysis:**

As noted, Beloit College would like to relocate the maintenance garage (900 square feet) currently located at 732 Church Street to their property located at 1006 Park Avenue (formerly Geri's Hamburgers) and continue to use it as a campus maintenance building. A maintenance building for Beloit College is not permitted in the existing C-1, Office District, but is permitted in the PLI, Public Lands and Institutions District, which is the most appropriate zoning for college and related accessory buildings and uses. The property has a future land use designation of *Office* and so in order to ensure consistency between the zoning amendment and the Comprehensive Plan, an amendment to the Comprehensive Plan would be needed to change the future land use to *Institutional and Community Services*, which is consistent with the PLI, Public Lands and Institutions zoning district. If both the Comprehensive Plan Amendment and Zoning Map Amendment are approved, redevelopment of the property will be subject to Site Plan Review requirements as well as the Architectural Review and Landscaping code, which require staff review and approval.

**Zoning Map Amendment Findings of Fact:** Based on Section 2-304 of the Zoning Ordinance, the Plan Commission shall make a recommendation based on the following considerations:

- 1. The existing use of property within the general area of the subject property.**

The existing land use is vacant land (since 2006), but existing development surrounding the property is compatible with the Public Lands and Institutions District, which is most appropriate for college and related accessory buildings and uses.

2. **The zoning classification of property within the general area of the subject property.**

Existing development surrounding 1006 Park Avenue includes compatible residential and office uses. Generally, the Public Lands and Institutions District is compatible with and integrated among other zoning districts to accommodate public and quasi-public land uses throughout the City, including the Beloit College campus.

3. **The suitability of the subject property for the uses permitted under the existing zoning classification.**

The existing zoning classification is C-1, Office District. Uses permitted in C-1 may be compatible with this location, but the property has been vacant since 2006. Prior to that it was a commercial use (Geri's Hamburgers). The proposed maintenance building for Beloit College is not permitted in the existing C-1, Office District, but is permitted in the PLI, Public Lands and Institutions District. Staff believes PLI is also a compatible zoning district for this property.

4. **The trend of development and zoning map amendments in the general area of the subject property.**

There has not been much need for zoning map amendments in this area as it is a developed area of the City. However, the development of a Community Outreach and Engagement Center at the Morse Library on campus involves significant investment, and necessitates relocation of the college maintenance facility. Staff believes it is appropriate to rezone this parcel for Public Lands and Institutions uses provided a Comprehensive Plan amendment is approved to accommodate College and related accessory buildings and uses allowed under the *Institutional and Community Services* future land use designation.

**STAFF RECOMMENDATION – COMPREHENSIVE PLAN AMENDMENT AND ZONING MAP AMENDMENT:**

The Planning and Building Services Division recommends approval of a Comprehensive Plan Amendment to change the future land use classification from *Office* to *Institutional and Community Services* for the property located at 1006 Park Avenue in the City of Beloit and also recommends approval of a Zoning Map Amendment to change the zoning district classification from C-1, Office District, to PLI, Public Lands and Institutions District, for the property located at 1006 Park Avenue in the City of Beloit.

Resolutions for approval and denial of the Comprehensive Plan Amendment are included in this agenda packet. The Plan Commission will need to make a motion to approve one of the resolutions, as the policy regarding amendments requires Plan Commission to make a recommendation by resolution.

**ATTACHMENTS:** Zoning Map, Location Map, Application, Zoning Public Notice, Zoning Mailing List, Ordinance, Existing Site, Proposed Site, Comprehensive Plan Future Land Use Map, Application and Resolutions.

# Zoning Map



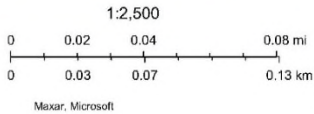
5/30/2023

Zoning Districts

- C-1
- C-2
- M-2
- PLI
- PUD
- R-1B
- R-2
- R-3

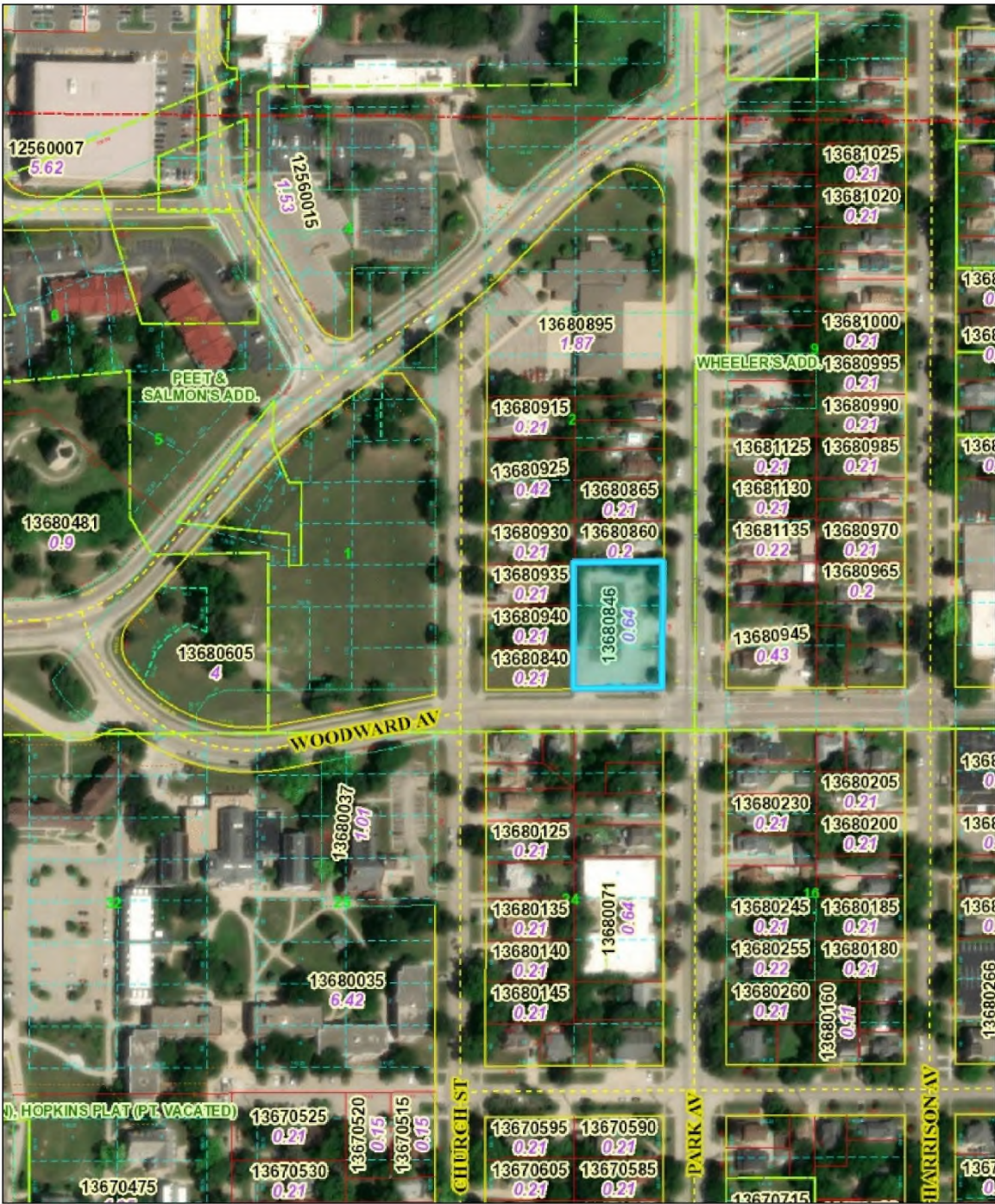
World Imagery

- Low Resolution 15m Imagery
- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations
- 60cm Resolution Metadata





Location Map



1006 Park Avenue  
Web Print: 05/30/2023

0 200  
Feet

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



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# CITY of BELOIT

## PLANNING & BUILDING SERVICES DIVISION

100 State Street, Beloit, WI 53511

Phone: (608) 364-6700

Fax: (608) 364-6609

### Zoning Map Amendment Application Form

(Please Type or Print)

File No.: \_\_\_\_\_

1. Address of subject property: 1006 Park Ave. Beloit, WI 53511

2. Legal description: Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_

LOTS 1, 2 & 3 PEET & SALMONS ADD

(If property has not been subdivided, attach a copy of the complete legal description from deed.)

Property dimensions are: 198 feet by 140.08 feet = 27,736 square feet.

If more than two acres, give area in acres: \_\_\_\_\_ acres.

3. Tax Parcel Number(s): 13680846

4. Owner of record: Board of Trustees of Beloit College Phone: 608-363-2631

700 College St. Beloit WI 53511  
(Address) (City) (State) (Zip)

5. Applicant's Name: Lori Rhead

735 College St. Beloit WI 53511  
(Address) (City) (State) (Zip)

608-363-2631 / rheadl@beloit.edu  
(Office Phone #) (Cell Phone #) (E-mail Address)

6. **THE FOLLOWING ACTION IS REQUESTED:**

Change zoning district classification from: C-1 to: PLI - Public Lands

and Institutions. All existing uses on this property are: Vacant land

7. All the proposed uses for this property are:

Principal use(s): New relocation of existing Beloit College maintenance building, new parking, new privacy fencing, new utility services to building from existing tie ins to mains.

Secondary use(s): \_\_\_\_\_

Accessory use(s): \_\_\_\_\_



8. I/we represent that I/we have a vested interest in this property in the following manner:

(x) Owner

( ) Leasehold, Length of lease: \_\_\_\_\_

( ) Contractual, Nature of contract: \_\_\_\_\_

( ) Other, explain: \_\_\_\_\_

9. Individual(s) responsible for compliance with conditions (if any), if request is granted:

Name(s): Lori Rhead Phone: 608-363-2631

735 College St.  
(Address)

Beloit  
(City)

WI  
(State)

53511  
(Zip)

The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

I/we, the undersigned, do hereby respectfully make application for and petition the City Plan Commission and City Council to grant the requested action for the purpose stated herein. I/we represent that the granting of the proposed request will not violate any of the required standards of the Zoning Ordinance of the City of Beloit. I/we also agree to abide by all applicable federal, state and local laws, ordinances, rules, and regulations.

Lori Rhead , Lori Rhead , 5-10-2023  
(Signature of Owner) (Print name) (Date)  
[Signature] , Joseph J. Stadelman , 5-10-23  
(Signature of Applicant, if different) (Print name) (Date)

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Division for acceptance by the filing deadline date prior to a scheduled Plan Commission meeting. This application must be submitted with the \$300.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, and it is typically between \$5.00 and \$20.00.

**To be completed by Planning Staff**

Filing Fee: \$300.00 Amount Paid: \$200.00 Meeting Date: \_\_\_\_\_

Number of notices: \_\_\_\_\_ x mailing cost (\$0.50) = cost of mailing notices: \$ \_\_\_\_\_

Application accepted by: [Signature] Date: 5/16/23

Date Notice Published: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_





CITY HALL • 100 STATE STREET • BELOIT, WI 53511  
Office: 608/364-6700 • Fax: 608/364-6609  
www.beloitwi.gov  
Equal Opportunity Employer

## **NOTICE TO THE PUBLIC**

May 19, 2023

To Whom It May Concern:

Lori Rhead on behalf of the Beloit College Board of Trustees has submitted an application for review and consideration for a Zoning Map Amendment to rezone 1006 Park Avenue in the City of Beloit from C-1, Office District to PLI, Public Lands and Institutions District.

The following public hearings will be held regarding these applications:

**City Plan Commission:** Wednesday, June 7, 2023 at 7:00 PM, or as soon thereafter as the matter can be heard in The Forum, Beloit City Hall, 100 State Street.

**City Council:** Monday, July 17, 2023 at 7:00 PM, or as soon thereafter as the matter can be heard in The Forum, Beloit City Hall, 100 State Street.

**We are interested in your opinion. \***

**Anyone bringing handouts to the Plan Commission meeting must bring 10 copies and submit them to City staff before the meeting begins. You may also mail your comments to the attention of TJ Nee at 100 State Street or via email to [planning@beloitwi.gov](mailto:planning@beloitwi.gov). You may also call (608) 364-6711 to provide your comments over the phone.**

JOSE HERNANDEZ  
1031 PARK AVENUE  
BELOIT, WI 53511

DEISY REYES  
1011 CHURCH STREET  
BELOIT, WI 53511

MARK ENDRESS  
1003 PARK AVENUE  
BELOIT, WI 53511

R M R RNETALS LLC  
1425 E WILLIAMS DRIVE  
BELOIT, WI 53511

CLIFFORD PHEN  
1025 CHURCH STREET  
BELOIT, WI 53511

TUANGPORN FITZGERALD  
1028 PARK AVENUE  
BELOIT, WI 53511

NATHAN WASSER  
949 PARK AVENUE  
BELOIT, WI 53511

GABRIEL ORONA  
1543 WASHBURN STREET  
BELOIT, WI 53511

360 DEGREES LLC  
7245 N 12<sup>TH</sup> PLACE  
PHOENIX, AZ 85020

JUAN MEDINA VEGA  
1034 PARK AVENUE  
BELOIT, WI 53511

GUADALUPE SCHULTZ  
1023 PARK AVENUE  
BELOIT, WI 53511

ARTUNRO CARDENAS  
1019 PARK AVENUE  
BELOIT, WI 53511

BELOIT COLLEGE BOARD OF  
TRUSTEES  
700 COLLEGE STREET  
BELOIT, WI 53511

WISCONSIN INVESTMENT HOMES  
LLC  
12 S PONTIAC ADR  
JANESVILLE, WI 53545-2266

MANUEL VILLEGAS  
945 CHURCH STREET  
BELOIT, WI 53511

JESSE CONNORS  
1020 PARK AVENUE  
BELOIT, WI 53511

**ORDINANCE NO. 3794**

**AN ORDINANCE AMENDING THE  
ZONING DISTRICT MAP OF THE CITY OF BELOIT**

The City Council of the City of Beloit, Rock County, Wisconsin do ordain as follows:

**Section 1.** The Zoning District Map of the City of Beloit, mentioned in the Zoning Code, Chapter 19 of the Code of General Ordinances of the City of Beloit, is amended as follows:

The following described land is hereby changed from C-1, Office District to PLI, Public Lands and Institutions District:

LOTS 1, 2 & 3 PEET & SALMONS ADDITION, CITY OF BELOIT, ROCK COUNTY, WISCONSIN. SAID PARCELS CONTAINING 0.64 ACRES MORE OR LESS. A/K/A 1006 PARK AVENUE.

**Section 2.** This Ordinance shall take effect and be in force upon its passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**City Council of the City of Beloit**

\_\_\_\_\_  
Regina Dunkin, Council President

Attest:

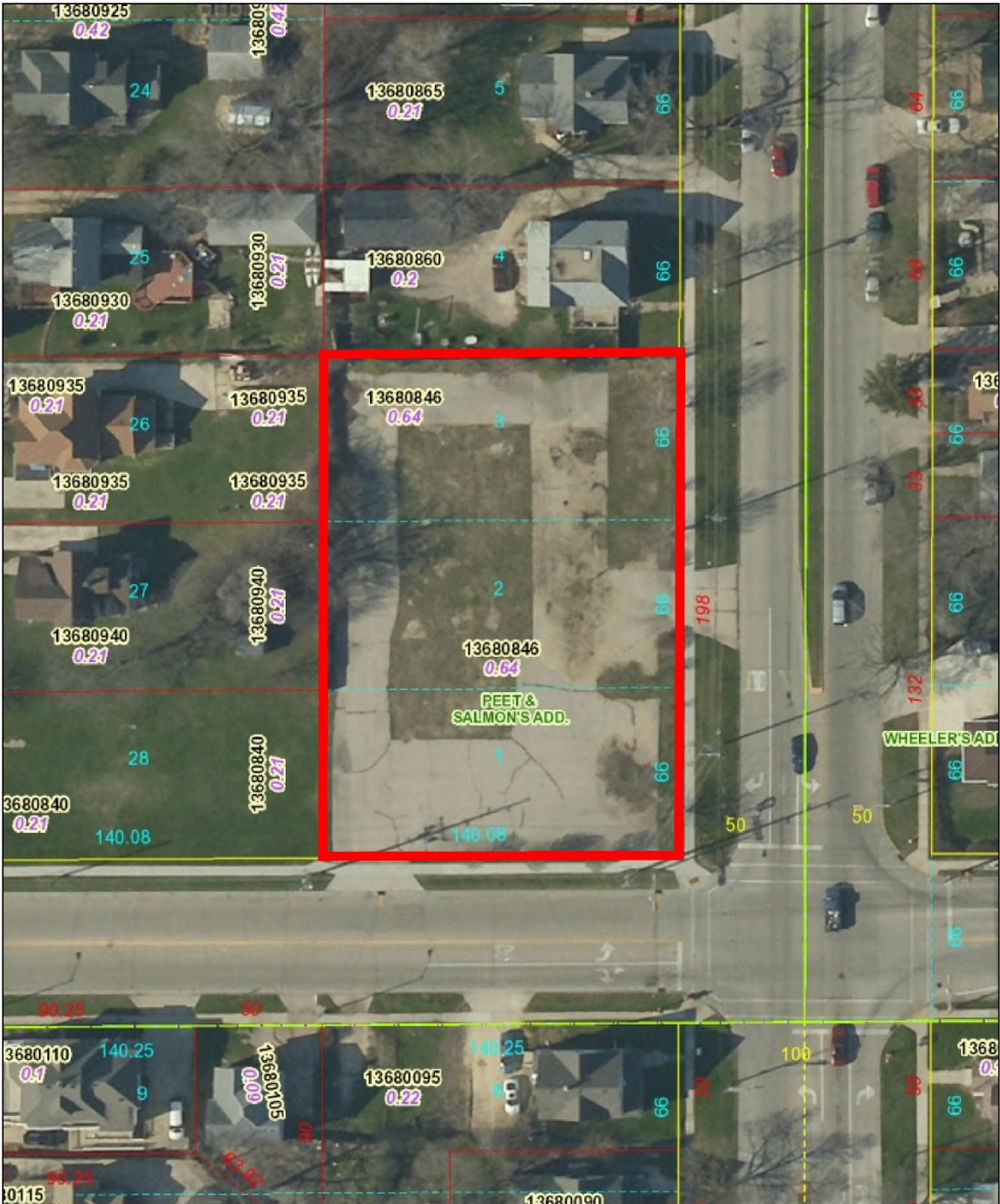
\_\_\_\_\_  
Marcy J Granger, City Clerk-Treasurer

Published this \_\_\_\_ day of \_\_\_\_\_, 2023

Effective this \_\_\_\_ day of \_\_\_\_\_, 2023

01-611100-5231-\_\_\_\_\_

## Existing Site



1006 Park Avenue  
Web Print: 05/30/2023

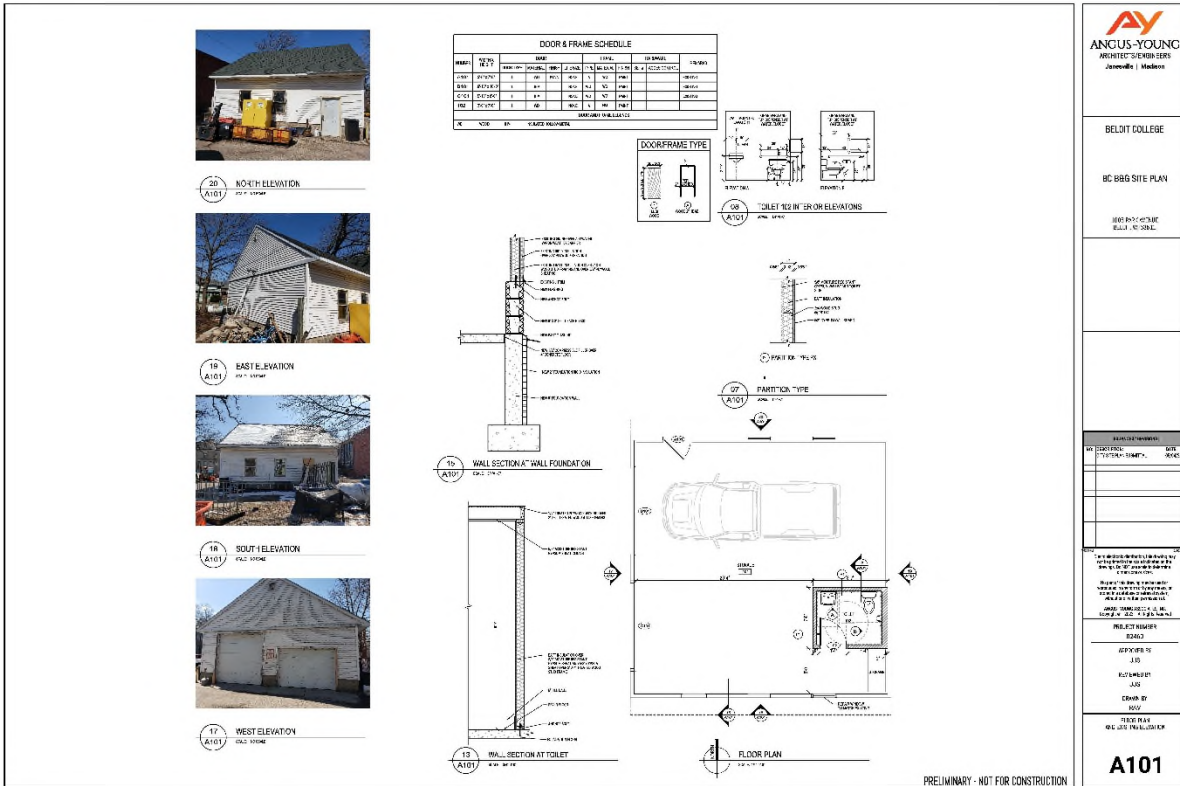
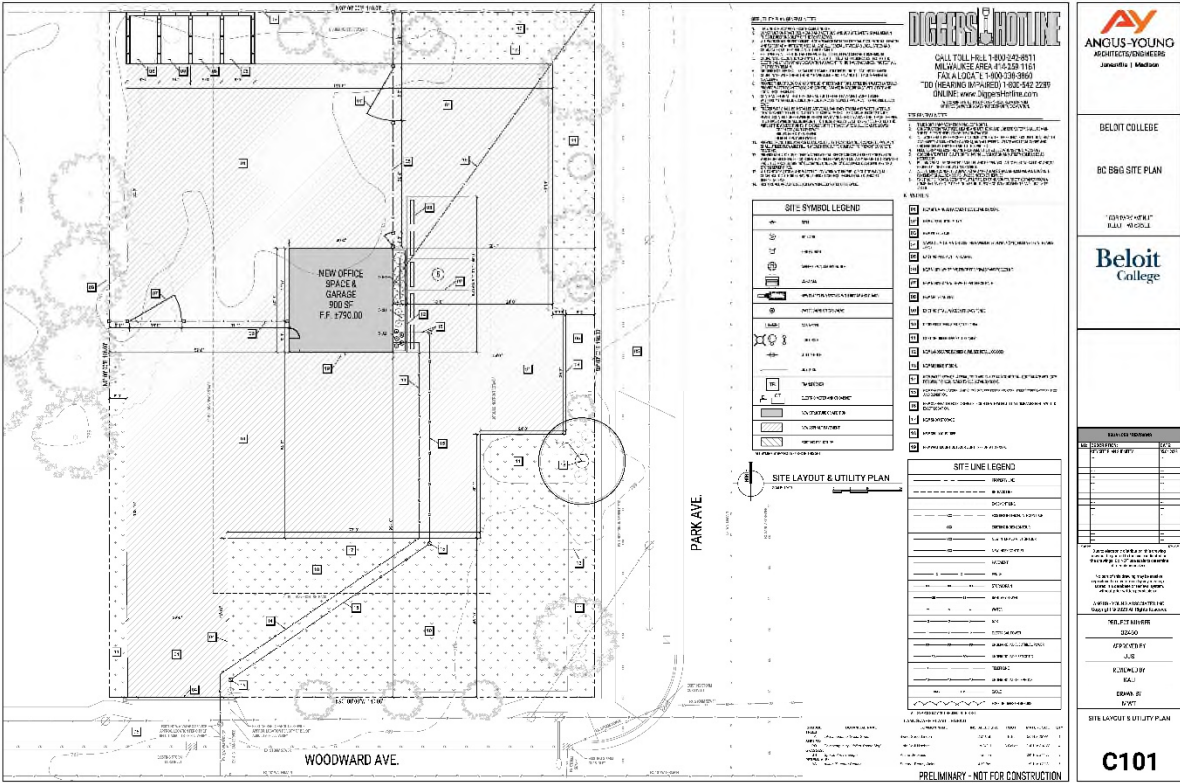
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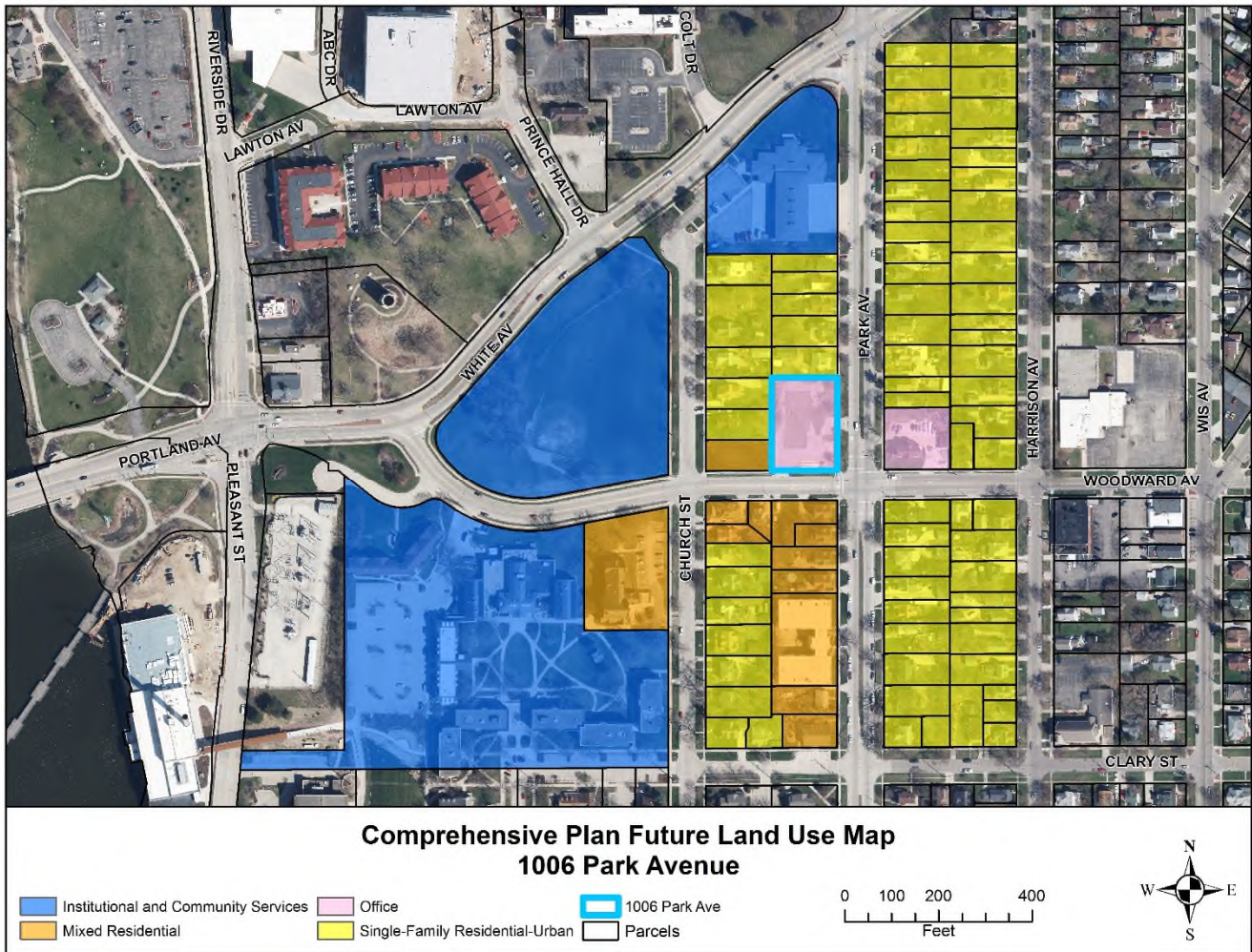
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Proposed Site



