



OFFICIAL NOTICE AND AGENDA

of a meeting of a City Board, Commission, Department, Committee, Agency, Corporation, Quasi-Municipal Corporation, or sub-unit thereof.

Meeting of the: **FINANCE COMMITTEE**

Date/Time: **Tuesday, January 28, 2020 at 5:15 PM**

Location: **City Hall (407 Grant Street) - Council Chambers**

Members: Lisa Rasmussen (C), Dave Nutting, Michael Martens, Dennis Smith, Linda Lawrence

AGENDA ITEMS

- 1 Approval of the minutes of previous meetings (1/14/20)
 - 2 Discussion and Possible Action Regarding Construction Request of a 60' X 75' Hangar in the East Hangar Development Area by Learn Build Fly
 - 3 Discussion and Possible Action Regarding Construction Request of a 48' X 48' Hangar change of location in the East Hangar Development Area by Dave Harm
 - 4 Discussion and Possible Action Regarding Construction Request of a 100' X 100' Hangar in the East Hangar Development Area by Kocourek
 - 5 Discussion and possible action regarding sole source request for professional services - Bridge Street Bridge (Ayres Associates)
 - 6 Discussion and possible action regarding amending salary rates for the Temporary Positions of Election Chief Inspector and Election Inspector
 - 7 Discussion and possible action on sole source request providing Oblique Imagery with Pictometry International Corp.
 - 8 Discussion and possible action on approving city's Waiver of First Right of Refusal to Repurchase property at 8101 International Drive from Packaging Tape, Inc. n/k/a Rocket Industrial, Inc. to Rocket Properties, LLC
 - 9 Discussion and possible action regarding the contract between Devnet, Inc. involving the purchase of assessment software
 - 10 **CLOSED SESSION** pursuant to Section 19.85(1)(g) of the Wisconsin Statutes conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved – regarding the contract between Devnet, Inc. and City
 - 11 **RECONVENE** into open session, if necessary, to take action on closed session item.
- Adjourn

Lisa Rasmussen, Chairperson

This Notice was posted at City Hall and faxed to the Daily Herald newsroom 1/24/20 at 1130 AM

IMPORTANT: THREE (3) MEMBERS NEEDED FOR A QUORUM: If you are unable to attend the meeting, please notify Mary by calling (715)261-6621 or via email mary.goede@ci.wausau.wi.us

In accordance with the requirements of Title II of the Americans with Disabilities Act (ADA), the City of Wausau will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs or activities. If you need assistance or reasonable accommodations in participating in this meeting or event due to a disability as defined under the ADA, please call the City's ADA Coordinator at (715) 261-6620 or email clerk@ci.wausau.wi.us at least 48 hours prior to the scheduled meeting or event to request an accommodation.

Other Distribution: Media, (Alderspersons: Peckham, Neal, Gisselman, McElhaney, Herbst, Thao), *Mielke, *Jacobson, *Groat, Department Heads

FINANCE COMMITTEE

Date and Time: Tuesday, January 14, 2020 @ 5:30 pm., Council Chambers

Members Present: Rasmussen, Smith, Martens, Nutting, Lawrence

Others Present: Groat, Barnes, Bliven, Barteck, Jacobson, Mielke, Kujawa, Lindman, Mohelnitzky, Schock, Stratz, Vanderboom, Neal, Goede

In accordance with Chapter 19, Wisc. Statutes, notice of this meeting was posted and sent to the Daily Herald in the proper manner. The meeting was called to order by Chairperson Rasmussen.

Approval of the minutes of previous meetings (12/10/19)

Motion by Nutting, second by Smith to approve the minutes of the previous meetings on 12/10/19. Motion carried 5-0.

Discussion and possible action regarding sole source purchase asbestos abatement Great Lakes Cheese 101 Devoe Street

Martens questioned if the abatement had already started and if this was additional remediation that had to be done. Tammy Stratz explained the initial inspection was done and a quote was received, but after the work started more suspect materials were discovered as the deconstruction was happening. She indicated they stopped and worked with the DNR to find out what additional work needed to be done, as well as the most economical way of doing it.

Motion by Martens, second by Lawrence to approve the sole source for asbestos abatement. Motion carried 5-0.

Discussion and possible action regarding modification of the procurement policy

Rasmussen explained for a number of years it has been in the policy that documentation or committee approval is not required to expedite small purchases under \$5,000. This allows staff to make small incidental purchases to get a job done without having to wait to go through a committee process. She indicated the intent is to clarify the policy so it reads the way it has always been applied and our methods and procedures match.

Groat stated once the purchase is over \$5,000 there is a lot of red tape to go through, such as obtaining a purchase order, getting at least three quotes or submitting a sole source request. She indicated she has advised departments to do the best they can for the taxpayers when making a purchase under \$5,000. She explained the changes being made here are just clarifying that in addition to not having to provide procurement documentation, the sole source documentation is not necessary either.

Motion by Nutting, second by Martens to approve the modification of the procurement policy. Motion carried 5-0.