# Comprehensive Plan Future Land Use Map





***CITY of BELOIT***  
**PLANNING & BUILDING SERVICES DIVISION**  
 100 State Street, Beloit, WI 53511 Phone: (608) 364-6700 Fax: (608) 364-6609  
**Comprehensive Plan Amendment Application Form**

(Please Type or Print) File No.: \_\_\_\_\_

1. Applicant's Name: Lori Rhead

735 College St. Beloit WI 53511  
 (Address) (City) (State) (Zip)  
608-363-2631 / rheadl@beloit.edu  
 (Office Phone #) (Cell Phone #) (E-mail Address)

2. Type: Text Amendment  
x Map Amendment

3. The following Text Amendment is requested:  
 Chapter: \_\_\_\_\_, Section: \_\_\_\_\_, Subsection(s): \_\_\_\_\_  
 Proposed Amendment: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. The following Map Amendment is requested:  
 Map No. & Title: \_\_\_\_\_  
 Address of Affected Property: 1006 Park Ave, Beloit WI 53511  
 Tax Parcel Number(s): 13680846  
 Owner of record: Board of Trustees of Beloit College Phone: 608-363-2631

700 College St. Beloit WI 53511  
 (Address) (City) (State) (Zip)  
 Proposed Amendment: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. I/we represent that I/we have a vested interest in this property in the following manner:  
 (x) Owner  
 ( ) Leasehold, Length of lease: \_\_\_\_\_  
 ( ) Contractual, Nature of contract: \_\_\_\_\_  
 ( ) Other, explain: \_\_\_\_\_

The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

I/we, the undersigned, do hereby respectfully make application for and petition the City Plan Commission and City Council to grant the requested action for the purpose stated herein. I/we also agree to abide by all applicable federal, state and local laws, ordinances, rules, and regulations.

Lori Rhead , Lori Rhead , 5-10-2023  
 (Signature of Owner) (Print name) (Date)  
VP for HR & Operations , Joseph J STADELMAN 5-10-23  
 (Signature of Applicant, if different) (Print name) (Date)

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Planning & Building Services Division. This application must be submitted with the \$275.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, and it is typically between \$5.00 and \$20.00.

**To be completed by Planning Staff**

Filing Fee: \$275.00 Amount Paid: \_\_\_\_\_ Meeting Date: \_\_\_\_\_  
 Number of notices: \_\_\_\_\_ x mailing cost (\$0.50) = cost of mailing notices: \$ 275  
 Application accepted by: [Signature] Date: 5/16/23  
 Date Notice Published: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_

**RESOLUTION 2023-025**  
**RECOMMENDING APPROVAL OF AN AMENDMENT TO THE**  
**CITY OF БЕЛОIT COMPREHENSIVE PLAN**

**WHEREAS**, the Plan Commission of the City of Beloit recommended approval of the Comprehensive Plan of the City of Beloit (the Plan) on September 5, 2018, and the City Council of the City of Beloit approved an Ordinance adopting the Plan on November 5, 2018; and

**WHEREAS**, the Plan may be amended and changed in the years following adoption, particularly in instances where the Plan is becoming irrelevant or contradictory to emerging policies or trends, or does not provide specific advice or guidance on an emerging issue; and

**WHEREAS**, “Amendments” are generally defined as minor changes to the Plan’s maps or text; and

**WHEREAS**, the City Council of the City of Beloit approved a Resolution to Adopt a Process for Amending the City of Beloit Comprehensive Plan on February 1, 2010; and

**WHEREAS**, the approved process directs the Plan Commission to hold a public meeting on the proposed amendment, and following said public meeting, make a recommendation by Resolution to the City Council by majority vote of the entire Commission.

**NOW, THEREFORE, BE IT RESOLVED** that the Plan Commission of the City of Beloit, Rock County, Wisconsin, hereby recommends approval of the following amendment to the Future Land Use Map (Map 10) of the City of Beloit Comprehensive Plan:

1006 Park Avenue - From *Office to Institutional and Community Services*.

Adopted this 7<sup>th</sup> day of June, 2023.

**Plan Commission**

\_\_\_\_\_  
Mike Ramsden, Chairperson

ATTEST:

\_\_\_\_\_  
Julie Christensen,  
Community Development Director

**RESOLUTION 2023-026**  
**RECOMMENDING DENIAL OF AN AMENDMENT TO THE**  
**CITY OF BELOIT COMPREHENSIVE PLAN**

**WHEREAS,** the Plan Commission of the City of Beloit recommended approval of the Comprehensive Plan of the City of Beloit (the Plan) on September 5, 2018, and the City Council of the City of Beloit approved an Ordinance adopting the Plan on November 5, 2018; and

**WHEREAS,** the Plan may be amended and changed in the years following adoption, particularly in instances where the Plan is becoming irrelevant or contradictory to emerging policies or trends, or does not provide specific advice or guidance on an emerging issue; and

**WHEREAS,** “Amendments” are generally defined as minor changes to the Plan’s maps or text; and

**WHEREAS,** the City Council of the City of Beloit approved a Resolution to Adopt a Process for Amending the City of Beloit Comprehensive Plan on February 1, 2010; and

**WHEREAS,** the approved process directs the Plan Commission to hold a public meeting on the proposed amendment, and following said public meeting, make a recommendation by Resolution to the City Council by majority vote of the entire Commission.

**NOW, THEREFORE, BE IT RESOLVED** that the Plan Commission of the City of Beloit, Rock County, Wisconsin, hereby recommends denial of the following amendment to the Future Land Use Map (Map 10) of the City of Beloit Comprehensive Plan:

1006 Park Avenue - From *Office to Institutional and Community Services*.

Adopted this 7<sup>th</sup> day of June, 2023.

**Plan Commission**

\_\_\_\_\_  
Mike Ramsden, Chairperson

ATTEST:

\_\_\_\_\_  
Julie Christensen,  
Community Development Director

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Ordinance No. 3797 amending the Zoning District Map for 2231 Trevino Court		
<b>Date:</b>	August 7, 2023		
<b>Presenter:</b>	Julie Christensen	<b>Department:</b>	Community Development

### Overview/Background Information

Matt Finnegan, on behalf of For Him, Inc., has submitted an application for a Zoning Map Amendment from R-1A, Single-Family Residential District to R-1B, Single-Family Residential District for the property located at 2231 Trevino Court in the City of Beloit.

### Key Issues

1. Matt Finnegan has requested a Zoning Map Amendment to allow for the construction of single-family attached dwellings on the vacant parcel located at 2231 Trevino Court. An attached dwelling unit is one that is joined to another dwelling unit on one or more sides by a party wall or walls. The planned building will contain two side-by-side dwelling units. A recorded condominium plat will be needed to make each unit a condominium that could individually be sold, as opposed to a duplex in which each unit cannot be sold individually.
2. Attached single family dwellings are not permitted in the existing R-1A, Single-Family Residential District, but are permitted in the R-1B, Single-Family Residential District.
3. Because the future land use designation for 2231 Trevino Court in the Comprehensive Plan is *Single Family Residential Urban*, a Comprehensive Plan Amendment is not needed in order to approve this Zoning Map Amendment request. Both R-1A and R-1B zoning designations are consistent with *Single Family Residential Urban* future land use designation.
4. The existing lot is approximately 100 feet wide, 152 feet deep and a little over 15,000 square feet, all of which exceed the minimum requirements of R-1B zoning district.
5. The Plan Commission reviewed this application on June 21, 2023, and voted (4-1) to recommend approval of the Zoning Map Amendment. Chairperson Ramsden voted against this rezoning because he felt that residents in the neighborhood relied on the existing zoning when deciding to locate in the neighborhood. His other reasons for recommending denial were that there are not other attached dwelling units in this neighborhood and that reducing green space could be detrimental to property values in the area.

### Conformance with Strategic Plan

Approval of this agreement would conform with the stated purpose of the following strategic goal:

- ☒ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☒ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☐ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. **Write N/A if not applicable**

A rezoning will incentivize development of a vacant residential lot fostering Economic Sustainability in the City of Beloit.

### Action Required/Recommendation

- City Council consideration and 2<sup>nd</sup> reading of the proposed Ordinance.

### Fiscal Note/Budget Impact

This will allow for the development of this long vacant parcel which will increase the City's tax base.

### Attachments

Ordinance No. 3797 and Staff Report to the Plan Commission



**ORDINANCE NO. 3797**

**AN ORDINANCE AMENDING THE  
ZONING DISTRICT MAP OF THE CITY OF БЕЛОIT**

The City Council of the City of Beloit, Rock County, Wisconsin do ordain as follows:

**Section 1.** The Zoning District Map of the City of Beloit, mentioned in the Zoning Code, Chapter 19 of the Code of General Ordinances of the City of Beloit, is amended as follows:

The following described land is hereby changed from R-1A, Single Family Residential District to from R-1B, Single Family Residential District:

LOT 3 CSM VOL 38 PGS 98, 99 & 100, CITY OF БЕЛОIT, ROCK COUNTY, WISCONSIN. SAID PARCEL CONTAINING 0.35 ACRES MORE OR LESS. A/K/A 2231 TREVINO COURT.

**Section 2.** This Ordinance shall take effect and be in force upon its passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**City Council of the City of Beloit**

\_\_\_\_\_  
Regina Dunkin, Council President

Attest:

\_\_\_\_\_  
Marcy J Granger, City Clerk-Treasurer

Published this \_\_\_\_ day of \_\_\_\_\_, 2023

Effective this \_\_\_\_ day of \_\_\_\_\_, 2023

01-611100-5231-\_\_\_\_\_



## **REPORT TO THE PLAN COMMISSION**

**Plan Commission Meeting Date:** June 21, 2023

**Agenda Items:** 3.a.

**File Number:** ZMA-2023-06

### **General Information**

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**Applicant:** Matt Finnegan, on behalf of For Him, Inc.

**Owner:** For Him, Inc. A Wisconsin Corporation.

**Address/Location:** 2231 Trevino Court

**Applicant's Request/Proposal:** Matt Finnegan has requested a Zoning Map Amendment from R-1A, Single-Family Residential District, to R-1B, Single-Family Residential District for the property located at 2231 Trevino Court. This will allow for the construction of attached single-family dwellings on the vacant parcel located at 2231 Trevino Court. An attached dwelling unit is one that is joined to another dwelling unit on one or more sides by a party wall or walls. The planned building will contain two side-by-side dwelling units. A recorded condominium plat will be needed to make each unit a condominium that could individually be sold, as opposed to a duplex in which each unit cannot be sold individually. Attached single family dwellings are not permitted in the existing R-1A, Single-Family Residential District, but are permitted in the R-1B, Single-Family Residential District.

### **Staff Analysis**

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**Existing Site Conditions:** 2231 Trevino Court is currently a vacant lot and is zoned R-1A, Single Family Residential District. The existing lot is approximately 100 feet wide, 152 feet deep and a little over 15,000 square feet, all of which exceed the minimum requirements of R-1B (and the existing R-1A) zoning district.

**Surrounding Land Use and Zoning:** The subject property is surrounded by R-1A, Single Family Residential District zoned parcels, including a large vacant parcel to the east, and previously platted but now combined residential parcels to the north and south. The next two lots to the west of this parcel on Trevino Court are developed with detached single-family residences. Knoll View Drive, the next street south is zoned R-1B, Single Family Residential District and largely developed with detached single-family residences.

**City of Beloit Comprehensive and Strategic Plan:** Wisconsin's Comprehensive Planning Law, §66.1001 of the Wisconsin Statutes, was signed into law in 1999. The Comprehensive Planning

law requires all cities, towns, and villages that regulate land use through land use ordinances (e.g. zoning) to adopt a Comprehensive Plan. This plan is intended to guide development and redevelopment over a 20-year timeframe. The law also requires that land use decisions be consistent with the plan. All land use decisions made by the City of Beloit, including any actions regarding official mapping, local subdivision regulation, and zoning regulations, must be consistent with the plan.

The future land use designation for this parcel in the Comprehensive Plan is *Single Family Residential Urban*. Because the future land use designation for 2231 Trevino Court in the Comprehensive Plan is *Single Family Residential - Urban*, a Comprehensive Plan Amendment is not needed in order to approve this Zoning Map Amendment request. Both R-1A and R-1B zoning designations are consistent with the *Single Family Residential - Urban* future land use designation.

If rezoned, the applicant intends to develop a property that has been vacant since originally platted in 1972. This will meet two Strategic Goals: Strategic Goal #1 - Create and Sustain Safe and Healthy Neighborhoods and Strategic Goal #3 - Create and Sustain Economic and Residential Growth.

**Public Notices:** On June 7 and 14, 2023, notices were published in the Beloit Daily News and mailed notices were sent out on June 8, 2023. One comment was received by a neighboring property owner who is opposed to this rezoning. The e-mail is attached to the staff report.

**Zoning Map Amendment Findings of Fact:** Based on Section 2-304 of the Zoning Ordinance, the Plan Commission shall make a recommendation based on the following considerations:

1. **The existing use of property within the general area of the subject property.**  
The existing land use is vacant land (since 1972), but existing development surrounding the property is compatible with a Single-Family Residential District, which is most appropriate for attached and detached single family uses.
2. **The zoning classification of property within the general area of the subject property.**  
Existing development surrounding 2231 Trevino Court includes compatible single-family residential uses. Generally, R-1A, Single-Family Residential District and R-1B, Single-Family Residential District are similar, except that R-1B allows attached single-family (condominium) dwellings, whereas R-1A only allows detached single-family dwellings. R-1B also relaxes some lot dimensional and setback requirements (e.g., R-1B allows for 50-foot wide lots and 20-foot front and street-side setbacks whereas R-1A requires 70-foot wide lots and 30-foot front and street-side setbacks).
3. **The suitability of the subject property for the uses permitted under the existing zoning classification.**  
The existing zoning classification is R-1A, Single-Family Residential District. Uses permitted in R-1A are compatible with this location; however, the property has been

vacant since platted in 1972. The proposed attached single-family dwellings are not permitted in the existing R-1A, Single-Family Residential District, but are permitted in R-1B, Single-Family Residential District. Staff believes R1-B is also a compatible zoning district for this property.

**4. The trend of development and zoning map amendments in the general area of the subject property.**

In 2018, a Zoning Map Amendment to change the zoning district classification from R-1A, Single-Family Residential to R-1B, Single-Family Residential for 26 properties located on the 2100 and 2200 blocks of Knoll View Drive in the block south of Trevino Court was approved. The primary purpose of the 2018 amendment was to reduce front setbacks to 20 feet (which many of the existing houses were already built to) so that the applicant (Matt Finnegan) could add a front porch to the house located at 2212 Knoll View Drive and meet setback requirements. This amendment also brought other existing legal non-conforming houses that did not meet the 30-foot setback required in R-1A into compliance with the Zoning Code. While the reduced setbacks allowed in R-1B would provide flexibility to fit the attached single-family structure on 2231 Trevino Court, the Zoning Map Amendment is also intended to allow attached single-family dwellings as a permitted use. Given that this and several adjacent parcels have been vacant since platted in 1972, staff believes it is appropriate to rezone this parcel to allow attached single-family uses as an alternate and compatible housing type with detached single-family units.

**STAFF RECOMMENDATION:**

The Planning and Building Services Division recommends approval of a Zoning Map Amendment to change the zoning district classification from R-1A, Single-Family Residential District, to R-1B, Single-Family Residential District for the property located at 2231 Trevino Court in the City of Beloit.

**ATTACHMENTS:** Zoning Map, Location Map, Application, Building Example Exhibit, Public Notice, Mailing List, Public Comment and Ordinance.

# Zoning Map



6/14/2023

- Zoning Districts

C-3

PLI

PUD

R-1A

R-1B

R-2

World Imagery

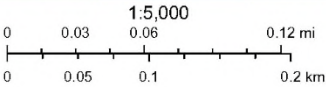
Low Resolution 15m Imagery

High Resolution 60cm Imagery

High Resolution 30cm Imagery

Citations

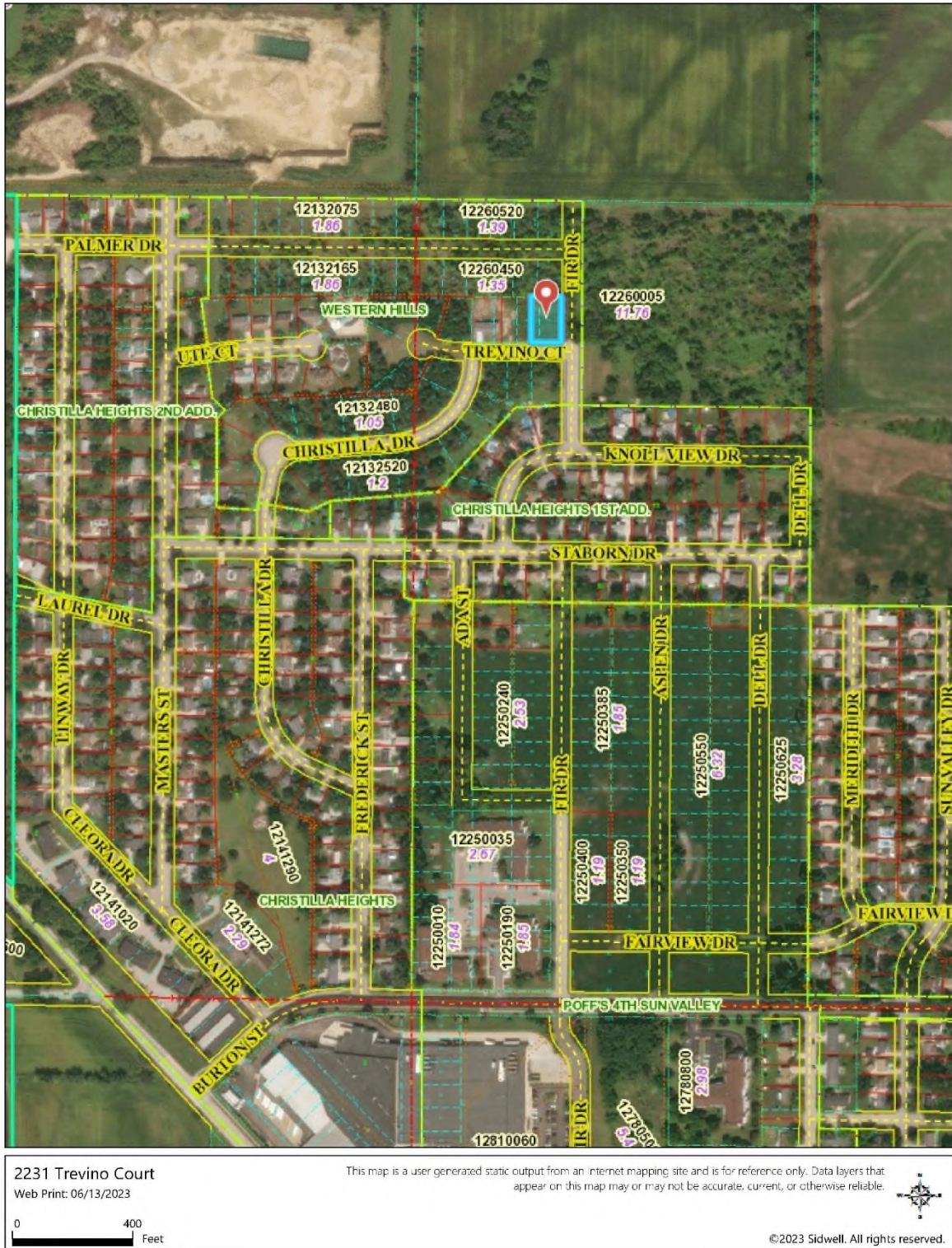
1.2m Resolution Metadata
- R-3



Maxar



## Location Map



# CITY of BELOIT

## PLANNING & BUILDING SERVICES DIVISION

100 State Street, Beloit, WI 53511

Phone: (608) 364-6700

Fax: (608) 364-6609

### Zoning Map Amendment Application Form

(Please Type or Print)

File No.: \_\_\_\_\_

1. Address of subject property: 2231 TREUND Court.

2. Legal description: Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: See Attached  
(If property has not been subdivided, attach a copy of the complete legal description from deed.)

Property dimensions are: 100 feet by 152 feet = 15,200 square feet.

If more than two acres, give area in acres: \_\_\_\_\_ acres.

3. Tax Parcel Number(s): 1226-0440

4. Owner of record: FOR HIM INC. Phone: 608-751-2915  
P.O. Box 41 Beloit WI 53512-0041  
(Address) (City) (State) (Zip)

5. Applicant's Name: Matthew L. Finnegan  
2212 Knoll View Dr. Beloit, WI 53511  
(Address) (City) (State) (Zip)

608-312-2345 608-751-2915 HomesTheyFinance@Freedom@gmail.com  
(Office Phone #) (Cell Phone #) (E-mail Address)

6. **THE FOLLOWING ACTION IS REQUESTED:**

Change zoning district classification from: R1A to: R1B

All existing uses on this property are: vacant land.

7. All the proposed uses for this property are:

Principal use(s): Attached single family. See Attached  
Plan to build a 2 unit condo for the  
purpose of sale.

Secondary use(s): \_\_\_\_\_

Accessory use(s): \_\_\_\_\_

8. I/we represent that I/we have a vested interest in this property in the following manner:

☒ Owner

( ) Leasehold, Length of lease: \_\_\_\_\_

( ) Contractual, Nature of contract: \_\_\_\_\_

( ) Other, explain: \_\_\_\_\_

9. Individual(s) responsible for compliance with conditions (if any), if request is granted:

Name(s): Matthew L. Finnegan Phone: 608-751-2915  
P.O. Box 41 Beloit, WI 53512-0041  
 (Address) (City) (State) (Zip)

The applicant's signature below indicates the information contained in this application and on all accompanying documents is true and correct.

I/we, the undersigned, do hereby respectfully make application for and petition the City Plan Commission and City Council to grant the requested action for the purpose stated herein. I/we represent that the granting of the proposed request will not violate any of the required standards of the Zoning Ordinance of the City of Beloit. I/we also agree to abide by all applicable federal, state and local laws, ordinances, rules, and regulations.

Matthew L. Finnegan Matthew L. Finnegan 5/18/2023  
 (Signature of Owner) (Print name) (Date)

\_\_\_\_\_  
 (Signature of Applicant, if different) (Print name) (Date)

In order for your request to be heard and considered in a timely manner, you must submit the completed application and all accompanying documents to the Division for acceptance by the filing deadline date prior to a scheduled Plan Commission meeting. This application must be submitted with the \$300.00 application fee. Applicants will also be charged a fee for mailing public notices at the rate of \$0.50 per notice. An invoice for this fee will be sent to the applicant, and it is typically between \$5.00 and \$20.00.

**To be completed by Planning Staff**

Filing Fee: **\$300.00** Amount Paid: \_\_\_\_\_ Meeting Date: \_\_\_\_\_

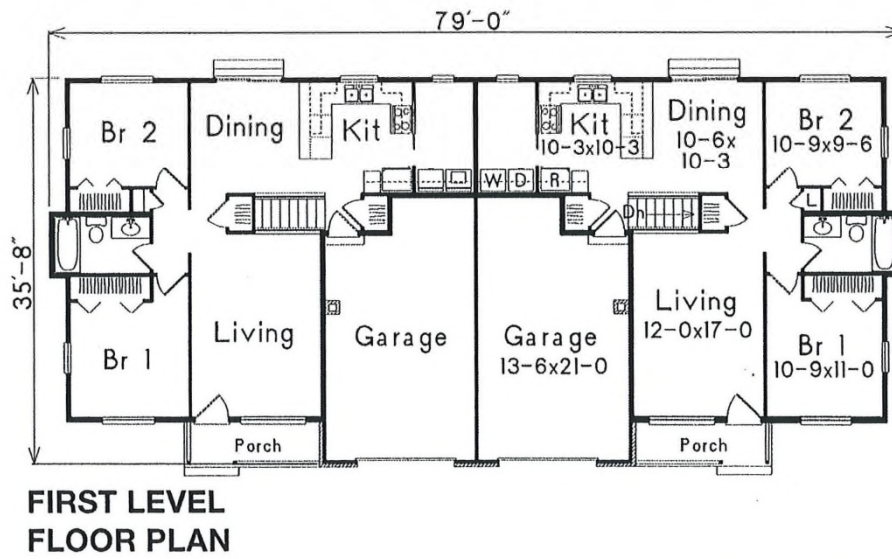
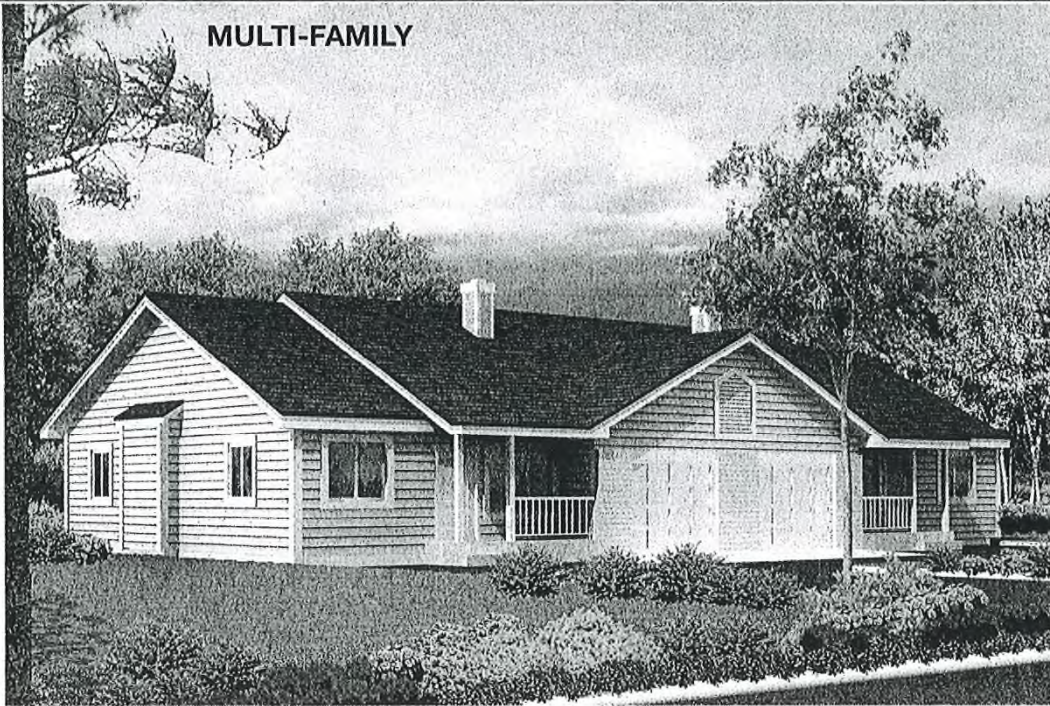
Number of notices: \_\_\_\_\_ x mailing cost (\$0.50) = cost of mailing notices: \$ \_\_\_\_\_

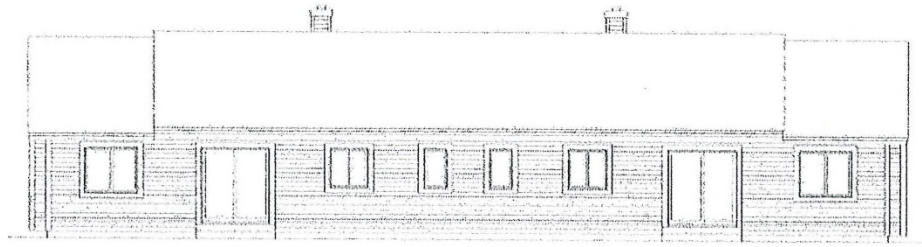
Application accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

Date Notice Published: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_

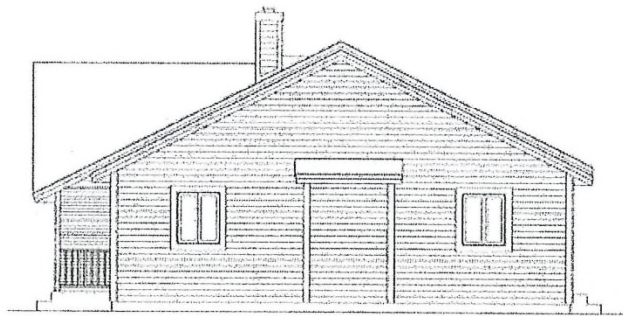


## Building Example Exhibit

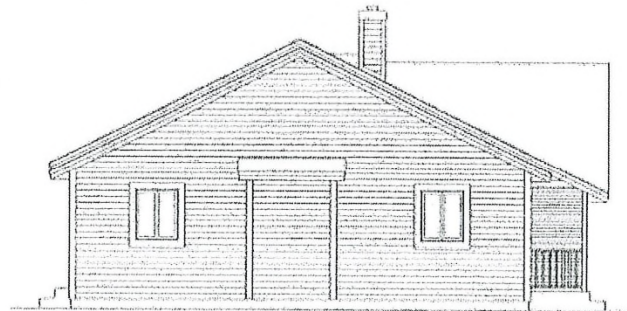




**REAR ELEVATION**



**RIGHT ELEVATION**



**LEFT ELEVATION**



CITY HALL • 100 STATE STREET • BELOIT, WI 53511  
Office: 608/364-6700 • Fax: 608/364-6609  
www.beloitwi.gov  
Equal Opportunity Employer

## **NOTICE TO THE PUBLIC**

June 8, 2023

To Whom It May Concern:

Matthew Finnegan on behalf of For Him, Inc. A Wisconsin Corp. has submitted an application for review and consideration for a Zoning Map Amendment to rezone 2231 Trevino Court in the City of Beloit from R-1A, Single Family Residential District to R-1B, Single Family Residential District.

The following public hearings will be held regarding these applications:

**City Plan Commission:** Wednesday, June 21, 2023 at 7:00 PM, or as soon thereafter as the matter can be heard in The Forum, Beloit City Hall, 100 State Street.

**City Council:** Monday, August 7, 2023 at 7:00 PM, or as soon thereafter as the matter can be heard in The Forum, Beloit City Hall, 100 State Street.

**We are interested in your opinion. \***

**Anyone bringing handouts to the Plan Commission meeting must bring 10 copies and submit them to City staff before the meeting begins. You may also mail your comments to the attention of TJ Nee at 100 State Street or via email to [planning@beloitwi.gov](mailto:planning@beloitwi.gov). You may also call (608) 364-6711 to provide your comments over the phone**



WHIRLING WHEEL  
ENTERPRISES, LLC.  
3307 RIVERSIDE DRIVE  
BELOIT, WI 53511

AARON J. LAGRANGE  
2261 TREVINO COURT  
BELOIT, WI 53511

STEPHAN AND BETH MILLER  
2251 TREVINO COURT  
BELOIT, WI 53511

**Rottmann, Hilary**

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**From:** Beth Kalina <beth.kalina@outlook.com>  
**Sent:** Monday, June 12, 2023 12:53 PM  
**To:** Planning (WebPage)  
**Subject:** Rezoning for District to R-1B

To whom it may concern,

We live at 2251 Trevino Ct, Beloit, WI. We enjoy are little quiet area here. We had asked when we bought this property from the owner Matt Finnegan if he would put the purchase the area next to us to be included in our ownership and he refused.

We are a family of a Vet and we could have bought it with no problem. Couple reasons why we purchased this area was because it was quiet, no drama, no violence. We are afraid if you re-do the zoning and allow an apartment complex or a huge duplex that we will lose the integrity of our little area. We have no problem with single homes being built back here and if we had known that we could have bought all this land for the price of back taxes: we would have. Also, if this does go through our property is worth less than what we purchased it.

Please vote that there will be no apartment zoning in this area.

We are unable to come to the zoning council or city plan commission and that is why I am writing this letter.

Thank you,

*Beth Kalina-Miller*

**ORDINANCE NO. 3797**

**AN ORDINANCE AMENDING THE  
ZONING DISTRICT MAP OF THE CITY OF BELOIT**

The City Council of the City of Beloit, Rock County, Wisconsin do ordain as follows:

**Section 1.** The Zoning District Map of the City of Beloit, mentioned in the Zoning Code, Chapter 19 of the Code of General Ordinances of the City of Beloit, is amended as follows:

The following described land is hereby changed from R-1A, Single-Family Residential District, to R-1B, Single-Family Residential District:

LOT 3 CSM VOL 38 PGS 98, 99 AND 100, CITY OF BELOIT, ROCK COUNTY, WISCONSIN. SAID PARCEL CONTAINING 0.35 ACRES MORE OR LESS. A/K/A 2231 TREVINO COURT.

**Section 2.** This Ordinance shall take effect and be in force upon its passage and publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2023.

**City Council of the City of Beloit**

\_\_\_\_\_  
Regina Dunkin, Council President

Attest:

\_\_\_\_\_  
Marcy J Granger, City Clerk-Treasurer

Published this \_\_\_\_ day of \_\_\_\_\_, 2023

Effective this \_\_\_\_ day of \_\_\_\_\_, 2023

01-611100-5231-\_\_\_\_\_

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Consideration of Ordinance No. 3800 prohibiting parking on Prospect Street north of Public Avenue		
<b>Date:</b>	July 17, 2023		
<b>Presenter:</b>	Bill Frisbee, Public Works Director	<b>Department:</b>	Public Works/Engineering
<b>Overview/Background Information</b>			
<p>The City of Beloit Fire Department has made a request to restrict parking on the west side of Prospect Street from Public Avenue north to the driveway at the Scoville Center. The Fire Department responds to emergency calls at the Scoville Center by using the driveway entrance off of Bushnell Street and exits the property by turning south on Prospect Street. There are frequently vehicles parked on both sides of Prospect Street making it difficult for an ambulance to turn onto Prospect Street which increases the time required to transport patients to the hospital.</p>			
<b>Key Issues</b>			
<ol style="list-style-type: none"> <li>1. Prospect Street is a one way street heading southbound.</li> <li>2. Parking is currently allowed on both sides of the street and is heavily utilized.</li> <li>3. The fire department has requested no parking signs be installed on the west side of the street from the Scoville Center driveway to Public Avenue which would eliminate two potential parking spots. The Fire Department indicates this is necessary to be able to safely transport patients to the hospital in the most expedited manner possible.</li> <li>4. All property owners on this block of Prospect Street plus the property owners at the southeast and southwest corners of Public and Prospect were notified that this item is on the agenda for this meeting.</li> <li>6. Traffic Review Committee unanimously recommended approval of this ordinance.</li> </ol>			
<b>Conformance with Strategic Plan</b>			
<p>Approval of this action would conform with the stated purpose of the following strategic goal:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Goal #1 - Create and Sustain Safe and Healthy Neighborhoods</li> <li><input type="checkbox"/> Goal #2 - Create and Sustain a High Performing Organization</li> <li><input type="checkbox"/> Goal #3 - Create and Sustain Economic and Residential Growth</li> <li><input type="checkbox"/> Goal #4 - Create and Sustain a High Quality of Life</li> <li><input type="checkbox"/> Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity</li> <li><input type="checkbox"/> Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image</li> </ul>			
<b>Sustainability</b>			
<p>If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. Write N/A if not applicable</p> <p>N/A</p>			
<b>Action Required/Recommendation</b>			
<p>Staff recommends approval of an ordinance to amend the index of special locations to restrict parking on the west side of Prospect Street from Public Avenue to a point 70 feet north of Public Avenue.</p>			
<b>Fiscal Note/Budget Impact</b>			
<p>Public Works will install the appropriate signage if the ordinance is approved.</p>			
<b>Attachments</b>			
<p>Proposed Ordinance, Exhibit</p>			

Revised 03-09-2022



N

**Proposed No Parking Zone  
Prospect St (West Side of ROW)**

**BUSHNELL ST**

545

**PROSPECT ST**

**PROPOSED  
NO PARKING ZONE**

**PUBLIC AV**

517

501



**Beloit**  
WISCONSIN

**ORDINANCE NO. 3800**

**AN ORDINANCE PROHIBITING PARKING ON PROSPECT STREET NORTH OF PUBLIC AVENUE**

The City Council of the City of Beloit, Rock County, Wisconsin, do ordain as follows:

**Section 1.** Section 13.02 of the Code of General Ordinances of the City of Beloit, as it relates to *Parking Prohibited* is hereby amended by adding, in alphabetical order by street name, to the Index of Special Locations, Chapter II, *Parking Prohibited*, the following:

“PROSPECT STREET      Public Avenue to a point 70 feet north of Public Avenue – WEST SIDE”

**Section 2.** This ordinance shall be in force and take effect upon passage and publication.

Adopted this \_\_\_\_ day of August, 2023.

**CITY COUNCIL FOR THE CITY OF БЕЛОIT**

By: \_\_\_\_\_  
Regina Dunkin, City Council President

**ATTEST:**

By: \_\_\_\_\_  
Marcy J. Granger, City Clerk-Treasurer

PUBLISHED: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

01-611100-5231- \_\_\_\_\_

13.02 - Prohibited Parking Prospect north of Public (West) (23-1116)



# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Consideration of Ordinance No. 3801 prohibiting parking on Fir Drive from Burton Street to Woodman Lane		
<b>Date:</b>	July 17, 2023		
<b>Presenter:</b>	Bill Frisbee, Public Works Director	<b>Department:</b>	Public Works/Engineering

### Overview/Background Information

The City of Beloit Public Works Department and Woodman's have both independently requested to install No Parking signs on Fir Drive from Burton Street to Woodman Lane. Woodman's has constructed an additional parking lot on the east side of Fir Drive along with a crosswalk for pedestrians to cross Fir Drive. In addition, there is also a bus stop on Fir Drive. Vehicles have been parking on Fir Drive which inhibits sight lines and makes it more difficult for pedestrians to cross Fir Drive.

### Key Issues

1. Parking is currently allowed on both sides of Fir Drive
2. Vehicles park on Fir Drive despite the construction of a new parking lot and ample parking areas in designated lots to serve Woodman's.
3. Vehicles parking on Fir Drive make it more difficult for pedestrians to cross Fir Drive.
4. Woodman and the City of Beloit Public Works Department have both requested that parking be restricted on Fir Drive so that Woodman's employees and customers will use the designated parking lots and increase pedestrian safety crossing Fir Drive.
5. Traffic Review Committee unanimously recommended approval of this ordinance.

### Conformance with Strategic Plan

Approval of this action would conform with the stated purpose of the following strategic goal:

- ☒ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☒ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. Write N/A if not applicable

N/A

### Action Required/Recommendation

Staff recommends approval of an ordinance to amend the index of special locations to restrict parking on both sides of Fir Drive from Burton Street to Woodman Lane.

### Fiscal Note/Budget Impact

Public Works will install the appropriate signage if the ordinance is approved.

### Attachments

Proposed Ordinance, Exhibit

Revised 03-09-2022



**BURTON ST**

**Proposed No Parking Zone  
Fir Dr on Both Sides  
Burton St to Woodman La**

2260

1877

1815

**NO PARKING ZONE**

**FIR DR**

**NO PARKING ZONE**

**NO PARKING ZONE**

**Woodman's  
New Parking Lot  
on East Side of Fir Dr**

**WOODMAN LA**

2200

**ORDINANCE NO. 3801**

**AN ORDINANCE PROHIBITING PARKING ON FIR DRIVE  
BETWEEN BURTON STREET AND WOODMAN LANE**

The City Council of the City of Beloit, Rock County, Wisconsin, do ordain as follows:

**Section 1.** Section 13.02 of the Code of General Ordinances of the City of Beloit, as it relates to *Parking Prohibited* is hereby amended by adding, in alphabetical order by street name, to the Index of Special Locations, Chapter II, *Parking Prohibited*, the following:

“FIR DRIVE                      Burton Street to Woodman Lane – BOTH SIDES”

**Section 2.** This ordinance shall be in force and take effect upon passage and publication.

Adopted this \_\_\_\_ day of August, 2023.

**CITY COUNCIL FOR THE CITY OF БЕЛОIT**

By: \_\_\_\_\_  
Regina Dunkin, City Council President

**ATTEST:**

By: \_\_\_\_\_  
Marcy J. Granger, City Clerk-Treasurer

PUBLISHED: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

01-611100-5231- \_\_\_\_\_

13.02 - Prohibited Parking Fir Drive, Burton Street to Woodman Lane (23-1117)

# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



**Topic:** AN ORDINANCE ESTABLISHING 30 MINUTE PARKING ZONE FOR TWO PARKING SPACES IN THE 300 BLOCK OF STATE STREET

**Date:** August 7, 2023

**Presenter:** Bill Frisbee, Public Works Director

**Department:**

Public Works

### Overview/Background Information

This staff report is intended to supplement the original staff report for this item.

Councilor Leavy requested a substitute amendment ordinance be prepared that allowed for a 30-minute parking zone as opposed to a 15-minute parking zone for 2 spaces in the 300 block of State Street.

### Key Issues

### Conformance with Strategic Plan

Approval of this action would conform with the stated purpose of the following strategic goal:

- ☒ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☒ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. **Write N/A if not applicable**

n/a

### Action Required/Recommendation

Consideration of the original ordinance or substitute amendment #1

Any motion to approve should clarify which version or ordinance 3799 the council wishes to adopt.

### Fiscal Note/Budget Impact

### Attachments

Original Ordinance and Substitute Amendment #1

Revised 03-09-2022



**ORDINANCE NO. 3799**

**AN ORDINANCE ESTABLISHING 30 MINUTE PARKING ZONE  
FOR TWO PARKING SPACES IN THE 300 BLOCK OF STATE STREET**

**SUBSTITUTE AMENDMENT #1**

The City Council of the City of Beloit, Rock County, Wisconsin, do ordain as follows:

**Section 1.** Section 13.02 of the Code of General Ordinances of the City of Beloit, as it relates to *Fifteen-Minute Parking Zones* is hereby amended by adding, in alphabetical order by street name, to the Index of Special Locations, Chapter 1 *Downtown Parking Time Limitations*, Section C *Thirty-Minute Parking Zones*, the following:

“STATE STREET                      Two stalls near the front of 314 State Street – WEST SIDE”

**Section 2.** Section 13.02 of the Code of General Ordinances of the City of Beloit, as it relates to *Two-Hour Parking Zones* is hereby amended by deleting from the Index of Special Locations, Chapter 1 *Downtown Parking Time Limitations*, Section E *Two-Hour Parking Zones*, the following:

“STATE STREET                      Broad Street to East Grand Avenue, except three stalls in front of the properties 318, 324, and 326 State St. – BOTH SIDES”

**Section 3.** Section 13.02 of the Code of General Ordinances of the City of Beloit, as it relates to *Two-Hour Parking Zones* is hereby amended by amending the Index of Special Locations, Chapter 1 *Downtown Parking Time Limitations*, Section E *Two-Hour Parking Zones*, to read as follows:

“STATE STREET                      Broad Street to East Grand Avenue, [except for any parking stalls otherwise designated elsewhere in this Index](#) - BOTH SIDES”

**Section 4.** This ordinance shall be in force and take effect upon passage and publication.

Adopted this \_\_\_\_ day of August, 2023.

**CITY COUNCIL FOR THE CITY OF БЕЛОИТ**

By: \_\_\_\_\_  
Regina Dunkin, City Council President

**ATTEST:**

By: \_\_\_\_\_  
Marcy J. Granger, City Clerk-Treasurer

PUBLISHED: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

01-611100-5231- \_\_\_\_\_

13.02 - 30-minute Parking State Street (300 block) (23-1115)



# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



<b>Topic:</b>	Consideration of Ordinance No. 3799 establishing 15 minute parking zone for two parking spaces in the 300 block of State Street		
<b>Date:</b>	July 17, 2023		
<b>Presenter:</b>	Bill Frisbee, Public Works Director	<b>Department:</b>	Public Works/Engineering

### Overview/Background Information

Scott and Teala Lamoreux have requested that two parking stalls near Northwoods Premium Confections be converted from 2-hour to 15-minute time limit parking. The requesters believe that they (along with other businesses on the block) lose customers due to parking unavailability along the street from vehicles that are parked for long durations limiting vehicle turnover. Northwoods Premium Confections feels this impact more due to the fact that they do not have a rear entrance that can be utilized by customers that park in the Mill Street parking lot.

### Key Issues

1. The request for two 15-minute parking stalls is being made to help provide available parking for businesses that have customers that typically need to park for fewer than 15 minutes at a time.
2. All parking stalls on this block are signed as 2-hour parking.
3. While reviewing the index of special locations it was noted that there are inconsistent parking time limits in this block that will be clarified.
4. Engineering reached out to Shauna El-Amin with Downtown Beloit Association and she supports the proposal to convert two parking stalls to 15-minute parking.
5. All property owners on State Street between Grand Avenue and Broad Street were notified about this item being on this agenda. Engineering received one comment that 30 minute parking should be considered instead of 15 minute parking.
6. Traffic Review Committee unanimously recommended approval of this ordinance, with one committee member abstaining.

### Conformance with Strategic Plan

Approval of this action would conform with the stated purpose of the following strategic goal:

- ☒ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☐ Goal #4 - Create and Sustain a High Quality of Life
- ☒ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. Write N/A if not applicable

N/A

### Action Required/Recommendation

Staff recommends approval of an ordinance to amend the index of special locations to mark two parking stalls in front of 314 State Street as 15-minute parking. Staff further recommends approval of an ordinance that would amend and clarify the index of special locations to establish parking time limits for all other stalls on this block as 2-hour parking.

### Fiscal Note/Budget Impact

Public Works will install the appropriate signage if the ordinance is approved.

### Attachments

Proposed Ordinance, Exhibit

N



**Proposed 15 Minute Parking  
(Two Stalls) at 314 State St**

324

408  
400

322

323

318

321

316A 316

314 UPPER 314

317 319

312

310 1/2 310

315  
313 311

306

302

307

409 309

411

**TWO STALLS**

**15 MINUTE PARKING**

**STATE ST**

**BROAD ST**

164



**Beloit**  
WISCONSIN

**ORDINANCE NO. 3799**

**AN ORDINANCE ESTABLISHING 15 MINUTE PARKING ZONE  
FOR TWO PARKING SPACES IN THE 300 BLOCK OF STATE STREET**

The City Council of the City of Beloit, Rock County, Wisconsin, do ordain as follows:

**Section 1.** Section 13.02 of the Code of General Ordinances of the City of Beloit, as it relates to *Fifteen-Minute Parking Zones* is hereby amended by adding, in alphabetical order by street name, to the Index of Special Locations, Chapter 1 *Downtown Parking Time Limitations*, Section A *Fifteen-Minute Parking Zones*, the following:

“STATE STREET                      Two stalls near the front of 314 State Street – WEST SIDE”

**Section 2.** Section 13.02 of the Code of General Ordinances of the City of Beloit, as it relates to *Two-Hour Parking Zones* is hereby amended by deleting from the Index of Special Locations, Chapter 1 *Downtown Parking Time Limitations*, Section E *Two-Hour Parking Zones*, the following:

“STATE STREET                      Broad Street to East Grand Avenue, except three stalls in front of the properties 318, 324, and 326 State St. – BOTH SIDES”

**Section 3.** Section 13.02 of the Code of General Ordinances of the City of Beloit, as it relates to *Two-Hour Parking Zones* is hereby amended by amending the Index of Special Locations, Chapter 1 *Downtown Parking Time Limitations*, Section E *Two-Hour Parking Zones*, to read as follows:

“STATE STREET                      Broad Street to East Grand Avenue, [except for any parking stalls otherwise designated elsewhere in this Index](#) - BOTH SIDES”

**Section 4.** This ordinance shall be in force and take effect upon passage and publication.

Adopted this \_\_\_\_ day of August, 2023.

**CITY COUNCIL FOR THE CITY OF БЕЛОIT**

By: \_\_\_\_\_  
Regina Dunkin, City Council President

**ATTEST:**

By: \_\_\_\_\_  
Marcy J. Granger, City Clerk-Treasurer

PUBLISHED: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

01-611100-5231-\_\_\_\_\_

13.02 - 15-minute Parking State Street (300 block) (23-1115)



# CITY OF BELOIT

## REPORTS AND PRESENTATIONS TO CITY COUNCIL



**Topic:** Consideration of Resolution 2023-119 approving WisGO Services Agreement for Touchless Fare Media Equipment and Services for Beloit Transit System between Milwaukee Transportation Services, Inc. (MTS) and the City of Beloit

**Date:** August 7, 2023

**Presenter:** Julie Christensen

**Department:**

Community Development

### Overview/Background Information

A number of Technology Upgrades are underway at Beloit Transit System that include automatic voice announcement (AVA) with LED displays, GPS, infotainment, and cashless fare media to enhance services to the public.

The cashless fare media will be provided by the WisGo system with app. This system was procured and developed through Milwaukee County Transit System includes options for riders to purchase fare through an app, debit card, or a transit pass card that can be loaded and charged electronically. The WisGo App also provides real-time trip planning options, and can be used throughout the state with other Transit agencies utilizing the WisGo App.

This system will benefit riders by providing more convenient and updated fare purchasing options, and will benefit transit drivers as it will reduce time needed to physically "punch" passes. It is anticipated that this will also reduce the amount of direct cash handling by staff. Another added benefit is that the system will be no-touch so it will minimize the contact between passengers and drivers, which will reduce the risk of spreading contagious illnesses.

Riders will still have the option to pay fares in cash on the bus at the farebox.

### Key Issues

1. The base cost for initial installation of WisGO hardware and software is \$26,180.00.
2. Annual costs for system maintenance and per transaction fees are \$8,215.00.
3. Initial costs and additional annual fees for the first five years of service will be funded with a combination of federal CARES and Transit ARP grant funds at 100% (no local match required).
4. The plan beyond five years to pay for annual fees related to the technology upgrades is to generate additional revenue from infotainment and AVA advertising through GPS geocoding, and increase in ridership.

### Conformance with Strategic Plan

Approval of this action would conform with the stated purpose of the following strategic goal:

- ☐ Goal #1 - Create and Sustain Safe and Healthy Neighborhoods
- ☐ Goal #2 - Create and Sustain a High Performing Organization
- ☐ Goal #3 - Create and Sustain Economic and Residential Growth
- ☒ Goal #4 - Create and Sustain a High Quality of Life
- ☒ Goal #5 - Create and Sustain High Quality Infrastructure and Connectivity
- ☐ Goal #6 - Create and Sustain Enhanced Communications and Community Engagement, while maintaining a Positive Image

### Sustainability

If applicable, briefly comment on the environmental, economic, and/or social sustainability of this policy or program. Consider how current needs are met without compromising the ability of future generations to meet their own needs. Write N/A if not applicable

N/A

### Action Required/Recommendation

City staff recommends approval of the resolution to approve the WisGo Services Agreement for cashless fare media equipment and services for Beloit Transit System between Milwaukee Transportation Services, Inc. (MTS) and the City of Beloit.

### Funding is available

This project is funded with federal CARES and Transit ARP grant funds. No City match or local share dollars are required.

### Attachments

WisGo Services Agreement, Resolution

**RESOLUTION 2023-119**

**RESOLUTION APPROVING WISGO SERVICES AGREEMENT FOR CASHLESS FARE MEDIA EQUIPMENT AND SERVICES FOR БЕЛОIT TRANSIT SYSTEM BETWEEN MILWAUKEE TRANSPORTATION SERVICES, INC. (MTS) AND THE CITY OF БЕЛОIT**

**WHEREAS**, the City of Beloit Strategic Plan includes a goal to create and sustain high quality infrastructure and connectivity; and

**WHEREAS**, Beloit Transit System has identified providing electronic trip planning and cashless fare options for riders will improve the community's ability to access and utilize Beloit's public transportation system and increase ridership; and

**WHEREAS**, the attached agreement outlines responsibilities with regard to equipment, fees, and services to provide cashless fare media and electronic trip planning.

**NOW, THEREFORE, BE IT RESOLVED** that the attached *WisGo Services Agreement* is hereby approved and City Manager of the City of Beloit is hereby authorized to execute the attached Agreement and take such other necessary action to effectuate the purpose of this Resolution.

Approved this 7<sup>th</sup> day of August, 2023.

**CITY COUNCIL OF THE CITY OF БЕЛОIT**

\_\_\_\_\_  
Regina Dunkin, President

ATTEST:

\_\_\_\_\_  
Marcy J. Granger, City Clerk-Treasurer



## WISGO SERVICES AGREEMENT

This WisGo Services Agreement (this “Agreement” or “Contract”) is made and entered into as of the \_\_\_\_\_ (the “Effective Date”) by and between Milwaukee Transportation Services, Inc., a quasi-governmental instrumentality of Milwaukee County and operator of Milwaukee County Transit System located at 1942 North 17<sup>th</sup> Street, Milwaukee, Wisconsin 53205 (“Contractor” or “MTS”) and City of Beloit with its principal place of business at 100 State St, Beloit, WI, 53511 (“Customer”). Customer and Contractor are each a “Party” and together, the “Parties”.

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## RECITALS

- A. MTS has procured from Cubic Transportation Systems, Inc. ("Cubic") the Umo-branded software-as-a-service application and related support and professional services pursuant to a contract with Cubic ("Cubic Contract") and has the ability to distribute and provide Customer access to the foregoing as the WisGo™ system ("WisGo").
- B. Customer desires to utilize WisGo in accordance with the provisions of this Agreement.

The Parties agree as follows:

## AGREEMENT

### 1 DEFINITIONS

- 1.1 Capitalized terms not defined elsewhere in the Agreement have the following meanings:
- 1.2 "Back Office" means the elements of the WisGo Services hosted in the public cloud.
- 1.3 "Bankcard Payments" means any credit, debit and prepaid debit card payments for Customer's products and services by End Users.
- 1.4 "Business Day" means Monday, Tuesday, Wednesday, Thursday, or Friday beginning at 12:00 midnight Pacific Time, excluding the Holidays and Non-Working Periods.
- 1.5 "Calendar Day" or "Day" means any day shown on the calendar beginning at 12:00 midnight Pacific Time, including Saturdays, Sundays, Holidays, and Non-Working Periods.
- 1.6 "Card" means Umo Pass Cards, as defined in Exhibit A1.
- 1.7 "Card Services" means the services set out in Exhibit A8.
- 1.8 "Contract Year" means each calendar year commencing on the Effective Date, or, where applicable, the anniversary of the Effective Date.
- 1.9 "Customer Data" means the data collected through or generated by the WisGo Services or use of the WisGo Services by Users, relating to Users' use of WisGo Services or Customer's transportation services, and analytics, reporting, results, or other information in respect of such data, excluding the WisGo User Profile.
- 1.10 "Customer Obligations" means the Customer obligations set out in Exhibit D for each WisGo Service.
- 1.11 "Customer User" means an end-user that accesses the administrative, reporting and customer service functions of the WisGo Services in the capacity of an employee, contractor, or agent of the Customer.

- 1.12 "Documentation" means the operating manuals, user manuals, guides, service descriptions, service specifications, training materials, technical manuals, and support material relating to the WisGo Services or Equipment, if and as made available by Contractor.
- 1.13 "End User" means a consumer end-user of the WisGo Services other than a Customer User. This includes transit riders, and employees, contractors, and agents of the Customer accessing the WisGo Services when utilizing the WisGo Services in their capacity as a consumer transit rider to plan and pay for transportation services.
- 1.14 "End User Profile" means data provided by End Users that is not specific to Customer such as the End User login, account-name, email, stored payment credentials and other such data provided by End Users in establishing and populating their account on the WisGo Services. End User Profile does not include data provided by End Users that is specific to the End User's relationship with the Customer (or any customer of the WisGo Services), such as transaction data, purchase history with the Customer, etc., which data is Customer Data.
- 1.15 "Equipment" means the physical hardware detailed in Exhibit B, or any such other physical hardware provided to the Customer under this Contract, that is sold to the Customer or otherwise required to be delivered to Customer for use in conjunction with the Software to provide the Services to the Users and the Customer.
- 1.16 "Fees" means the fees payable by Customer as described in Exhibit E for the Services and Equipment as described in Exhibit B.
- 1.17 "Holidays" means public holidays observed by either Party.
- 1.18 "Implementation Services" means the services required to configure and implement the WisGo Services on behalf of Customer as set forth in Exhibit B.
- 1.19 "Intellectual Property Rights" means trade secret rights, rights in know-how, databases moral rights, copyrights, patents, trademarks (and the goodwill represented thereby), and similar rights of any type under the laws of any governmental authority, domestic or foreign, including all applications for and registrations of any of the foregoing.
- 1.20 "Marketing Tool Kit" means marketing materials made available to the Customer for use by the Customer in its own marketing of the WisGo Services including graphics, videos and similar materials.
- 1.21 "Merchant Acquirer" means an entity that provides acquiring or electronic payment processing services in respect of settling funds to the Customer's account(s) for all End User purchases in the WisGo Services.
- 1.22 "Merchant of Record" means the party that holds the contractual relationship with a Merchant Acquirer for the acceptance of credit and debit card payments as it relates to the WisGo Services.
- 1.23 "Mobility Service Operator" means a third party organization that operates vehicles or transit services or behalf of Customer under an agreement with Customer.
- 1.24 "Non-Working Periods" means the Days each year designated by Contractor as excluded from the Business Days.
- 1.25 "Operating Year" means the calendar year commencing on Operating Period Start Date for the first such year and anniversary of the Operating Period Start Date for each subsequent year.
- 1.26 "Personal Information" means any Customer Data or WisGo Data that can or could reasonably be used to identify, contact or locate the person to whom such information pertains, any information from which such identification or contact information can or could be derived, and any other similar information as defined by any law. Personal Information includes, but is not limited to: credit, debit, and other payment cardholder information.
- 1.27 "Professional Services" means any additional services that Contractor shall provide or source as the parties agree in writing pursuant to a Statement of Work or similar document.

- 1.28 “Services” means the Implementation Services, WisGo Services, the Support Services, Professional Services and related Documentation .
- 1.29 “Services Commencement Date” means the date at which the WisGo Service is first utilized by the Customer for commercial purposes.
- 1.30 “Software” means the software applications provided as part of the Services consisting of Equipment firmware and the consumer facing mobile app to access the WisGo Services.
- 1.31 “Support Services” means the support services for WisGo Services as set forth in Exhibit C.
- 1.32 “Term” means the term of the Contract as defined in Section 11.1.
- 1.33 “Umo Privacy Policy” means the Cubic privacy policy set out at <https://umomobility.com/app/privacy-policy/> as updated from time-to-time .
- 1.34 “USD” means United States Dollars and is the currency for all prices and fees under this Agreement.
- 1.35 “Users” means End Users and Customer Users.
- 1.36 “User Terms and Conditions” means the terms and conditions governing an End User’s use of the WisGo Services, as set out at <https://umomobility.com/pass/terms-and-conditions/> as updated from time-to-time.
- 1.37 “WisGo Data” means the End User Profile and any other data, analytics, reporting, results, and other information, excluding Customer Data.
- 1.38 “WisGo Services” means the software and services described in the Exhibit A, which are the same or substantially the same software and services provided to Contractor by Cubic pursuant to the Cubic Contract.

## 2 THE SERVICES; LICENSE GRANTS, AND RESTRICTIONS

- 2.1 Contractor shall, during the Term, provide or have provided to Customer the Services as set out in Exhibit A and make available all Documentation to the Customer on and subject to the terms of this Agreement to the extent permitted by the Cubic Contract. Contractor shall, in addition, through its third party licensors provide and maintain the network, computers, software, infrastructure, and telecommunications systems necessary to provide the WisGo Services, including all Back Office components, in accordance with this Agreement.
- 2.2 Contractor grants to Customer:
  - 2.2.1 a limited, non-exclusive, non-sublicensable sublicense during the Term, to use the Software and Services during the Term solely in connection with Customer's transit operations, including any Mobility Service Operators, and use and copy the Documentation (other than Documentation relating to the Equipment manufactured by a third party OEM and resold to Customer) solely for Customer's internal business operations.
  - 2.2.2 a limited, non-exclusive, non-transferable, non-sublicensable sublicense during the Term to use the Equipment Software and the Documentation related to the Equipment solely for Customer's internal business operations. Customer shall have no rights to copy, modify or decompile such Software but shall be entitled to copy the Documentation as set forth above, unless copying such Documentation, in whole or in part, is prohibited by the applicable third party OEM that owns such Documentation, in which case Customer’s use of such Documentation is subject to the third party OEM terms, if any, to be provided or otherwise available to the Customer.
  - 2.2.3 a limited, non-exclusive, non-transferable, non-sublicensable sublicense during the Term to use and display the WisGo and Cubic trademarks, service marks, and logos, including the Umo trademarks and logos, as made available by WisGo (the “WisGo Marks”) (i) solely in connection and as necessary to carry out its obligations under this Agreement and (ii) to market and promote the WisGo Services. Any goodwill which may be acquired through the use of the WisGo Marks shall inure solely to the benefit of Contractor and its licensors.

Customer shall abide by any usage guidelines as may be provided to Customer. Contractor reserves the right to update, replace, or retire any WisGo Marks or usage guidelines at any time upon sixty (60) Days' prior written notice. In such event, Customer shall cease use of the updated, replaced, or retired WisGo Marks as soon as commercially practical thereafter. Contractor shall have no liability for any costs incurred by the Customer in respect of its reasonable use of or changes to the WisGo Marks.

- 2.2.4 a limited, non-exclusive, non-transferable, non-sublicensable sublicense during the Term to use, modify, distribute, display, create derivative works from, and adopt for its own purposes materials in the Marketing Tool Kit (other than the WisGo Marks) to market and promote the WisGo Services. Customer shall abide by such usage guidelines as may be provided to Customer in writing.
- 2.3 Except to the extent expressly permitted under this Agreement, Customer shall not, and shall not permit any third party to:
  - 2.3.1 copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services, Software, and/or Documentation (as applicable) in any form or media or by any means, or attempt to do the same;
  - 2.3.2 reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services or Software, or attempt to do the same;
  - 2.3.3 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;
  - 2.3.4 use any equipment other than the Equipment as described in Exhibit B in conjunction with the Services; or
  - 2.3.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, use, or make available, the Services, Software, and/or Documentation to or on behalf of any third party other than Users.
- 2.4 Customer shall use all reasonable efforts to prevent any unauthorized access to, or use of, the Services and/or the Documentation. Customer shall promptly notify Contractor in the event of any such unauthorized access or use of which Customer becomes aware.
- 2.5 The WisGo Services may be updated at any time. Contractor will use commercially reasonable efforts to help ensure that such updates and changes do not materially and negatively impact the performance or functionality of the WisGo Services and if Contractor becomes aware of such impact, Contractor will provide notice of such impact to the extent feasible. Use and enablement of major new features in the WisGo Services may be subject to additional fees or terms.
- 2.6 Certain aspects of the Services may be performed by third-party subcontractors. Such subcontractor personnel shall not be the employees of, or have any other contractual relationship with Customer.
- 2.7 Contractor represents and warrants that it has exclusive title to the Software and Documentation or otherwise has the right to grant the sublicense to Customer in accordance with this Contract.
- 2.8 **Affirmative Action:** The Contractor assures that it will undertake an affirmative action program as required by Milwaukee County Code of General Ordinances (MCCGO) 56.17(1d), to insure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in MCCGO 56.17(1d). The Contractor assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that it will require that its covered organizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by MCCGO 56.17(1d), to the same effect.
- 2.9 **NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS:** In the performance of work or execution of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as



a victim of domestic abuse, sexual assault or stalking, which shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. When a violation of the non-discrimination and equal opportunity provisions of this section has been determined by Customer, Contractor shall immediately be informed of the violation.

- 2.10 **PROHIBITED PRACTICES:** The following practices are prohibited during the Term of this Contract: Customer hereby attests that it is familiar with Milwaukee County's Code of Ethics, which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgement would be influenced thereby" and will not offer or give anything of value to any Contractor employee.
- 2.11 **PUBLIC RECORDS:** Both Parties understand that Contractor is bound by the public records law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Customer hereby agrees that it shall be obligated to assist Contractor in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this Contract, whereupon the Customer shall then and in such event be obligated to indemnify, defend and hold Contractor harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Customer shall be paid its reasonable costs in respect of any such assistance. Except as otherwise authorized by Contractor in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this Contract.

### 3 EQUIPMENT

- 3.1 Contractor shall provide Customer with Equipment as set forth in Exhibit B. Contractor provides no warranty or guarantee with respect to any Equipment; provided applicable warranties from third-party Equipment suppliers will be provided to the Customer as feasible and Contractor will pass through such warranties to Customer to the fullest extent permitted and otherwise facilitate Customer's access to such warranties from any third-party Equipment OEM warranty.
- 3.2 Title to the Equipment and risk of loss for the Equipment shall transfer to Customer on delivery unless otherwise provided in Exhibit B. For the purpose of this clause, Equipment shall be deemed delivered on the earlier of being received at a Customer controlled site or on installation, whichever first occurs.
- 3.3 Contractor may substitute or replace the Equipment at no cost to Customer with alternative Equipment at any time during the Term provided that such alternative Equipment complies with the Federal Buy America requirements and provides materially equivalent functionality as the replaced Equipment including a materially equivalent remaining warranty.

### 4 FEES AND PAYMENT

- 4.1 Customer Fees and Payment.
- 4.1.1 The Fees payable for the provision of the Services are set forth in Exhibit E. Fees are exclusive of any taxes, duties or withholdings of any nature whatsoever. Unless otherwise stated in Exhibit E, Contractor shall invoice Fees monthly in arrears. Fees for Implementation Services shall be invoiced in accordance with the milestone schedule set forth in Exhibit E.
- 4.1.2 Customer shall pay in full all invoices submitted by Contractor within 30 days of the date of submittal. All fees are stated, and payment shall be made, in USD. Any undisputed amounts remaining unpaid following the payment due date and all payments disputed by Customer in good faith that are paid following the resolution of such dispute shall bear interest accruing from the original payment due date through the date that such amounts are paid at the lower interest rate of (a) 1.0% per month and (b) the highest interest rate allowed by law. Without limitation of Contractor's other rights or remedies, in the event that Customer fails to timely

pay any invoiced amounts that are not the subject of a good-faith dispute, Contractor may, after providing written notice to Customer and an additional 30 business days to pay such undisputed amounts, suspend access to all or part of the Services and Contractor shall be under no obligation to provide any or all the Services until all such undisputed amounts are paid.

4.1.3 Unless otherwise stated in Exhibit E, Customer shall make payment for Equipment upon delivery.

4.1.4 State Prompt Pay Law, Section 66.285, does not apply to this Agreement.

4.1.5 Contractor shall provide Customer with monthly billings, listing actual cost, which shall include, but not be limited to, the following:

- a) Name and address of Contractor
- b) Invoice date and number
- c) Remittance name and address
- d) Name, title, and phone number of persons to notify in event of defective invoice

4.1.6 Customer represents that as of the Effective Date of this Agreement, it is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes. Invoices submitted by Contractor will not include such taxes. Contractor's inclusion of taxes on invoices may delay payment. In the event Customer is no longer exempt from either Federal Excise Taxes or Wisconsin State Sales Taxes, Customer will promptly notify Contractor, in writing, of its change in tax exempt status and Contractor will invoice Customer for applicable taxes commencing from the date the Customer's change in tax exempt status goes into effect.

4.2 Payments to Customer.

4.2.1 If Customer is entitled to a share of revenue generated in connection with certain Services as indicated in the applicable Exhibit, Contractor shall pay Customer within thirty (30) Days of the calendar quarter during which the applicable revenue was collected by Contractor.

4.2.2 Each payment will be accompanied by a report stating in reasonable detail the basis upon which payment is made.

## 5 DATA AND SECURITY

5.1 Between the Parties, Customer shall own all right, title, and interest in and to the Customer Data. As between the Parties, Customer Data shall be treated as Customer's Confidential Information and WisGo Data shall be treated as Contractor's Confidential Information. Notwithstanding the foregoing, Customer expressly grants the rights to Contractor and its subcontractors to use the Customer Data for purposes of providing Services to the Customer under this Agreement.

5.2 Customer will use commercially reasonable efforts to ensure that Customer Data within Customer or its subcontractor's possession, custody, or control is subject to the data security procedures set forth in Exhibit G.

5.3 WisGo Data will be collected, used, processed, and shared in accordance with the User Terms and Conditions and the Umo Privacy Policy.

5.4 Contractor and its licensors, including without limitation Cubic, may use WisGo Data collected via the WisGo Services from an End User in accordance with the Umo Privacy Policy, in connection with (a) business operations, on an aggregate, anonymous basis such that any use or disclosure does not permit a third party to associate any particular data with the Customer or any User and (b) if required by court order, law or governmental agency. In addition, Contractor and its licensors may use WisGo Data and data derived from Customer's use of the Services, including Customer Data, on an aggregate and anonymous basis for Contractor's and Cubic's internal business purposes, including to operate, manage, maintain, and improve products and services, including the Services.

- 5.5 In the event Contractor becomes aware of any incident that may result in the unauthorized access, processing, exfiltration, destruction, disclosure or use of any Customer Data or any Personal Information, it will notify Customer within five (5) days of becoming aware of the same.

## **6 WARRANTY DISCLAIMER**

- 6.1 EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY CONTRACTOR IN THIS AGREEMENT, INCLUDING ITS EXHIBITS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER CONTRACTOR NOR ITS LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES AND EQUIPMENT ARE MADE AVAILABLE TO CUSTOMER "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT, TITLE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITATION OF THE FOREGOING, CONTRACTOR WILL HAVE NO LIABILITY FOR ANY: (A) ERRORS, MISTAKES, OR INACCURACIES, IN DATA AS PROVIDED TO CONTRACTOR; (B) ANY UNAUTHORIZED ACCESS TO OR USE OF THE SERVICES BY ANY THIRD PARTY UNLESS SUCH ACCESS OR USE IS THROUGH OR BY CONTRACTOR ; (C) ANY INTERRUPTION OF TRANSMISSION TO OR FROM THE SERVICES AS A RESULT OF A THIRD PARTY PROVIDER ; (D) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED ON OR THROUGH THE SERVICES ; AND (E) ANY LOSS OR DAMAGE OF ANY KIND INCURRED BY CUSTOMER AS A RESULT OF ANY INFORMATION OR DATA PROVIDED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE BY CUSTOMER OR CUSTOMER USERS OR ANY THIRD PARTY ENGAGED BY THE CUSTOMER.

## **7 CUSTOMER OBLIGATIONS**

- 7.1 Customer shall:
- 7.1.1 provide Contractor with:
- a) all cooperation in relation to this Agreement as agreed upon in Exhibit A, Exhibit B, Exhibit D, or as otherwise reasonably requested by Contractor; and
  - b) all reasonable access to such information as may be reasonably requested in order to provide the Services, including but not limited to Customer Data;
- 7.1.2 carry out all Customer responsibilities set out in this Agreement in accordance with any timeframes agreed in writing between the Parties, including the Customer Obligations set out in Exhibit D. The Customer shall be liable for any reasonable and demonstrable costs related to such adjustment to the extent arising from such Customer failure;
- 7.1.3 obtain and shall maintain all necessary licenses, consents, and permissions that are required for the Customer, its subcontractors and personnel to perform their obligations under this Agreement;
- 7.1.4 ensure that it maintains its network and systems; and
- 7.1.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Customer's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or otherwise caused by the public Internet.

## **8 PROPRIETARY RIGHTS**

- 8.1 The Parties acknowledge that Customer is not getting any proprietary customizations to the WisGo Services or Equipment. As a result, Customer acknowledges and agrees that Contractor and/or its licensors own all intellectual property rights in the Services, Equipment, the Documentation, and all modifications, improvements and derivative works thereof. Except to the extent expressly set forth in this Agreement, (a)

Contractor does not grant to Customer any license, express or implied, to Contractor's or its licensors' Intellectual Property Rights and (b) nothing in this Contract the performance thereof, or that might otherwise be implied by law, will operate to grant Customer any right, title, or interest, implied or otherwise, in or to Contractor's or its licensors' intellectual property. Contractor, on behalf of itself and its licensors, expressly reserves all Intellectual Property Rights not expressly granted under this Agreement.

## **9 INDEMNITY**

### **9.1 Intellectual Property Rights Indemnity.**

9.1.1 Subject to Section 9.1.3, if an action is brought by a third party against Customer or its respective directors or employees (a "Customer Indemnified Party") claiming that Services, Software, Documentation, WisGo Marks, Marketing Tool Kit or Equipment or the use or receipt of any foregoing infringes or misappropriates a third-party United States Intellectual Property Right, Contractor will defend such Customer Indemnified Party at Contractor's expense, indemnify Customer from any liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs) incurred as a result of such claim, and pay the damages and costs finally awarded against such Customer Indemnified Party in such action, but only if:

- a) Customer notifies Contractor promptly and without delay upon learning of such claim, however, Customer's failure to notify Contractor shall not affect Contractor's obligation to indemnify Customer unless such failure to notify Contractor materially prejudices Contractor's ability to defend against the action;
- b) Contractor has sole control over the defense of the claim; and
- c) Customer provides Contractor with all available information and assistance reasonably requested to defend such claim.

9.1.2 In no event shall Contractor or its subcontractors or licensors have any obligations under Section 9.1, nor shall it or its employees, agents or sub-contractors be liable to Customer, to the extent that the alleged infringement is based on:

- a) a modification of the Services, Equipment, or Documentation by Customer or anyone under the Customer's direction ;
- b) Customer's use of the Services or Equipment in a manner contrary to the formal written instructions given to Customer or in violation of this Agreement or any applicable Documentation; or
- c) Customer's continued, unreasonable use of the Services, Equipment, or Documentation after reasonable notice of the alleged or actual infringement.

9.1.3 The foregoing is Customer's sole and exclusive rights and remedies, and Contractor's (including Contractor's employees', agents' and subcontractors') entire obligations and liability, for infringement of any third party patent, copyright, trademark, database right or right of confidentiality.

9.2 Customer Indemnity. If an action is brought by a third party against Contractor or its respective directors or employees (a "Contractor Indemnified Party") as a result of (a) any misuse or unlawful use of the Services, Software, Documentation, WisGo Marks, Marketing Tool Kit or Equipment or (b) any actual or alleged breach of this Agreement, Customer will defend such Contractor Indemnified Party at Customer's expense, indemnify Contractor Indemnified Party from any liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs) incurred as a result of such claim, and pay the damages and costs finally awarded against such Contractor Indemnified Party in such action, but only if:

- a) Contractor Indemnified Party notifies Customer promptly and without delay upon learning of such claim, however, Contractor Indemnified Party's failure to notify Customer shall not affect Customer's obligation to indemnify Contractor Indemnified Party unless such failure to notify Customer materially prejudices Customer's ability to defend against the action;

- b) Customer has sole control over the defense of the claim; and
- c) Contractor Indemnified Party provides Customer with all available information and assistance reasonably requested to defend such claim.

## **10 CORRECTIVE ACTION PLANS**

- 10.1 If Customer reasonably believes that Contractor is in material breach of this Agreement and such breach or default is capable of being cured, then prior to issuing written notice of such a breach, Customer shall notify Contractor that a plan is required to remedy such material breach (a "Corrective Action Plan").
- 10.2 If Contractor fails to provide a Corrective Action Plan within thirty (30) Business Days of such notification or fails to comply with the Corrective Action Plan, then Customer shall be entitled to issue a Default Notice.
- 10.3 The Parties acknowledge that breach of any confidentiality provisions (including but not limited to those relating to the protection of all Personal Information) may cause irreparable harm to the other Party or to any third-party to whom the other Party owes a duty of confidence, and that the injury to the other party or to any third-party may be difficult to calculate and inadequately compensable in damages. The Parties each agree that the other is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of such confidentiality provisions.

## **11 TERM AND TERMINATION**

- 11.1 This Agreement shall, unless otherwise terminated as provided in this Section 11, commence on the Effective Date and continue for a period of thirty-six (36) months from the Service Commencement Date (the "Initial Term"). This Agreement may be renewed for two (2) successive one (1)-year periods (each, a "Renewal Term") unless either Party gives 180 days-notice to terminate prior to the end of the then-current Term. "Term" means the Initial Term and any Renewal Terms that have been exercised.
- 11.2 Either Party may, subject to Section 10.1, terminate this Agreement if either Party breaches or defaults on any of the material provisions of this Agreement and such breach is not cured within thirty (30) Days after that Party receives written notice from the other Party (a "Default Notice"), then in addition to all other rights and remedies of law or equity or otherwise, then the Party not in default shall have the right to terminate this Agreement without any charge or liability, at any time thereafter.
- 11.3 Either Party may terminate this Agreement by giving written notice if the other Party does not make a payment that they have been given written notice of to the other Party within sixty (60) Calendar Days of the date such amount is due.
- 11.4 In addition, this Agreement will terminate immediately in the event the Cubic Contract is terminated or otherwise expires.
- 11.5 Upon the expiration or termination of this Agreement for any reason:
  - 11.5.1 All rights and licenses granted under this Agreement to Customer shall immediately terminate;
  - 11.5.2 Each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party if requested to do so by the other Party;
  - 11.5.3 Contractor shall destroy or otherwise dispose of any of the Customer Data in its possession utilizing industry acceptable practices for the secure destruction and disposal of data, no later than sixty (60) Days after the effective date of the termination of this Agreement.
  - 11.5.4 Any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced; and
  - 11.5.5 Sections 2.11, 4, 5, 6, 8, 9, 11, 14, 15, 26 & 27 will survive any termination or expiration of this Agreement.



## 12 SUSPENSION OF SERVICES

- 12.1 WisGo Services may be suspended in the event that Contractor or its licensors, reasonably believe that:
- 12.1.1 Customer or a User is engaged in or has experienced any activity that materially harms WisGo Services, or the ability to operate and maintain the WisGo Services or the network used to provide the same;
  - 12.1.2 a security incident has occurred that threatens the security or stability of the WisGo Services or the network used to provide the same; or
  - 12.1.3 Customer or any Customer Users has engaged in any fraudulent or illegal activity or any activity that could result in legal liability.
- 12.2 Contractor will use reasonable efforts under the circumstances to:
- 12.2.1 provide prior written notice of such suspension, which notice shall include a reasonable explanation and description of the basis for its intended suspension to allow Customer to respond (to the extent practicable), mitigate and/or cure the underlying circumstances, if curable; and
  - 12.2.2 limit such suspension to the extent necessary to mitigate the prospective harm. Any such suspension may continue until the event causing such suspension has been cured or until Contractor has received satisfactory assurances that such event will not recur. To the extent the issue that gave rise to a suspension is caused by Customer, Customer shall take all reasonable measures to remedy the issues as expeditiously as possible.

## 13 FORCE MAJEURE

- 13.1 Neither Party shall have any liability to the other under this Agreement if a Party is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Party or any other party), failure of a utility service or transport or telecommunications network, act of God, war, epidemic, pandemic, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default or service failures of suppliers or sub-contractors, provided that the other Party is notified of such an event and its expected duration.

## 14 LIMITS OF LIABILITY

- 14.1 NO CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, AS A RESULT OF ANY DELAY IN RENDERING SERVICE, LOSS OF DATA, LOSS OF USE OR, THE DIRECT OR INDIRECT LOSS OF PROFIT OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY BROUGHT (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE OR OTHER TORT THEORY OF LIABILITY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 14.2 LIABILITY CAP. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY'S LIABILITY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THESE TERMS (WHEN AGGREGATED WITH ITS LIABILITY FOR ALL OTHER CLAIMS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS) EXCEED THE GREATER OF (A) \$250,000 or (B) THE AMOUNTS PAID BY CUSTOMER TO CUBIC DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO SUCH LIABILITY.
- 14.3 EXCEPTIONS. THE EXCLUSIONS AND LIMITATIONS OF LIABILITY IN THIS SECTION 14 SHALL NOT APPLY TO (A) A BREACH BY A PARTY OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT; (B) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 OF THIS AGREEMENT (OR ANY AMOUNTS PAID OR PAYABLE IN CONNECTION WITH SUCH OBLIGATIONS); (C) CUSTOMER'S BREACH OF SECTION 2.2.1 (D)

CUSTOMER'S PAYMENT OBLIGATIONS; (E) FRAUD, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE OF A PARTY, OR (F) DAMAGES FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE TO THE EXTENT RESULTING FROM EITHER PARTY'S OR ITS PERSONNEL'S OR SUBCONTRACTOR'S NEGLIGENCE OR MISCONDUCT

**15 CONFIDENTIALITY** Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:

- 15.1.2 is or becomes publicly known other than through any act or omission of the receiving Party;
  - 15.1.3 was in the other Party's lawful possession before the disclosure without any restrictions on use or disclosure;
  - 15.1.4 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
  - 15.1.5 is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 15.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 15.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 15.4 Customer acknowledges that specifications, technical information, designs and other detailed information of operational performance or architecture of the WisGo Services, and the results of any performance tests of the Services, constitute Contractor's Confidential Information.
- 15.5 Contractor acknowledges that the Customer Data is the Confidential Information of Customer.
- 15.6 If a Party is required to disclose the Confidential Information of the other Party in accordance with judicial or governmental order or requirement, it shall promptly notify the other Party so that the other Party may contest the order or requirement or seek confidential treatment for such information.
- 15.7 No Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **16 ASSIGNMENT**

- 16.1 Neither Party may, without the prior written consent of the other Party, assign or transfer its rights or obligations under this Agreement.
- 16.2 Notwithstanding Section 16.1, Contractor in its discretion, may assign the Agreement in connection with the sale of all or substantially all its assets, equity interests or business or to any affiliated entity.
- 16.3 Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns, as set out herein. Any attempted assignment in violation of this Section 16 shall be null and void.

## **17 FEDERAL TERMS AND CONDITIONS**

- 17.1 This Agreement is subject to a financial assistance contract between Customer and the United States of America (hereinafter "Federal Government"), acting through the Department of Transportation (hereinafter "U.S. DOT"), and Federal Transit Administration (hereinafter "FTA"). Contractor agrees that it must comply with all applicable FTA regulations, policies, procedures and directives as set forth in Exhibit H.

## **18 CONFLICT**

- 18.1 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Exhibits, the provisions in the main body of this Agreement shall prevail.

## **19 VARIATION**

- 19.1 Except as otherwise provided herein, no amendment to, or waiver of, any provision of this Agreement will be effective unless in writing and signed by both Parties.

## **20 NO WAIVER**

- 20.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **21 RIGHTS AND REMEDIES**

- 21.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **22 SEVERANCE**

- 22.1 Each provision of this Agreement shall be viewed as separate and distinct, and in the event that any provision shall be deemed by a court of competent jurisdiction to be illegal, invalid or unenforceable, the court or arbitrator finding such illegality, invalidity or unenforceability shall modify or reform these Terms to give as much effect as possible to such provision. Any provision which cannot be so modified or reformed shall be deleted and the remaining provisions of these Terms shall continue in full force and effect.

## **23 ENTIRE AGREEMENT**

- 23.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 23.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

## **24 NO PARTNERSHIP OR AGENCY**

- 24.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorize either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). The Agreement will not create an employment, partnership or agency relationship between Customer and Contractor's partners, affiliates (or any of Contractor's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

## 25 THIRD-PARTY RIGHTS

- 25.1 This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns).

## 26 NOTICES

- 26.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class mail or internationally recognized overnight courier to the other Party at its address set out below, or such other address as may have been notified by that Party for such purposes.

### Notices to Customer:

Beloit Transit System  
Attn: Operations Manager  
1225 Willowbrook Road

### Notices to Contractor:

Milwaukee Transportation Services, Inc.  
Attn: Chief Financial Officer  
1942 N 17 St  
Milwaukee, WI 53205  
thosch@mcts.org

- 26.2 A notice delivered by hand or by internationally recognized overnight courier shall be deemed to have been received when delivered. A correctly addressed notice sent by pre-paid first-class mail shall be deemed to have been received three days after it is sent.

## 27 GOVERNING LAW

- 27.1 This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and governed by the laws of State of Wisconsin without regard to its laws on personal jurisdiction. The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or any related transaction between the Parties.

## 28 DISPUTES

If a dispute about or arising from this Agreement which cannot be resolved informally by the Parties, the Parties will escalate such dispute to senior management, with the intention of reaching a good faith resolution within 30 Business Days. In the event of any dispute under this Agreement that cannot be resolved within the 30 Business Day period, the Parties agree that the dispute will be resolved by any court of competent jurisdiction sitting in Milwaukee, Wisconsin and hereby consent to personal jurisdiction over them by the court. The court shall have the discretion to award the prevailing Party its reasonable attorneys' fees and costs.

## 29 COMPLIANCE WITH LAWS

- 29.1 Each Party, in exercising its right and performing its obligations under this Agreement, shall comply with all applicable laws and governmental rules and regulations. Customer acknowledges and agrees that in event there is a change in law or regulation that causes a material change in cost to Contractor, then the Fees set out in Exhibit E may be adjusted to reflect a reasonable share of such change in costs that is reflective of the volume of Services consumed by Customer compared to that consumed by all other customers of the Services.
- 29.2 Contractor hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

### 30 COUNTERPARTS.

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

The Parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall be deemed an original, effective as of the Effective Date.

**MILWAUKEE TRANSPORTATION SERVICES, INC.**

**CITY OF БЕLOIT**

By: \_\_\_\_\_  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Name: \_\_\_\_\_  
(Print or Type)

Name: Jerry Gabrielatos  
(Print or Type)

Title: \_\_\_\_\_

Title: City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Marcy J. Granger, City Clerk-Treasurer

Approved as to Form:

\_\_\_\_\_  
Elizabeth Krueger, City Attorney

I hereby certify that sufficient funds are in the Treasury to meet the expense of this contract, or provision has been made to pay the liability that accrues under this contract.

\_\_\_\_\_  
Eric R. Miller, City Comptroller



## **Exhibit A**

### **Umo™ Services Description**

**The WisGo Services included this Agreement are as follows:**

- A1 Umo Pass™ Services**
- A2 Umo Pay™ Services**
- A3 Umo Rewards™ Services**
- A4 Intentionally Omitted**
- A5 Transition Out Services**
- A6 Incomm Services**
- A7 Intentionally Omitted**
- A8 Card Services**

## **Exhibit A1**

### **WisGo Services Description - Umo Pass™**

#### **1 UMO PASS SERVICE ADDITIONAL DEFINITIONS**

1.1 The following additional defined terms apply to this Exhibit:

1.1.1 “Umo Pass Feature Matrix” means the Umo Pass Feature Matrix included as Attachment 1 to this Exhibit A1.

#### **2 UMO PASS SERVICE DESCRIPTION**

2.1 The Umo Pass Service is a cloud-based electronic fare collection service provided on an as-a-service basis.

2.2 The Umo Pass Service shall provide the following functionality and as further described in the Umo Pass Feature Matrix:

2.2.1 Configure products and fare rules;

2.2.2 Process fare and other mobility transactions through Umo Pass compatible devices;

2.2.3 Enable the purchase of fare and other supported mobility services products through a mobile application and end-user website;

2.2.4 Enable the Customer to support End Users using web-based support and end-user account management functions;

2.2.5 Enable the Customer to set-up and administer special fare programs and institutional program partners;

2.2.6 Enable the Customer to create and export reports for financial reporting and service management including transaction level reports; and

2.2.7 Other functionality detailed in the Umo Pass Feature Matrix.

#### **3 UMO PASS SPECIFIC CONTRACTOR OBLIGATIONS**

3.1 Configure product and fare rules on behalf of the Customer as the same are provided by Customer.

3.2 Configure any such other Umo Pass Service parameters that cannot be configured by the Customer itself through the Umo Pass Service configuration tools.

3.3 Manage the procurement of Cards if requested by the Customer.

3.4 Manage the encoding of Cards unless otherwise operationally agreed between the Parties.

#### **4 UMO PASS SPECIFIC CUSTOMER OBLIGATIONS**

4.1 Determine the fare rules and products to be configured on the Umo Pass Service.

4.2 Validate and in a timely manner approve fare rule and configuration changes

4.3 Procure Cards. Customer will be responsible for purchase of Cards in accordance with Contractor’s published brand guidelines and together with the Card specification (as updated from time to time).

4.4 Perform Card distribution to the extent distribution is not performed by Contractor under the WisGo Services.

4.5 Perform fare product sales through physical sales locations (such as, but not limited to, Customer ticket windows).

- 4.6 Encourage and promote use of the Umo Pass Services through rider alerts, social media and demonstration events. The Customer will consider ways to incentivize the transition from cash to Umo Pass Services use.
- 4.7 Establish and implement a phased rollout schedule for introduction of fare products and fare media, to be supplied by Customer.
- 4.8 Operate and maintain an AVL system capable of providing driver login and bus route and location information (as per Attachment 3 to this Exhibit), or perform manual login of readers to routes to the Umo Pass Service via the Umo Pass administrative portal.
- 4.9 Provide the mobile data plans or network connections for use by the Validators and other Equipment that are identified in writing to Customer as necessary to communicate with the Umo Pass Service.
- 4.10 Enter into and maintain where applicable into inter-agency or inter-operator agreements with the Mobility Service Operators.

## 5 ADDITIONAL UMO PASS SPECIFIC TERMS

NOT USED

## 6 ATTACHMENT 1 – UMO PASS FEATURE MATRIX

The following table provides a summary of features available to the Customer through the Umo Pass Service.

Summary of Umo Pass Service Features
<b>Umo Pass Feature Matrix</b>
<b>Fare Rule Support including</b>
Fare Types & Base Fares by Fare Type (Passenger Group)
Passes (Calendar, Time, Trip)
Closed-loop Stored Value
Transfers
Fare Capping
Special Fare Program Passes
Special Fare Program Positive List
Discount and Special Fare Program Benefit Codes
Passback Features and Restrictions
Open Payments (contactless EMV Cards and mobile wallets at Validators)
<b>Mobile Application</b>
Purchase Fare Products, Passes & Stored Value
Manage Account
Transaction History
Use Mobile (QR Code) for Onboard Validation
Use Mobile EMV Bank Or Credit Card for Onboard Validation

<b>Summary of Umo Pass Service Features</b>
Trip Planning
Where's My Bus
Loyalty Program
Visually Validated Product And Account Status
Accessibility Features
Short term changes and service alerts
Passenger chat (requires the Customer to utilize a compatible message provider (Twitter, Slack or similar) within their customer service operations
Passenger survey capability / rate my experience
<b>Passenger Website</b>
Purchase Fare Products, Passes & Stored Value
Manage Account
Transaction History
Visually Validated Product And Account Status
Accessibility Features
<b>Account Top-up And Product Purchase Via Web And Mobile</b>
Payment Options
Credit/Debit Cards
Stored Value (pre-paid cash value in the account)
Apple Pay
Google Pay
<b>Fare Media Options</b>
Umo Cards
Mobile Application Umo QR Code
Printed Tickets with Umo QR Code
Third Party ID Cards (example compatible employee or student cards)
Contactless Credit And Debit Cards
<b>Device Options</b>
Bus Validator with contactless EMV and barcode support
Station Validator with contactless EMV and barcode support
Tablet Based Driver Control Unit
Handheld validation and fare inspection device

<b>Summary of Umo Pass Service Features</b>
Ticket Vending Machine / Sales Kiosk
Retail Point Of Sale Device
<b>Fare Product Sales Network</b>
Web-based Merchant Portal for use by ticket windows, retailers and institutional resellers / partners
Mobile Application
Passenger Website
InComm Retail Reload Network (optional, subject to separate InComm agreement)
Autoload Pass Products & Stored Value
Customer or 3rd Party Website Integration API
TVMs/Kiosks
Benefit Code Redemptions
Payment SDK
<b>Customer Service Agent Support</b>
Web-based customer service agent interface
Account History
Concession / Fare type Management
Account adjustments
Lost Card Replacement
Card account to mobile account conversion
Mobile account to Card account conversion
<b>Administration</b>
Define and manage user roles and permissions
Configure and manage institutional program partners and resellers
Manage Customer configurable branding elements
<b>Fraud Management</b>
Dynamic QR Code
Anti-Passback Configuration
Managed and Publish A Negative List Of Blocked Accounts to Validators
Product high-usage reporting
<b>Reporting</b>
Comprehensive reporting including reports addressing
Customer accounts



<b>Summary of Umo Pass Service Features</b>
Sales analysis and reconciliation
Fare payment and product usage analysis
Detailed transaction export and analysis
Device event analysis
Regional program views
Customer User configurable reports
Customer Management Dashboard
Data Export And Integration
Excel download
CSV download
Data Extract API
<b>Device / Asset Management</b>
Real-time device monitoring
Remote device control / diagnostics
Device status dashboard
Over the air software updates
Configurable e-mail alerts
Remote manual driver login
<b>Open Application Programming Interfaces (APIs and SDKs)</b>
Third Party Mobile Application Integration SDK
Trip Planning Integration Into Customer Website
Data Export
Positive List Maintenance
Ticket Vending Machine / Sales Kiosk
Reader Assignments
CAD / AVL Integration
Route / real-time bus import via GTFS and GTFS-RT
Self-service Tokens Issuance
Virtual ticket sales via Customer web site
<b>Security, Data Privacy, Reliability</b>
Customer definable role-based access control
Credit and debit card tokenization

## 7 ATTACHMENT 2 –CARD SPECIFICATION

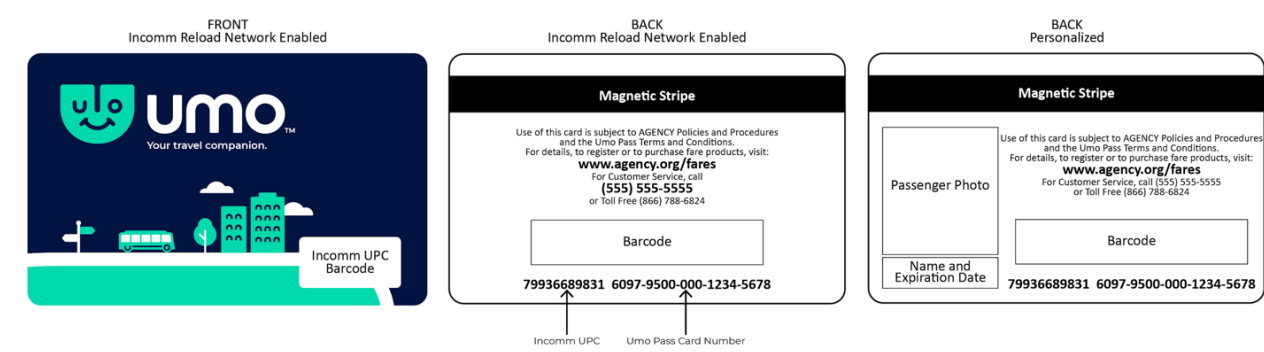
This attachment provides the preliminary Card specification for closed-loop Cards to be used with WisGo Services. Contractor will provide a final specification prior to any Card orders.

### Umo Card Specifications

#### Requirements:

- Clean and free of burrs and sharp edges
- Compliant with ISO/IEC 14443 parts 1-3 and ISO/IEC 18092
- Dimensions compliant with ISO/IEC 7810 and ISO/IEC 7813
- Encoded by Cubic for use in the Umo Pass System
- Chip type: MIFARE® DESFire EV2 2K or other, compatible chip type approved by Cubic
- Chip permanent unique identifier (“UID”), confirmed by Cubic as unique within the Umo Pass system
- Card numbers: Unique Card number (sixteen (16) digits or longer), provided by Cubic (e.g., in Excel file), printed on Card in dimensions and format shown below
- Bar code: Card number; printed within the dimensions shown below using the Code 128 bar code format
- Cross-reference Table: Linking UID and printed Card number
- Front of Card
  - Two-colour (2-colour) graphics extending to all four (4) edges. Any Card design with more than two (2) pantone colors are subject to additional fees
  - Umo Pass logo: within area shown below
  - Customer-approved logo (“Customer Logo”) and design graphic (“Customer Design Graphic”): may be printed within the areas shown below; final printer-ready graphic file(s) prepared and approved by Cubic
  - InComm enabled Cards require UPC Bar Code 2: UPC-A format printed on the Card face
- Back of Card: Black, static text as shown below with Card number and corresponding bar code
  - InComm enabled Cards require the following
    - Card printed bar code using Code 128-C bar code format
    - Unique thirty-digit (30-digit) number and twelve-digit (12-digit) UPC
    - HI-coercivity magnetic stripe encoded to use in InComm Reload Network

Note: All measurements in millimeters. Text shown on back of Card not to scale.



*Umo Card specifications*

## 8 ATTACHMENT 3 – AVL COMPATIBILITY REQUIREMENTS

8.1 The Umo Pass Services have the following requirements for integration with CAD/AVL systems:

### 8.1.1 Standard integration via GTFS and GTFS-RT

The standard integration for the automatic import of route and bus location information from CAD/AVL systems into the Umo Pass Services is via data feeds conforming to the real-time and static General Transit Feed Specification (<https://gtfs.org/>) via an internet accessible location that enables Cubic to automatically look for an import updated files.

Compatibility requirements include:

8.2 Route identifiers, stop identifiers, and trip identifiers must be consistent across the GTFS Static and GTFS Realtime.

8.3 GTFS-RT must contain unique vehicle identifiers for each vehicle in the fleet.

### 8.3.1 Custom integration via the CAD/AVL system API

Integration via GTFS is the preferred and most common integration. Alternatively, Cubic can integrate on professional services, directly with CAD/AVL systems where the CAD/AVL system provides a suitable API, and the Customer securing acceptable access to such API through the Customer's commercial agreement with the CAD/AVL vendor.

Compatibility requirements include:

8.4 Consistent naming of key data elements such route identifiers, stop identifiers, and trip identifiers across both the scheduled and real-time information available via the API; and

8.5 Where the CAD/AVL is utilized for real-time information only, naming convention to ensure such data elements are consistent between the GTFS static feed and the real-time API data.

## Umo Exhibit A2

### WisGo Services Description - Umo Pay™

#### 1 UMO PAY SERVICE DESCRIPTION

- 1.1 The Umo Pay Service is a cloud-based tokenization and payment gateway provided on an as-a-service basis.
- 1.2 The Umo Pay Service shall provide the following functionality and as further described in the Umo Pay Feature Matrix (Attachment 1 to this Exhibit A2):
  - 1.2.1 Open Payment Processing:
    - a) Process contactless EMV fare and mobility payment taps from physical or virtual (through compatible mobile wallets such as Apple Pay and Google Pay) bank and debit cards issued by compatible card schemes at Umo Pay certified devices (Mobility Payment Taps);
    - b) Route Mobility Payment Taps to the Umo Pass Service for fare calculation and recording;
    - c) Route resulting bank and debit card transactions to applicable merchant acquiring service for authorization and settlement.
    - d) Tokenization
    - e) Securely encrypt and store bank and debit card credentials in a PCI-DSS certified tokenization solution;
  - 1.2.2 E-commerce Transaction Processing
    - a) Process credit and debit card payment transactions from the Umo Pass Service mobile application, Umo Pass Service end-user web-site and Umo Pass Service customer service interface to the applicable merchant acquiring service for authorization and settlement
  - 1.2.3 Negative List Maintenance
    - a) Maintain and make available to Umo Pay certified devices a list of blocked credit and debit card credentials;
  - 1.2.4 Other functionality detailed in the Umo Pay Feature Matrix.

#### 2 UMO PAY SPECIFIC CUBIC OBLIGATIONS

- 2.1 Configure and maintain the configuration of the Umo Pay Service;
- 2.2 Ensure compatibility and maintain certification of the Umo Pay Service with the Umo Pay standard product supported merchant acquiring service;
- 2.3 Ensure the on-going compliance of the Umo Pay Service with the PCI-DSS standard;
- 2.4 Integrate and maintain the integration between the Umo Pay Service and the Umo Pass Service

#### 3 ADDITIONAL UMO PAY SPECIFIC TERMS

- 3.1 The Customer shall bear any fraud or revenue risk as it relates to the acceptance of credit and debit cards by the Customer on the WisGo Services except when such fraud or revenue risk is caused by the gross negligence or willful misconduct of Cubic.

#### 4 ATTACHMENT 1 – UMO PAY FEATURE MATRIX

<b>Umo Pay Feature Matrix</b>
-------------------------------

<b>Supported Payment Use Cases</b>
Card present payments from Umo Pay Services certified fare payment devices
Card-not-present payments initiated from the Umo Pass Service
Card present payments from Umo Pay Services certified sales devices (example ticket vending machine payment terminals)
Refunds initiated through the Umo Pass Service
<b>Tokenization</b>
Encrypted storage of bank and debit card information in compliance with PCI-DSS
<b>Risk Management</b>
Negative list maintenance
Negative publishing to devices capable of utilizing negative for off-line risk management
<b>Supported Credit And Debit Card Brands (Subject to the Customer providing a compatible Merchant Facility through a Merchant Acquirer supported by the Umo Pay Services)</b>
Mastercard
Visa
American Express
Discover
<b>Supported Merchant Acquirers</b>
First Data Merchant Services

## **Exhibit A3**

### **WisGo Services Description - Umo Rewards**

#### **1 UMO REWARDS SERVICE DESCRIPTION**

- 1.1 Umo Rewards is a cloud-based service that provides loyalty and content publishing specifically designed for Customer to securely monetize your transit devices for extra revenue while delivering a rewarding rider experience.
- 1.2 Umo Rewards offer three (3) main services, including hyper targeted content publishing, analytics-driven loyalty rewards campaigns, and Card-linked offers.
  - 1.2.1 Umo Rewards content publishing provides ad-serving capabilities to display personalized, location-based rich-media ads without disrupting user experience. Content includes third-party offers, ads, promotional messaging, links to third-party services, or other online commerce offerings on Customer devices or Cubic-owned devices in connection with Customer networks, including mobile app, website, ticket vending machines ("TVM"), and transit gates.
  - 1.2.2 Loyalty rewards campaigns allow Contractor to launch data-driven campaigns to drive desired transit rider behavior with loyalty-based incentives. Eligible End Users who opt-in to the loyalty rewards program and accept Customer's offerings will be awarded with loyalty points based on their riding activities.
  - 1.2.3 Card-linked offers is a feature that allows loyalty users to link their credit card with Umo Rewards. End Users will get loyalty points credit for every dollar spent on their linked Card with participating merchants.
- 1.3 Loyalty rewards are earned from loyalty rewards campaigns, and/or from Card-linked offers on Umo Rewards platform.
- 1.4 Umo Rewards enables loyalty End Users with self-service loyalty redemption capabilities, giving Users options to redeem for free transit passes, transit cash balance, or rewards Cards for shopping online, or at local stores and restaurants.
- 1.5 Umo Rewards provides Customer with revenue share generated from the content publishing activities.
- 1.6 Agencies or sponsors may purchase loyalty rewards value to give to End Users.
- 1.7 Umo Rewards provides Contractor with ability to run their own promotional content in the Umo App consuming up to twenty-five percent (25%) of all impressions served provided there are three (3) ad spaces are enabled. There is no cost to the Contractor or Customer for the consumption of the aforementioned impressions utilizing their own content.

#### **2 UMO REWARDS SPECIFIC CONTRACTOR OBLIGATIONS**

- 2.1 Umo Rewards Loyalty and Advertising Product Package: Umo Rewards provides full loyalty and advertising platform functionalities.
- 2.2 Advertiser relationship and communications management: Umo Rewards manages the entire relationship and communications with advertisers, ranging from relationship building, ad platform sales and marketing, product feature updates, and all other communications.
- 2.3 Advertiser Contract, Billing, and Payment Collection Management: Umo Rewards secures a smooth advertiser activation process from advertiser contract signing, ad content fulfilling, billing, and payment collection. The entire legal and contract negotiation, closing, and billing are handled by Umo Rewards sales, contract specialists, and ad legal consultants, saving Customer extra resources to focus on other projects.



- 2.4 Ad Operation Management: Umo Rewards acts as the authorized agent on behalf of Customer in onboarding advertisers, reviewing ad campaign plan and content, activating, monitoring, and reporting campaign performance. Our ad operation management team ensures that advertisers can roll out their ad campaigns to the market quickly, and all ad content meets industry's and Customer's advertising policy and editorial guidelines.
- 2.5 Loyalty Program Management: Umo Rewards fulfills loyalty awards when End Users interact with the ads or use loyalty-based transit service offered by Customer and enables End Users to redeem loyalty points for any available transit service products.
- 2.6 Umo Rewards provides all computation regarding the awarding, management, and redemption of loyalty points within the Umo Rewards platform.
- 2.7 Accounting Record Keeping and Financial Settlement Management: Umo Rewards manages accounting record keeping and financial settlement management services for all loyalty-based advertising programs for Customer. We keep track of ad campaign and loyalty revenue, ad operational costs, and prepare detail periodical financial settlement statements, breakdown by advertisers, campaigns, and revenue share calculations. Umo Rewards shall send Contractor quarterly financial settlement statement via email within fifteen (15) Business Days since end of previous quarter. Contractor will pass through reports and payments to Customer within 15 days.
- 2.8 As WisGo is a shared platform, MTS manages the Umo Rewards program setup including but not limited to frequency of ads, placement/location of advertising within the app, and approval of ads referenced in Section 1.7 above.

### **3 UMO REWARDS SPECIFIC CUSTOMER OBLIGATIONS**

- 3.1 Share Customer's advertising policy for alignment with Umo Rewards advertising policy.
- 3.2 Ensure that there is no conflict between Umo Rewards and any other advertising commitment made by Customer and, to the extent any conflict does arise, promptly resolve that conflict in a manner that does not detriment the revenue earned by Umo Rewards.
- 3.3 Market the Umo Rewards program to the Customer's End Users to increase adoption, if desired.
- 3.4 Allow fare products to be redeemed for rewards value earned by End Users.

**Exhibit A4**

**Merchant Of Record Services**

Intentionally Omitted

**Exhibit A5**  
**Transition Out Services**

**1 TRANSITION OUT SERVICES**

- 1.1 Contractor will support the Customer as reasonably required to transition the Customer out of the WisGo Services on termination if required, including but not limited to:
  - 1.1.1 Preparing and delivering to the Customer in a mutually agreed data format an export of the Customer Data
  - 1.1.2 Providing knowledge support as reasonably required by Customer staff or contractors to take receipt and utilize the exported Customer Data
- 1.2 Transition out services will be provided on a time and materials basis using rates in Exhibit E.
- 1.3 Transition out services are not available for such Customer Data of a highly PCI-DSS or privacy sensitive nature such as tokenized credit and debit card details.

**Exhibit A6**  
**InComm Services**

**1 INCOMM SERVICES**

- 1.1 Additional terms apply where the Customer exercises the option to utilize the InComm Retail Network for the load of stored value and/or Umo Card distribution.
- 1.2 Section 2 of this Exhibit A6 provides sample terms the Customer can expect with respect to the InComm Services.
- 1.3 The Parties acknowledge the terms applicable to the InComm Services will require further negotiation between the Parties in order for the Customer, Contractor, and InComm agreeing to specific services, scope and terms.
- 1.4 Contractor and Customer agree to negotiate the InComm Services terms in good faith where the Customer chooses to bring the InComm Services in scope to this agreement based on the following commercial principals:
  - 1.4.1 The Customer acknowledges that InComm offers a standard service which InComm may vary or terminate from time-to-time.
  - 1.4.2 Contractor's primary role is one of a service manager responsible for the technical integration between InComm network and WisGo Pass and, if so required by InComm's service offering, forward any funds settled by InComm to the Customer. Contractor's liabilities for the InComm Services performance will be limited to Contractor's performance of its work-scope in providing the technical integration and managing such settlement of funds as applicable.
  - 1.4.3 Since InComm's current business model involves settling funds net of InComm fees and commissions, the Customer will pay any fees and commissions assessed by InComm ("InComm Fees").
  - 1.4.4 Customer has the option to enable one of two InComm Services, as follows:
    - a) "InComm Standard Reload Services" which enables WisGo End Users with an InComm Services compatible WisGo Card to add stored value at InComm locations supporting WisGo reloads.
    - b) "InComm Transit Services" which enables additional functionality as set-out in Clause 2 including the ability for WisGo End Users to utilize the Umo App at compatible InComm locations to identify their account for reload and enables distribution of WisGo Cards by InComm.
- 1.5 The InComm Services option must be exercised within 60 days of the Effective Date.

**2 ATTACHMENT 1 – INCOMM SERVICES SAMPLE TERMS**

**2.1 INCOMM SERVICES DESCRIPTION**

- 2.1.1 Program. Interactive Communications International, Inc. ("InComm") will provide products and services associated with the production, retail distribution, loading and reloading of electronic fare media, which shall be implemented at Customer's option, subject to final approval by InComm, over time as set forth herein and the "InComm Network Statement of Work" included herein as Attachment 1.1 to this Exhibit A6 ("InComm Services").
- 2.1.2 Work Share. Contractor, InComm and Customer shall perform the tasks listed in the InComm Network Statement of Work.
- 2.2 InComm Fees

- 2.2.1 Load Fees are applicable for loading and/or reloading of stored value to Umo Pass Accounts within the InComm Reload Network at an associated InComm retailer and are not applicable for any loading and/or reloading of Umo Pass Accounts on the Umo Pass Passenger Portal, Mobile App, Merchant Portal or Administrative Console or any other sales channel supported by the Umo Pass Hosted Services other than the InComm Reload Network.
- 2.2.2 Load Fees are a percentage based on the total stored value loaded for pre-existing Umo Pass Accounts and Umo Pass Accounts created by the sale of a Umo Pass Card by the retailer as part of the same transaction ("InComm Commission"). The stored value is added to the Umo Pass Account associated with the fare media (e.g. Umo Pass Card, smartphone) presented by the Umo End User. Load/Reload Fees are inclusive of the amounts to be paid to InComm and/or an InComm retailer. Net Proceeds, less Load/Reload Fees, shall be transmitted to the Customer's designated account.
- 2.2.3 Card Distribution Fees are applicable for each Umo Card sold/activated through the InComm Services
- 2.2.4 The InComm Fees as of the effective date are as follows:
- a) InComm Commission when using the InComm Standard Reload Services: 3.5%
  - b) InComm Commission when using the InComm Transit Services: 5%
  - c) Card Distribution Fee when using the InComm Transit Services: \$1.00 per card sold
- 2.2.5 The Customer acknowledges that the InComm Fees are set by InComm and may be varied by InComm with notice.
- 2.3 Flow Of Funds
- 2.3.1 For Standard Reload Services, InComm's business practice currently is to settle directly to the Customer net of InComm Fees.
- 2.4 Data. The Customer acknowledges that InComm Services are performed utilizing technology and operational services in the United States. Further, the Customer acknowledges that the InComm Service is a third-party service provided and operated independently of Cubic. The sole obligation of Cubic is to provide the technical interface to InComm and manage InComm on half of the Customer.
- 2.5 The Customer will provide any required forms and other information as reasonably required by Contractor to facilitate the settlement of funds to a Customer nominated bank account.
- 2.6 Retailer Participation: The Customer acknowledges that neither InComm nor Contractor can compel retailers that are part of the InComm Retail Network to offer or participate in the sale of the Umo Loads or Umo Card distribution. InComm will provide Cubic, and Cubic will provide to the Customer an updated list of participating retailers as needed from time-to-time.
- 2.7 Termination Rights.
- 2.7.1 The Customer acknowledges that InComm shall have the right to terminate the InComm Services for convenience with notice.
- 2.7.2 Customer acknowledges that InComm shall have the right to terminate services it provides to Contractor upon which Contractor relies upon under this Agreement immediately upon written notice to Customer and Contractor in the event that (i) InComm or any InComm retailer is deemed, or (ii) InComm reasonably determines that InComm or any InComm retailer may be deemed, a "seller of prepaid access" or "provider of prepaid access" (as each term is defined under 31 CFR 1010.100(ff) or any successor provision) as a result of their respective activities related to participation in the Retail Sales Network or Retail Distribution Network. In the event of InComm termination of services for this or any other reason, Cubic shall have the right to immediately terminate provision of the InComm Services to Customer.
- 2.7.3 In the event of InComm Services termination, Cubic will make commercially reasonable efforts to actively pursue a replacement retail network solution in a timely manner to avoid any disruption of services to client.

### 3 ATTACHMENT 1.1 – INCOMM NETWORK STATEMENT OF WORK

3.1 The following table summarizes the functionality available through the InComm Standard Reload Services and InComm Transit Services

InComm Feature By Services Offering	InComm Standard Reload Services	InComm Transit Services
Cash stored value load – Umo Cards	Yes	Yes
Cash stored value load – Umo App	No	Yes
Card distribution through InComm locations	No	Yes

3.2 The following scope items are applicable to both the InComm Standard Reload Services and InComm Transit Services

Task	Cubic	InComm	Customer
Retailer recruitment, relationship management and contract management		X	
Reload Network setup, training, management and maintenance		X	
Retailer funds collection and reconciliation		X	
Retailer commission payment		X	
Retailer marketing program management		X	
Retailer technical support		X	
Customer Reload Network account creation and management	X	X	X
Customer-specific Reload Network configuration and testing	X	X	
Customer Code creation	X		
Umo Pass Card Specification creation, maintenance and distribution	X		
Customer-specific testing with Retailer systems	X	X	
Customer funds remittance and reconciliation		X	X
Customer fee calculation and collection		X	
Customer reload program marketing			X
Accept and process end-user requests for reloads of stored value to Umo Pass accounts		X	
Submit stored value reload requests to Umo Pass account		X	
Reload Network transaction reporting	X	X	
Integration with Umo Pass Services	X	X	
Reload Network – Umo Pass Services Interface setup, operation and maintenance	X	X	
Accept and process stored value reload transactions from InComm	X		



Accept reloaded stored value for fare payments on the Umo Pass Services	X		X
Umo Pass Services support to end-users			X

### 3.3 The following scope items are applicable in addition for only the InComm Transit Services

Task	Cubic	InComm	Customer
Procure cards packaged for distribution through the InComm Services	X		X
Card Distribution Network setup, training, management and maintenance		X	
Accept and process passenger requests for Umo Card purchase, activation and loading		X	
Customer Card Distribution Network account creation and management		X	
Customer UPC creation		X	
Card production and packaging	X		Option
Card re-order processing	X		Option
Card package warehousing and distribution		X	
Customer-specific Card Distribution Network configuration and testing		X	
Card sales transaction reporting	X	X	
Integration with Umo WisGo Services for card distribution and mobile re-load	X	X	
Accept and process card sales, activation and load requests from Incomm	X		
Accept Incomm-sold cards and stored value for fare payments on Customer vehicles	X		X

**Exhibit A7**  
**Intentionally Omitted**

## **Exhibit A8**

### **Card Services**

#### **1 CARD SERVICES DESCRIPTION**

- 1.1 Card Services comprises of the following services as further described in this section
  - 1.1.1 Card Procurement (Optional)
  - 1.1.2 Card Encoding (Required)
- 1.2 Card Procurement comprises of Contractor ordering and managing the delivery of Cards from qualified Card manufacturers ("**Card Orders**")
  - 1.2.1 Card Orders will be placed by the Customer by placing a Card Order request
  - 1.2.2 Card Orders will be delivered to Cubic's service facility for Card Encoding or, where encoded by the manufacturer to work the WisGo Services and then delivered directly to the Customer's nominated ship to location
  - 1.2.3 The minimum order quantity shall be five thousand (5,000)
- 1.3 Card Encoding comprises Contractor encoding Cards to be compatible with the WisGo Services by placing a card image and associated security keys onto the Cards
  - 1.3.1 Card Encoding is a required service where Cards are not encoded by the Card manufacturer as part of the ordering process
  - 1.3.2 Card Encoding will be performed by Cubic at one (1) of its operational facilities in Canada or the United States.

#### **2 CONTRACTOR OBLIGATIONS**

- 2.1 With respect to Card Procurement
  - 2.1.1 Make reasonable commercial efforts to process Card Orders in a timely fashion
  - 2.1.2 Obtain quotes and place the order with the most appropriate manufacturer on obtaining authorization from the Customer
  - 2.1.3 Manage orders with manufacturers until received and make all reasonable commercial efforts to resolve issues with orders
- 2.2 With respect to Card Encoding
  - 2.2.1 Perform Card Encoding to agreed timelines for each Card Order taking into account the size of the Card Order, available staffing and Card Encoding obligations to other customers
  - 2.2.2 Ship the encoded cards on the completion of encoding in bulk to the MTS designated receiving location
- 2.3 General
  - 2.3.1 Provide as reasonably requested by the Customer input on expected lead-times for Card Orders and Card Encoding

#### **3 CUSTOMER OBLIGATIONS**

- 3.1 With respect to Card Procurement
  - 3.1.1 Monitor stock levels of Cards and initiate Card Orders to maintain supply taking into account manufacturing and shipping lead-times

#### **4 ADDITIONAL CARD SERVICES TERMS**

- 4.1 Encoding at the point of manufacturing is not available at this time. If and when select vendors offer Cards encoded at the point of manufacturing, the Card Encoding services will not be required for Cards ordered through manufacturers enabled and certified to encode Cards. Customer acknowledges that there will be costs to both the card manufacturer and Contractor to implement and maintain the capability for a card manufacturer to encode cards at the point of manufacturing which will be reflected in the cost of the Card.
- 4.2 For fare media procured by Contractor, title and risks shall pass to the Customer on the fare media being delivered to the Customer's specified delivery location
- 4.3 For Cards procured by the Customer and encoded by Cubic, Cubic shall not have title at any time to the procured cards. Cubic shall have risk in the cards while cards are encoded at the encoding facility. Risk in cards shall be with the Customer or the card manufacture as applicable at all other times.

**Exhibit B**  
**Implementation Services**

**1 SERVICE DESCRIPTION**

- 1.1 Implementation Services are the activities executed to supply, install, configure, verify, and commission the Services:
  - 1.1.1 WisGo Services described in Exhibit A.
  - 1.1.2 Support Services described in Exhibit C.
- 1.2 The Implementation Services will incorporate updates to the WisGo Services hardware and features available prior to Services Commencement Date.
- 1.3 During the mobilization period Contractor will establish an implementation plan that defines the implementation approach and controls including, but not limited to:
  - 1.3.1 Communication protocol.
  - 1.3.2 Delivery of Documentation.
  - 1.3.3 Project execution and governance including variation management.
- 1.4 As part of the implementation plan each Party will nominate personnel responsible for implementation as follows:
  - 1.4.1 Point of contact accountable for the day-to-day management, coordination, and execution of the Implementation Services.
  - 1.4.2 Executive sponsor.
  - 1.4.3 Steering committee membership.

**2 EQUIPMENT SUPPLY**

- 2.1 Contractor will supply Equipment as set out in Exhibit E:
- 2.2 The Bus Validator Mounting Assembly Kit includes mounts for either horizontal or vertical stanchions provided such stanchions are readily available. If maintaining hand-rail space is important to the Customer, installation may require additional parts which may include “T-Clamps” and a small pole so to lower the Validator under stanchions. Similarly, a “Figure-8” clamp can be used to put a second parallel stanchion to better control position and height. Such parts and associated installation scope if required would be added to scope through the agreed variation process.
- 2.3 In addition to the purchased Bus Validators and Validator Installation Kits, Contractor will be responsible for providing as reasonably required cabling, connectors, in-line fuses and other parts to connect the Bus Validators to the vehicle power systems.
- 2.4 An individual item of Equipment is deemed delivered in accordance of Clause 3.2 of the Agreement on the earlier of:
  - 2.4.1 The item being installed by Contractor on a vehicle
  - 2.4.2 The item being delivered by Contractor to an Authorized Mobility Services Provider or Mobility Service Operator under the direction and agreement by the Customer
  - 2.4.3 The item having been received by the Customer at the Customer’s nominated receiving location for such item
- 2.5 Contractor will be responsible for:

- 2.5.1 Specification of the Equipment.
- 2.5.2 Execution of the hardware installation verification.
- 2.5.3 Supply of the Equipment.
- 2.5.4 Qualification of suppliers.
- 2.5.5 Verification of the supplied equipment to the specification and required certifications, standards, and quality.
- 2.5.6 Supply chain management.
- 2.5.7 Logistics, receipt, and storage.
- 2.6 The Customer will be responsible for:
  - 2.6.1 Defining the representative sample of the fleet ("prototypes").
  - 2.6.2 Assembling the prototype vehicles for the purpose of hardware installation verification.
  - 2.6.3 Providing access to Contractor personnel, including Cubic, to perform the hardware installation verification.

### **3 EQUIPMENT INSTALLATION AND COMMISSIONING**

- 3.1 Contractor will install and commission the Mobile Validator Equipment detailed in Section 2 in each bus operated by a Mobility Service Operator, unless install is waived by Customer.
- 3.2 Contractor will be responsible for:
  - 3.2.1 In-person execution of the prototype hardware installation verification.
  - 3.2.2 Desktop Survey of the vehicle fleet.
  - 3.2.3 Development of the installation plan.
  - 3.2.4 Provision and maintenance of the installation drawings and guidelines.
  - 3.2.5 Qualification of the installation subcontractor including verification of required insurance, capability, experience, licensing, permits, and compliance to human and industrial resource requirements.
  - 3.2.6 Coordination and management of the subcontractor.
  - 3.2.7 Verification and quality assurance of the work performed by the subcontractor.
- 3.3 The Customer will be responsible for
  - 3.3.1 Coordinating and making buses available from the Mobility Service Operators in accordance with the quantities and locations defined in the Implementation Schedule.
  - 3.3.2 Provisioning vehicles for installation based upon a schedule which is mutually agreed upon by Contractor and Customer.
  - 3.3.3 Providing photos and other information as reasonably required by Contractor to perform the Desktop Survey
  - 3.3.4 Provide a team to complete an 'in-person' survey of the fleet and collaborate on installation plans.
  - 3.3.5 Having onsite resources available to confirm that the installation and commissioning of the Equipment has been completed in accordance with the installation and commissioning Documentation.
  - 3.3.6 Provision to Contractor and enablement of cellular SIM cards in accordance with the installation plan and schedule.
- 3.4 Contractor will install and commission the Platform Validator Equipment detailed in Section 2 for each station. [only applicable to certain contracts]
- 3.5 Contractor will be responsible for:



- 3.5.1 In-person execution of the prototype hardware installation verification.
- 3.5.2 Survey of station installation site.
- 3.5.3 Development of the installation plan.
- 3.5.4 Provision and maintenance of the installation drawings and guidelines.
- 3.5.5 Qualification of the installation subcontractor including verification of required insurance, capability, experience, licensing, permits, and compliance to human and industrial resource requirements.
- 3.5.6 Coordination and management of the subcontractor
- 3.5.7 Verification and quality assurance of the work performed by the subcontractor.
- 3.6 The Customer will be responsible for:
  - 3.6.1 Ensuring equipment mounting locations are level, of appropriate dimensions, and installed with conduit placed appropriately to serve the platform validator being installed.
  - 3.6.2 Testing of electrical and communication cabling prior to installation.
  - 3.6.3 Providing photos and other information as reasonably required to perform the installation site survey.
  - 3.6.4 Providing access to the sites as reasonably required to perform the installation
  - 3.6.5 Having onsite resources available to confirm that the installation and commissioning of the Equipment has been completed in accordance with the installation and commissioning Documentation.

#### **4 CONFIGURATION**

- 4.1 Contractor will configure the Services, including but not limited to:
  - 4.1.1 Fare policy definition.
  - 4.1.2 Transport Network Topology (GTFS).
  - 4.1.3 Configurable branding elements.
  - 4.1.4 User accounts.
  - 4.1.5 Payment gateways and third-party interfaces.
  - 4.1.6 Asset definition and record keeping for Equipment.
- 4.2 The Customer will be responsible for:
  - 4.2.1 Provision of required configuration inputs that are the responsibility of the Customer and Mobility Service Operators or other third parties.
  - 4.2.2 Delivery of inputs according to schedule.
  - 4.2.3 Approval of configuration Documentation.

#### **5 CERTIFICATION**

- 5.1 Contractor shall secure the necessary certifications required for the provision of the Services and the supply and installation of the Equipment.
- 5.2 Contractor will be responsible for:
  - 5.2.1 Application, verification, and remediation of required certifications.
  - 5.2.2 Providing PCI-DSS Attestation of Compliance for the applicable WisGo Services annually.
- 5.3 The Customer will be responsible for:

- 5.3.1 PCI-DSS certification for the Mobility Service Operators responsibilities, including compliance by Mobility Service Operator personnel.

## **6 SERVICE COMMISSIONING**

- 6.1 Contractor will coordinate the commissioning and enablement of the Services for each Mobility Service Operator.
- 6.2 Contractor will be responsible for:
  - 6.2.1 Verifying completion of the preceding or dependent configuration, installation, and commissioning activities.
  - 6.2.2 Delivery of train-the-trainer training to each Mobility Service Operator including all user manuals and training materials.
  - 6.2.3 Enablement of the Services.
  - 6.2.4 Post-commissioning monitoring and tuning of the configuration through to acceptance and transition to operations.
- 6.3 The Customer will be responsible for:
  - 6.3.1 Managing the enrollment of participants.

## **7 TRAINING**

- 7.1 Contractor will provide training for the following roles at mutually agreed times:
  - 7.1.1 Fare program administrators including in the use of Customer's configurable system parameters
  - 7.1.2 Back-office staff (including financial operations staff and on the use of reports)
  - 7.1.3 Front office/customer service personnel
  - 7.1.4 Bus operators
  - 7.1.5 Bus and station maintenance staff
- 7.2 The Customer may record training sessions and print or duplicate training materials for internal reference and use or incorporate the training materials and content into the Customer's own training materials and documents.
- 7.3 Contractor will be responsible for:
  - 7.3.1 Provision of training materials, which may be supplied in electronic format including recorded video presentations.
  - 7.3.2 Delivery of in-person or in-camera train-the-trainer format training.
- 7.4 The Customer will be responsible for:
  - 7.4.1 Provision of facilities for delivery of training, including but not limited to conference or meeting rooms, audio-visual equipment, Internet connectivity, consumables.
  - 7.4.2 Provision of suitability of qualified trainees.

## **8 TVM INTEGRATION SUPPORT**

- 8.1 Not applicable.

## **9 TRANSITION TO OPERATIONS**

- 9.1 Contractor will establish the WisGo Services set out in Exhibit A and the Support Services set out in Exhibit C prior to the earliest applicable Services Commencement Date.
- 9.2 Contractor will coordinate with the Customer to execute the soft launch prior to the go-live.
- 9.3 Contractor will support the Customer in the Customer's performance of configuration validation testing during the Soft Launch Period.
- 9.4 Contractor shall maintain a register of Incidents raised by the Customer. If there is an Incident deemed to be critical, urgent or moderate that impacts the completion of Soft Launch, Contractor shall resolve said Incident

## **10 DOCUMENTATION**

- 10.1 Contractor will submit implementation Documentation to the Customer during the Implementation Services. Standard Documentation is not subject to Customer review and approval.
- 10.2 Standard Documentation consists of the following:
  - 10.2.1 Installation and commissioning records for Equipment.
  - 10.2.2 Configuration Documentation.
  - 10.2.3 Certification Documentation.
  - 10.2.4 Operator Implementation Checklist.
- 10.3 Non-Standard Documentation
  - 10.3.1 To the extent that Contractor provides any non-standard Documentation then such Documentation shall be subject to review and approval by the Customer. Documents shall be comprehensive, and include, where applicable, step-by-step instructions, explanatory pictures, required parts and components (with quantity, description, and part numbers), and relevant as-built wiring diagrams.
  - 10.3.2 Customer shall complete any required review within ten (10) Business Days of submittal and to extent that any changes are required, Customer shall act reasonably in determining those changes and shall provide a detailed summary of the required changes.
  - 10.3.3 Providing any subsequent submittal incorporates the proposed Customer changes or as otherwise agreed prior to that submittal, the Customer shall confirm approval of that Documentation within five (5) Business Days of re-submittal.

## **11 ACCEPTANCE**

- 11.1 The Customer shall within 30 days from the date Contractor notifies the Customer in writing that the WisGo Services are ready for acceptance testing either:
  - a) Confirm in writing that the WisGo Services are accepted; or
  - b) provide a list of issues ("Draft Acceptance Issue List") that in the Customer's reasonable belief need to be resolved in order for the Customer to reach Final Acceptance.
- 11.2 The Parties will work together promptly in good faith to mutually review the Draft Acceptance Issue List and create a mutually agreed list of issues that require resolution for Final Acceptance ("Final Acceptance Issue List"). If there is a dispute on what issues constitute a failure to meet the requirements set-out in this Agreement, the WisGo Services description or the Compliance Matrix, such dispute will be resolved as per Article 8 (Disputes) of this Agreement.

- 11.3 Contractor will then resolve issues in the Final Acceptance Issue List and notify the Customer, in writing, when, in Contractor's opinion, such issues are resolved and request that the Customer again review the WisGo Services in accordance with Clause 11.1.
- 11.4 "Final Acceptance" will be achieved on the Customer confirming that the WisGo Services are accepted in accordance with Clause 11.1 (a)
- 11.5 Notwithstanding 11.1 and 11.1.2 above, the Implementation Services are deemed automatically accepted if the Customer fails to issue a Draft Acceptance Issue List.

## 12 SCHEDULE

12.1 Contractor will be responsible for:

- 12.1.1 Maintaining a register of implementation milestones reflecting the planned, forecast, and actual delivery dates.
- 12.1.2 Maintaining a register of schedule integration milestones for management of alignment between Contractor master program and the Customer program of related or dependent work.
- 12.1.3 Delivery of an implementation status report no more frequently than monthly including:
  - a) Milestone registers current as at the close of the preceding month.
  - b) A Level 2 schedule printed to PDF format, where Level 2 is defined by AACE International Recommended Practice No. 91R-16.
  - c) Planned, forecast, and actual dates for enablement of WisGo Services.
- 12.1.4 Scheduling the Implementation Services such that Holidays and non-working periods are Non-Working Days for Customer and Operators except by joint agreement.

12.2 The Customer will be responsible for:

- 12.2.1 Maintaining the Customer's schedules, schedule data and scheduling procedures.
- 12.2.2 Providing content and inputs to the master program and planning registers when requested.

## 13 ATTACHMENT 1.1 – VALIDATOR SPECIFICATION

Validator Specification – Access IS VAL100	
Display	Full color, 4.3" LCD Antireflective/antiglare/toughened 420 × 272 resolution
Processor and RAM	Dual core, 1 GHz

Media Interfaces	<p>EMV Level 1 and Level 2. PCI-SRED 5.1 Compliant, 4 SAM slots Payment Schemes Supported:</p> <ul style="list-style-type: none"> <li>• Visa</li> <li>• MasterCard</li> <li>• Discover, American Express</li> <li>• Interac Flash available for certification</li> </ul> <p>Barcode Support:</p> <ul style="list-style-type: none"> <li>• Linear: EAN, UPC, Code 2 of 5, Interleaved 2 of 5, IATA 2 of 5, Code 39, Code 128</li> <li>• 2D: IATA resolution 792, PDF417, Aztec, DataMatrix and QR Codes</li> <li>• Performance: Will read 2D barcodes from paper, mobile phone and tablet</li> </ul> <p>Reads NFC-enabled mobile phones and contactless smart and banking cards. NFC tags supported:</p> <ul style="list-style-type: none"> <li>• Milfare 1K/4K, Classic Tags, Milfare UL, Milfare Plus</li> <li>• ISO14443-4 Type A, ISO14443-4 Type B, HID iClass tags (only CSN read supported)</li> <li>• NXP iCode tags</li> <li>• Apply pay/VAS Payment</li> </ul>
User Interfaces	<p>Sound: Speaker with digital control for audio playback LED indicators 4 x RGB LEDs</p>

Connectivity	<p>Communication 3G*/4G*/GPRS* (*Optional)  Connection: USB, Ethernet, GPS, Wi-Fi, Bluetooth, 4/Bluetooth Low Energy RS232</p>
Tolerances	<p>Operating temperature: -20C to 50C  Storage temperature: -30C to 70C  Humidity: 0-95%RH, non-condensing  IP54 rated</p>
Operating System	Linux OS
Voltage	Supports 10.5-33 VDC

## 14 ATTACHMENT 2 – PRELIMINARY MILESTONE AND LEVEL 2 IMPLEMENTATION SCHEDULE

14.1 The following table lists the Level 1 Project Milestones .

Project Milestone
MOBILIZATION - NTP
MOBILIZATION - Kick off completed
MOBILIZATION – Implementation Planning
MOBILIZATION - Configuration Data Gathering
MOBILIZATION - Bus Equipment Delivery
MOBILIZATION - Bus Equipment Installation

TRAINING - Umo Platform MCTS training complete
MOBILIZATION – Bus Soft Launch
MOBILIZATION- Bus Full Launch
MOBILIZATION – Platform Validator Equipment Delivery
MOBILIZATION – Platform Validator Equipment Installation
MOBILIZATION – BRT Soft Launch
MOBILIZATION – BRT Full Launch
FINAL ACCEPTANCE
PROJECT COMPLETION

#### 14.2 Baseline project schedule

Contractor will work with Cubic to prepare to and agree with Customer a baseline level 2 implementation project schedule within 45 days of the Effective Date. This schedule will be incorporated into this Agreement on both Parties approving such baseline Schedule.



## Exhibit C

### Umo Support Services and Service Levels

The purpose of this schedule is to describe the services and service levels for the WisGo Services. All Support Services will be provided directly by Cubic and Contractor will support and assist Customer in obtaining such Support Services.

The following table sets-out which Support Services described in this Exhibit C have been purchased and are included in this Agreement:

Umo Support Services Element	Included / Not Included
Supplier Help Desk	Included
Software Maintenance Services	Included
Configuration Services	Included
Hardware Maintenance Services	Included
Warranty	Included
Extended Warranty	None
Service Delivery Management	Included

Table 1: Included Support Services

#### 1 UMO SUPPORT SERVICES AND SERVICE LEVELS

##### 1.1 Supplier's Help Desk

1.1.1 For the purposes of this Exhibit C, an "Incident" is an issue with the WisGo Services impacting the availability of functionality or services. All Incident and support requests should be logged through Cubic's Help Desk either via a Cubic notified phone or email. Cubic Help Desk operating hours twenty-four (24) hours each day. Any Incident and support requests logged outside the normal operating hours shall be responded during the following Business Day.

1.1.2 Cubic's Help Desk will provide technical and knowledge support to the Customer including:

- a) to log and record Incidents registered by the Customer through creation tickets in Cubic's service management tool;
- b) to escalate Incidents to relevant resolver groups and provide overall Incident management;
- c) to log and record service requests registered by the Customer in Cubic's service management tool;
- d) to assist the Customer with general enquiries in connection with the WisGo Services;
- e) Launch the RMA process

1.1.3 Cubic Help Desk will remain the overall owner of Incidents and will update Cubic's service management system on current status and activities carried out within each Incident. Cubic Help Desk will also be responsible for the tracking and closure of tickets within Cubic's Service Management System.

1.1.4 Where applicable any resolver groups will provide the Customer with:

- a) instructions on how to resolve the issue being experienced; and/or
- b) results of diagnostics and investigations with details on what actions will be carried out by Cubic to resolve the Incident; and/or
- c) the deployment of a workaround; and/or
- d) to notify the customer that the Incident is to be resolved through the release of software.

##### 1.2 Software Maintenance Services

- 1.2.1 Any updates for the WisGo Service will be made available to the same extent the same is available to Contractor. Intentional downtime for system maintenance or upgrades may be scheduled as set forth in Section 1.2.2 below.
- 1.2.2 Scheduled maintenance of the WisGo Services may be scheduled during non-core business hours. Non-core business hours are defined as 12:00 am to 4:00 am (Pacific Time Zone). Cubic maintains a standing scheduled maintenance window of either 12:00 am – 4:00 am (Pacific Time Zone) or 2:00 am – 6:00 am (Pacific Time Zone) once a month on Sunday (“Scheduled Downtime”). Scheduled Downtime may be scheduled outside of the current once-a-month schedule by providing notification to Customer at least 24 hours in advance; this notification will be provided via the agreed upon communication protocol to designated support representatives.
- 1.2.3 Additionally, any downtime caused by factors outside of Contractor’s reasonable control do not factor in to the Monthly Uptime Percentage calculation, including any force majeure event, Internet service, cloud hosting, cellular or communications network provider availability outside of the WisGo platform, any downtime resulting from outages of third-party connections or utilities, and actions or inactions of the Customer (“Excluded Downtime”).
- 1.3 Configuration Services. Configuration Services consist of:
  - 1.3.1 Configuration management and control.
  - 1.3.2 Provision and maintenance of configuration Documentation.
  - 1.3.3 Coordination and management of the configuration of the services in conjunction with the Customer.
- 1.4 Hardware Maintenance Services
  - 1.4.1 Customer is responsible for all “first level” of support to address hardware defects in accordance with any maintenance instructions including but not limited to de-installation of faulty Equipment, replacement with a spare, and return of the faulty Equipment if needed.
  - 1.4.2 Where Customer is unable to rectify and hardware fault, Customer may report to Cubic any hardware failure with the following information:
    - a) Date the Equipment defect was discovered,
    - b) Equipment type,
    - c) Equipment serial number,
    - d) Detailed description of the Equipment defect,
    - e) Detailed description of Customer first-level support steps taken to resolve the issue, and
    - f) A statement as to whether the Equipment repair should be covered under warranty
  - 1.4.3 If the Equipment defect cannot be repaired remotely, Cubic shall provide a Return Merchandise Authorization Number (“RMA”) to Customer authorizing the return of faulty/defective Equipment to be repaired or replaced under warranty as per the Warranty and Extended Warranty clause below.
  - 1.4.4 Customer shall be responsible for all costs of shipping repairs for Equipment not covered under a valid warranty, including Equipment returned with no fault found or with issues not covered by an applicable warranty. Cubic shall be responsible for all costs of shipping repaired or replaced units to Customer.
    - a) Unless otherwise agreed between the Parties during the implementation phase, the assumed RMA model will involve returning Equipment for warranty service directly to Cubic on being issued a RMA. Cubic will then ship replacement units and repaired units to designated equipment management location.
  - 1.4.5 Cubic shall perform the following maintenance activities on all Equipment sent into Cubic for repair:
    - a) Confirmation of whether the hardware is under warranty,

- b) Take receipt of equipment sent to Cubic and verify an RMA number was issued,
- c) Investigate the alleged Equipment defect,
- d) Perform any necessary repairs on the Equipment as applicable, and
- e) Test the Equipment to ensure it is in good working order in accordance with the Documentation

## 1.5 Warranty and Extended Warranty

- 1.5.1 Cubic proprietary Equipment, including the Access IS Platform Validator, and the Access IS VAL100, shall be covered by a one-year (1- year) warranty commencing from the date of first production use of such hardware as per Clause 6 of the Agreement ("Standard Warranty Period"). For Cubic proprietary equipment not intended for immediate production that is part of the use (such as spares or additional equipment orders), the date of first production use shall be deemed 3 months from the date of delivery.
- 1.5.2 All Cubic proprietary Equipment, including the Access IS Platform Validator, and the Access IS VAL100, shall be further covered by an Extended Warranty Period commencing from the end of the Standard Warranty Period for such period set out in Table 1 to this Exhibit C.
- 1.5.3 All other Equipment shall only be warranted to the extent there is an OEM warranty applicable, copies of which will be provided to Customer.
- 1.5.4 Cubic's warranty liability is limited to the repair or replacement of the defects not caused by misuse or abuse, normal wear and tear, or due to a failure to be maintained in accordance with the any written manuals, training materials or formal written maintenance instructions issued to Customer defined as defects in the materials and manufacturer's production of the product.
- 1.5.5 Warranty repairs may only be completed by Cubic.
- 1.5.6 Consumable parts including brackets, cables, batteries, and accessories are excluded from the warranty. Customer may purchase such parts from Cubic or a third party providing that Customer shall be responsible for costs of repairing any damage caused to the Equipment caused by the use of any non-conforming consumable part not purchased from Cubic.
- 1.5.7 Where the Parties identify a systemic issue suspected of impacting a high percentage of units of a particular equipment under warranty, the Parties shall discuss and agree in good faith a remediation plan that identifies commercially reasonable steps to remediate such issue. Any remediation steps above and beyond the warranty obligations under this agreement shall be at the discretion of Cubic.

## 1.5.1

## 1.6 Non-Warranty Repair

- 1.6.1 All Equipment sent into Cubic for repair not under warranty will still require an RMA prior to shipping and will be subject to Cubic's then current and published repair fees and policies. A minimum fee will be charged even if the device is found to have no fault or defect.
- 1.6.2 By submitting the non-warranty Equipment for repair, Customer agrees to pay Cubic's then current fees for parts, materials and labor needed for repairs.
- 1.6.3 Neither Contractor nor Cubic shall be under any obligation to perform non-Warranty repairs under this Section. Where no Return Merchandise Authorization is given, Cubic is not responsible for any unreceived, lost or misdirected Equipment.
- 1.7 Substitution. Equipment may be substituted or replaced at no cost to Customer with alternative Equipment at any time during the Term providing such Equipment shall provide at least the same functionality as the original Equipment.

## 1.8 Service Delivery Management

- 1.8.1 Cubic will assign a service delivery manager ("Service Delivery Manager") to act as the primary person responsible for managing the service relationship between the Customer and Cubic under this Agreement.

1.8.2 The Service Delivery Manager has primary responsibility to:

- a) Track and manage to resolution configuration and other change requests in relation to the WisGo Services;
- b) Manage and resolve service delivery issues as an escalated point of contact;
- c) Meet regularly (monthly or as otherwise mutually agreed with the Customer) to review the Contractor's service performance with the Customer; and
- d) Participate and support the Customer as commercially reasonably requested in long-term service planning discussions as it relates to the WisGo Services including interactions between the WisGo Services and other technology solutions procured by the Customer.

## 2 UMO SERVICE LEVELS

Cubic will use reasonable endeavors to achieve the target service level set out in this service level description. Cubic shall not be in breach of contract nor shall have any liability, to the Customer in the event the service levels are not met.

### 2.1 Umo Services Target Availability

The following availability targets apply to the WisGo Services Back-Office. For the purpose of this clause WisGo Services includes the Umo Pass Passenger Portal, other web-based user interface portals provided by the WisGo Services and centrally hosted elements of WisGo Services utilized by the Umo App connected to the Umo Pay Services.

Service Uptime target (see Measurements)	99.9%
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### 2.2 Severity Level Definition for Incidents

Incidents are classified as per the Severity Level 1 through 4 defined in the table below.

Severity Level	Severity Level Definition
Severity Level 1 – Critical (S1)	<p>A widespread Incident impacting critical functions that produces a major business impact, including significant loss of revenue or expense; negative impact to many customers and/or internal Users; system-wide issue impacting devices or production applications; WisGo Services are operating at a seriously degraded level such that normal business operations cannot be conducted.</p> <p>Examples: The ability to process transaction or make product purchases are unavailable.</p>
Severity Level 2 – Urgent (S2)	<p>Incident produces substantial business impact with non-trivial loss of revenue or expense; substantial negative impact to multiple customers and/or Users; device or production application functionality is severely limited, or is experiencing continual or repeated Incidents; WisGo Services are operating at a degraded level such that normal business operations are severely impacted.</p> <p>Examples: End Users are unable to access information in their accounts (such as, transaction history); critical reporting functions are unavailable or</p>

Severity Level	Severity Level Definition
	working incorrectly for Customer Users; WisGo Services response times are significantly degraded; route planning data returns wrong stop sequences
Severity Level 3 – Moderate (S3)	<p>Incident produces limited business impact and negligible loss of revenue or expense; little negative impact to Users; Incident limited to a discrete component of production application functionality; work-arounds available allowing Users to circumvent or avoid the issue; WisGo Services are operating at a degraded level such that normal business operations are minimally impeded.</p> <p>Examples: Issues where there is a reasonable workaround available; inability to configuration change that is not time critical in nature; usability issues that severely degrade the User experience.</p>
Severity Level 4 – Cosmetic (S4)	<p>Incident produces little or no business impact with no loss of revenue or expense; little or no negative impact to Users. Incident limited to a discrete component of production application functionality and does not prevent business operations to function.</p> <p>Examples: spelling mistake; errors in documentation; minor usability issues; issues where there are easy to use workarounds available.</p>

### 2.3 Target Service Levels for Incidents

This section describes the Service Levels that apply to Severity Level 1 through 4. When raising a potential Incident, the Customer shall provide a reasonable and clear description of the nature of the suspected Incident, how MTS operations are impacted, and any other information reasonably requested by Cubic to investigate and resolve the Incident. Resolution may include providing any of a permanent fix, roll-back, workaround temporary fix or temporary bypass of a failure. Where a temporary fix or work around reduces the severity of an Incident, resolution target times will be adjusted to the adjusted severity level.

### 2.3.1 Lodgment and response target service levels

Service Incident Target Response SLA				
Priority	Response Time	Service Window	Lodgment	Time Zone
S1	2 hours	24 x 7	Phone	CST
S2	4 hours	24 x 7	Phone or email	CST
S3	1 Business Day	08:00 to 18:00 Business Days	Email	CST
S4	5 Business Days	08:00 to 18:00 Business Days	Email	CST

### 2.3.2 Resolution

#### a) Umo Back-office Services

Service Incident Target Resolution Times SLA			
Priority	Target Resolution Time	Resolution Window	Progress Updates
S1	4 hours	24 x 7	Yes
S2	24 hours	As reasonably required to meet target resolution times	Yes
S3	30 Business Days	Business hours commercially reasonable efforts Business hours	On request
S4	At Umo discretion		Release notes

#### b) Umo App – Incidents requiring a new app release or roll-back

Service Incident Target Resolution Times SLA			
Priority	Target Resolution Time	Resolution Window	Progress Updates
S1	24 hours	24 x 7	Yes
S2	48 hours	As reasonably required to meet target resolution times	Yes
S3	3 Business Days	Business hours	On request
S4	At Umo discretion	Business hours	Release notes

#### c) Devices Software – incidents related to Cubic developed and maintained device software

Service Incident Target Resolution Times SLA			
Priority	Target Resolution Time	Resolution Window	Progress Updates
S1	24 hours	24 x 7	Yes
S2	48 hours	24 x 7	Yes
S3	3 Business Days	Business hours	On request
S4	At Umo discretion	Business hours	Release notes



d) Third-party commercial-off-the shelf vendor software or applications

Target resolution and update availability is provided as per each respective third-party vendor's applicable commercial service agreements and support arrangements.

2.4 Exclusions

2.4.1 Target service levels do not apply to faults outside Cubic's control – for example a fault with the merchant acquiring solution impacting service functionality. Third-party service provider issues will be managed on a commercially reasonable efforts basis.

2.4.2 This exclusion does NOT apply to our Service Uptime target service levels as it relates to the use of public cloud services to host the WisGo Services, or where a public cloud services provider has a service issue impacting all services utilized by Cubic.

2.5 Measurements

Definition	Measurement
Response Time	The clock shall commence from the time that the Service Incident or Service Request is logged in Cubic's service management system and its associated unique reference number is advised to the Customer. The clock shall stop at the time that Cubic's resources commence investigation of actions. This shall be recorded within Cubic's service management system.
Resolution Time	The clock shall commence from the time that the Service Incident or Service Request is logged in Cubic's service management system and its associated unique reference number is advised to the Customer. The clock shall stop at the time that Cubic's resources contact the Customer either by telephone or by email to instruct the Customer on the steps to be taken by the Customer to resolve the Incident or at the time of issuance of a workaround; temporary fix; software release or patch to the Customer. For mobile applications or any software that require an application store approval process (for example Apple or Google approval), the incident is deemed resolved and the resolution time clock is stopped is defined at the time Cubic makes a new release available to the applicable app store for review. For device software, resolution time is defined as the time to make a new release available for distribution through the applicable device management solution.
Service Uptime	Back-office services uptime is measured through Cubic's monitoring systems as the number of minutes the back-office services are operating in any one calendar month divided by the number of minutes in the calendar month excluding any scheduled down-time. For the purpose of this measurement, operating means the back-office services are not impacted by a Severity 1 incident. A monthly Service Uptime report will be provided electronically within 10 Business Days of the end of each calendar month.

## **Exhibit D**

### **General Customer Obligations**

#### **1 GENERAL**

- 1.1 Provide general User customer support services for the WisGo Services including pass redemption, refunds, and instruction on use and troubleshooting common problems.
- 1.2 Provide basic maintenance for Equipment, such as daily cleaning of equipment and protection of equipment from damage and temperatures above or below reader tolerances specifications, if and as required in Equipment Documentation and training materials.
- 1.3 Implement and execute PCI-DSS practice as required by and applicable to the Customer as requested by Contractor as Merchant of Record.
- 1.4 Permit Contractor and its subcontractor's reasonable access to Customer's buses, installation sites and to the premises in which Customer conducts its business and furnish to Cubic other information as Cubic may reasonably request for performance of the Services, each at mutually agreed upon times and locations.
- 1.5 Return malfunctioning readers for repair/replacement in accordance with the return maintenance authority processes as set forth in Exhibit C.
- 1.6 Unless specifically agreed otherwise in writing, provide and maintain the cellular data services required for the Equipment to communicate with the WisGo Services as contemplated by Section 4.9 of Exhibit A1.
- 1.7 Public relations and marketing in Customer's discretion.
- 1.8 Manage third-parties that the Customer sources or Customer partners that will integrate with the Services.
- 1.9 Responsible for validating WisGo Services readiness for revenue service.

## Exhibit E

### Fees

Unless otherwise specifically stated otherwise, all amounts are in USD and exclusive of taxes as further set out in Article 4 of this Agreement.

#### 1 CAPITAL COSTS

- 1.1 The following fees are payable for the Implementation Services and Equipment ("Capital Costs")

Description	Per Unit	Qty	Extended Price	Assumptions
<b>Startup</b>				
Validators*	\$ 1,250.00	10	\$ 12,500.00	10 buses
Validator installation kit	\$ 110.00	10	\$ 1,100.00	10 buses
Validators, spares	\$ 1,250.00	2	\$ 2,500.00	<i>recommended</i>
Validator Installation service	\$ 3,045.00	-	\$ -	<i>not included; Customer will install.</i>
Implementation Fee- <i>WAIVED</i>	\$ -	1	\$ -	
WisGo Smart cards	\$ 2.00	5,000	\$ 10,000.00	initial stock
WisGo paper tokens	\$ 0.04	2,000	\$ 80.00	initial stock
Total Startup Costs			\$ 26,180.00	

- 1.2 Contractor shall be entitled to invoice the Customer for the milestone-based Capital Costs on providing reasonable documentation to Customer to demonstrate completion of the following milestones:
- 1.2.1 30% upon contract signing; 50% upon delivery of validators; 20% upon system acceptance. Customer can elect to pay fees in advance.
- 1.3 Fare Media shall be invoiceable and payable on delivery.

## **2 UMO SERVICES TRANSACTION, SUPPORT AND MAINTENANCE FEES**

2.1 The following fees shall be payable on the Customer first utilizing the WisGo Services for commercial purposes:

2.1.1 A **"Fixed Support And Maintenance Fee"** of \$715 per calendar month per validator

2.1.2 **"Transaction Fees"**:

- a) Transaction Fees are calculated as \$0.035 per Billable Transaction. Transaction Fees are calculated based on the **"Billable Transactions"** in the calendar month being invoiced. A Billable Transaction is defined as an electronically recorded boarding utilizing the WisGo Services.
- b) A monthly minimum Transaction Fee of \$0 applies (**"Monthly Minimum Transaction Fee"**). If in any one calendar month, the Transaction Fees as calculated on a per transaction basis above are less than the Monthly Minimum Transaction Fee, the Monthly Minimum Transaction Fee is charged instead.

2.2 Fees in this Clause 2 are invoiced monthly in arrears.

## **3 OPEN PAYMENTS (CONTACTLESS EMV ACCEPTANCE)**

3.1 The Customer has the option to enable the Open Payments feature of the WisGo Services

3.2 The following fees shall be payable on the Customer first utilizing the Open Payments feature for production purposes:

3.2.1 An Open Payments End-point Fee of \$0 per Validator (Bus or Station) per year.

3.2.2 An Open Payments Transaction Fee of \$0.01 per tap performed at a Validator using a contactless EMV payment card. This fee is in addition to the Transaction Fees

3.3 Fees in this Clause 3 are invoiced monthly in arrears.

## **4 OTHER RECURRING FEES**

4.1 As Contractor will remain the Merchant of Record on the WisGo application, all credit card fees will be paid by Contractor and passed through to Customer, without markup, on a monthly basis as a billable expense or a reduction in Customer revenue earned.

## **5 CARD ENCODING**

5.1 A Card Encoding Fee of \$0.23 shall apply per Card encoded by Cubic subject to the minimum batch being 5,000 Cards. This fee is inclusive of shipping the encoded cards to a Customer designated location in the United States. It assumes under this scenario that the Customer is responsible for the purchasing cost, import duties (if applicable) and shipping costs of Cards to Cubic's encoding facility in the United States.

5.2 Card Encoding Fees shall be invoiced and payable upon Cubic shipping the Cards to the Customer's designated location following encoding.

## **6 ADDITIONAL EQUIPMENT**

6.1 The Customer may procure Equipment under this Agreement, in addition to the quantities in the initial equipment order set-out in Clause 1.

6.2 The following table sets-out the pricing for additional Contractor Equipment as of the Effective Date:

Item	Reference Price
Mobile Validator 3	\$1250.00
Cubic Platform Validator	Not applicable

- 6.3 The reference pricing includes 1-year warranty, Cubic overhead, general and admin expenses, handling and margin. It excludes shipping and installation.
- 6.4 Pricing and lead Times. Additional equipment or services pricing and lead times are subject to change and will be confirmed by means of a quote for each additional order requested by the Customer. Lead times will be confirmed at time of quote.

## 7 ADDITIONAL FARE MEDIA

- 7.1 As of the Effective Date, the following reference pricing applies to additional orders of Fare Media procured by Cubic on behalf of the MTS in addition to the Fare Media included in Clause 1.1

Item	Price
Card purchased and encoded by Cubic	\$2 per additional card. Minimum order of 5,000 cards.
Paper Tokens	\$.04 per Paper Token. Minimum order of 1,000 Paper Tokens.

- 7.2 Card pricing assumes 2 pantone color design and excludes any special packaging. Pricing is inclusive of card encoding.
- 7.3 Pricing and lead Times. Additional fare media pricing is subject to change and will be confirmed by means of a quote taking into account then prevailing cards costs, card design and packaging requirements. Lead times will be confirmed at time of quote.

## 8 FEES ESCALATION AND INDEXATION

- 8.1 The following fees will automatically increase by 3% per year on the anniversary date of the WisGo Services first being utilized for production purposes.

Fixed Support And Maintenance Fee
Open Payments End-point Fee
Card Encoding Fee

## 9 PAYMENTS TO CUSTOMER FOR UMO REWARDS

- 9.1 In respect of the optional Umo Rewards Services set out in Exhibit A3, Contractor shall pay Customer twenty-five percent (25%) of the Net Sponsored Content Revenue (the "Customer Revenue Share") where:
- 9.1.1 "Net Sponsored Content Revenue" means (i) the amount actually paid by sponsors calculated based on the number of impressions of Sponsored Content on the Umo App within the Customer's service area less (ii) any applicable third-party brokerage or commissions fees.
- 9.1.2 "Sponsor" means any entity that pays Contractor in respect of the display of Sponsored Content.
- 9.1.3 "Sponsored Content" means any content provided by Sponsors that is approved by Cubic and displayed on the Umo App in the Customer's service area
- 9.2 The Customer Revenue Share shall be payable no later than forty-five (45) days from end of each quarter via cheque or electronic payment. The end dates for each quarter in each calendar year shall be 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September, and 31<sup>st</sup> December.

## **10 CHANGE ORDERS**

- 10.1 If Customer wishes to order any additional Equipment or extend the Services to additional Authorized Mobility Services Providers, then the pricing for such order shall be applicable as set out above. The additional requirement including the schedule for implementation shall be documented in a change order to be executed between the Parties. Contractor shall have no obligation to provide any such Services prior to execution of that change order.
- 10.2 Where the Parties mutually agree other changes to the Services provided under this Agreement, such changes, including any agreed changes to the Fees, schedule or scope, will be documented in the form of a written change order signed by both Parties in accordance with Clause 18 of the Agreement.
- 10.3 The Fees set out in this Exhibit E and the schedule set out in Exhibit B (Implementation Services) are based on Customer's performance of its obligations in this Agreement and the assumptions set out in this Agreement. To the extent that Customer fails to perform these obligations in accordance with the agreed timeframes, or these assumptions are incorrect, Contractor will promptly notify Customer, and the Parties will work to implement any changes schedule and price shall be adjusted in accordance with Clause 7.1.2 of the Agreement.

## **11 TERMINATION FEE**

- 11.1 If Customer terminates the Agreement in accordance with Section 11.4 of the Agreement, the following Fees shall be payable to Contractor on the termination date (the "Termination Fee"):
- 11.2 Payment in full for the cost for any Services performed or Equipment supplied or ordered prior to the date of termination that have not already been paid for.
  - 11.2.1 Breakage costs related to early termination of any subcontract or supplier agreements including any committed costs.
  - 11.2.2 Reasonable and demonstrable demobilization costs including any related to subcontracted or outsourced personnel.
  - 11.2.3 Any costs related to any transition services required including but not limited to the Transition Services set out in Exhibit A5.
  - 11.2.4 For the initial Term of the Agreement, the Customer will pay the 25% of the Operations and Maintenance Fees remaining for the Term from when the Agreement was terminated for convenience. For any subsequent extensions, the Customer will pay fifteen percent (15%) of any fees that would have been payable for the remainder of the contract Term had the Agreement not been terminated for convenience
  - 11.2.5 Contractor shall be entitled to include direct costs, overheads, indirect costs allocation and a reasonable level of profit in any claim for costs.



## **EXHIBIT G**

### **SECURITY**

Contractor shall source the WisGo Services in accordance with the following security policies:

- a) Contractors Compliance Matrix Sec 2.6
- b) Cubic's Acceptable Use of Technology Policy
- c) Cubic's Mobile Device Policy
- d) Cubic's Information Security Manual

The foregoing policies as provided to Customer prior to the Effective Date are incorporated into this Agreement with this reference. Contractor will provide annual copies of the foregoing policies to Customer on an annual basis. Contractor may modify and update the foregoing policies, provided such modification or update does not materially decrease any security referenced in the foregoing policies.

## Exhibit H

### Required Federal Terms

#### U.S. GOVERNMENT REQUIRED CLAUSES

**Fly America Requirements** – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

**Buy America Requirements** – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Charter Bus Requirements** – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

**School Bus Requirements** – School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third-Party Participant that has operated school bus service in violation of FTA’s School Bus laws and regulations,

FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

**Cargo Preference** - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

**Seismic Safety** – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

**Energy Conservation** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

**Clean Water** – Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

**Bus Testing** – Applicability – Rolling Stock/Turnkey

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall **provide a copy of the final test report** to the recipient prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis

for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**Pre-Award & Post-Delivery Audit Requirements** - Applicability – Rolling Stock/Turnkey Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

- 1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:
  - A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
  - B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
  - C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
  - D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

**Lobbying** – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**Access to Records and Reports**– Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital

project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

**Federal Changes** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

**Bonding Requirements** – Applicability – For those construction or facility improvement contracts or subcontracts exceeding \$250,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

- (1) 50% of the contract price if the contract price is not more than \$1 million;
- (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### Bid Bond Requirements (Construction)

(a) Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient). It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive. Performance and Payment Bonding Requirements (Construction)



The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the

(Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

- (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
- (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (iii) Two and one half million if the contract price is increased.

#### Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

#### Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

#### Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These

bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**Clean Air** – Applicability – All contracts over \$150,000. 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding

\$150,000 financed in whole or in part with FTA assistance.

**Recycled Products** – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**Davis-Bacon and Copeland Anti-Kickback Acts** – Applicability -Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000

**(1) Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5.

This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the

reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an



apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

**Contract Work Hours & Safety Standards Act** – Applicability – Contracts over \$250,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40

hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

**No Government Obligation to Third Parties** - Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right

to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Termination** – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions

If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damages to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

**Government-wide Debarment and Suspension (Nonprocurement)** – Applicability – Contracts over \$25,000

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments

thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C.

§ 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

**Contracts Involving Federal Privacy Act Requirements** – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over

\$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**Civil Rights Requirements**– Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal



Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance, and

2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a)

The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal

laws, regulations, and guidance. (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42

U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer”.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No.

11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42

U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as

“Disadvantaged Business Enterprises” (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third-party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and  
(5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be

accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2, Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:

1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

i. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

j. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

#### **Breaches and Dispute Resolution** – Applicability – All contracts over \$250,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **12 PATENT AND RIGHTS DATA –**

Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

### **Patent Rights**

#### **A. General. The Recipient agrees that:**

(1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

#### **B. Federal Rights. The Recipient agrees that:**

(1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees

to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

#### **C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:**

(1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or

royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and

(b) As FTA determines otherwise in writing.

#### Rights in Data and Copyrights

A. Definition of "Subject Data." means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

B. Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to:

(a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but (2) Do not include: (a) Financial reports,

C. Cost analyses, or (c) Other similar information used for Project administration, General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement:

(1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that: (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and

(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and

expenses of: 1 The Federal Government's officers acting within the scope of their official duties, 2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by: (1) The Freedom of Information Act, 5 U.S.C. § 552, (2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

**Transit Employee Protective Provisions** – Applicability – Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Public Transportation Employee Protective Arrangements. The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:



(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c)

It will follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29

C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and

(e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, 2 The documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, (2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b),

(b) Follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29

C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (c) It will comply with the

U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and (3) Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49

U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and (b) FTA reserves the right to make other exceptions as it deems appropriate.

**Disadvantaged Business Enterprise (DBE)** – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt Payment** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the

above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

**Incorporation of Federal Transit Administration (FTA) Terms** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT- required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

**Drug & Alcohol Abuse and Testing** – Applicability – Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants), "49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41

U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

### **13 OTHER FEDERAL REQUIREMENTS:**

**Full and Open Competition** – In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

**Prohibition Against Exclusionary or Discriminatory Specifications** – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Conformance with ITS National Architecture** – Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

**Access Requirements for Persons with Disabilities** – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with

Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

**Notification of Federal Participation** – To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

**Interest of Members or Delegates to Congress** - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**Ineligible Contractors and Subcontractors** - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Other Contract Requirements** - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

**Compliance With Federal Regulations** - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Real Property** - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as

amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Access to Services for Persons with Limited English Proficiency** - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of

U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

**Environmental Justice** - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42

U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

**Environmental Protections** – Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.S.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

**Geographic Information and Related Spatial Data** – Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

#### **14 GEOGRAPHIC PREFERENCE**

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposed to be amended in 2 CFR Part 1201 ).

#### **15 ORGANIZATIONAL CONFLICTS OF INTEREST**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

#### **16 FEDERAL SINGLE AUDIT REQUIREMENTS FOR STATE ADMINISTERED FEDERALLY AID FUNDED PROJECTS**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources

are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for

that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

**Veterans Preference.** As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **17 SAFE OPERATION OF MOTOR VEHICLES.**

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and
- (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:

- (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),
- (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and
- (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
  - (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award
  - (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and
  - (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.



## 18 CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

**The CFDA number for the Federal Transit Administration.** Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit

Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.