Discussion and possible action regarding authorizing the modification of fees to the City of Wausau Fees and Licenses Schedule adopted pursuant to Wausau Municipal Code 3.40.010(a) relating to open record copies

Martens stated the current fee is 25 cents per page and questioned if it would now be 3.5 cents for color and .04 cents for black & white. Jacobson indicated Assistant Attorney Nate Miller and IT Director Gerry Klein worked on this because there were complaints from the media that what we were charging was too high. This reflects more accurately the true costs for copies.

Motion by Nutting, second by Lawrence to approve the modification of fees relating to open record copies. Motion carried 5-0.

Discussion and possible action regarding sole source purchase planning services North Riverfront and related budget modification

Smith asked for clarification on what they were actually voting on. Chris Schock explained this was in reference to the North Riverfront, which is the area north of Wausau Avenue, a separate item from the Riverlife Development. It is the Great Lakes Cheese facility, for which three proposals were received, including two commercial users and a residential user. The ED Committee felt it might be valuable to hire a professional planning and engineering firm to work with the three proposers and staff to come up with a site plan. This is being called a unifying plan that unifies together the three proposals rather than selecting one of the proposals and not the others. He indicated from a staff perspective they felt there was opportunity to incorporate all three interested parties into this large site. The work

that needs to be done is to plan and layout where the roads, stormwater, parking facilities, and future utility corridors will go, as well as how the different users will be placed on their sites. He stated the request was for up to \$9,000.

Motion by Lawrence, second by Martens to approve the sole source purchase and related budget modification for planning services North Riverfront. Motion carried 5-0.

Discussion and possible action regarding terms of development agreement Riverlife Condos and related developer incentives

Rasmussen stated the ED Committee recommended approval of this plan, which is Phase II of Riverlife located south of the current area. Schock clarified this Phase II of Riverlife is south of Fulton Street and south of where the current building is under construction; it is between the current building and the Eye Clinic.

Smith questioned if there was a projected payback when the city will break even on its investment. Schock stated this project is not receiving a great deal of incentive. It has a minimum of \$5 million in construction value and its incentive is under 10% of that. He stated it is unknown what the property will assess for, but it will pay significant taxes fairly quickly. Groat noted it is in TID #3. *Discussion followed regarding high-end housing versus affordable housing for lower incomes.*

Motion by Nutting, second by Lawrence to approve the terms of development agreement Riverlife Condos and related developer incentives. Motion carried 5-0.

Discussion and possible action regarding sole source purchase Fire Station Furniture

Rasmussen noted they would like to keep the same vendor for all furniture for interchangeable parts and service.

Motion by Nutting, second by Smith to approve the sole source. Motion carried 5-0.

Discussion and possible action regarding the November General Fund financial report

Groat presented the Financial Report: <http://www.ci.wausau.wi.us/Departments/Finance/MonthlyReports.aspx> She commented the General Fund will make a profit, however, there are going to be some pretty significant differences in our results at the end of the year. The biggest stars in revenue performance are investment income and permit fees. She stated the biggest concern in expenses continues to be a decline in Municipal Court fines. She reiterated we will show a profit at the end of the year, but our budget to actual will show the budget as overspent.

Groat stated the most problematic area is the Engineering Budget (DPW) due to snow removal and the winter event. In November a budget amendment of \$300,000 was approved to increase that budget for Public Works to offset some of that winter maintenance, but it most likely won't be enough. She indicated she would have a report for the next meeting.

Groat estimated an overall profit of approximately \$500,000. Lawrence commented we are not here to make a profit because city government isn't a business, it is a service provider, where there are a lot of unknowns when setting the budget.

Discussion and possible action opposing SB 560 limiting Tax Increment Districts

Rasmussen stated we get a newsletter every month from the Wisconsin League of Municipalities which tracks the legislative things happening in Madison that cities might be interested in. She felt this is one of those things because it makes changes to how TID financing works and to some of the requirements for us to locally manage our tax increment districts. She felt there were a couple of troubling caveats in it. The regulations that cities must go through to manage TID's per the mapping and the Joint Review Board are already fairly stringent. This bill would require a unanimous vote, not a majority vote, of any Joint Review Board to either increase the size of a TID or extend its life. This would be statewide and have far reaching impacts for cities like Wausau and many others that would be forced to seek that unanimous vote to increase a TID or extend the life. Sometimes activity like that can completely change the success of a TID and the revenue stream that comes from it.

Groat felt that creating a higher threshold for approval for the Joint Review Board seems unreasonable. There are checks and balances for our developer agreements because we have to provide that to the Joint Review Board through the Project Plan, so they are able to review our desire to give developer incentives as part of their approval.

Smith indicated he would not support a resolution opposing this legislation because he felt we need to do a better job of managing the TID's or the state would not be bringing this forward.

Rasmussen responded our financial planners each year state that we are doing a good job of managing our TIDs and are in a good financial situation because of that management. She commented we know that there are municipalities throughout the state that don't do that good of job but she did not believe Wausau was among them. The city utilizes TIDs as a development tool, but she did not believe they use it irresponsibly.

Lawrence stated you need to increase your tax base and use whatever tool the state lets you have. She pointed out we don't have sales tax or wheel tax and the state has limited what can be done with room tax. She believed the TIDs in the city were managed well and it is the only tool we have.

Motion by Lawrence, second by Nutting to approve the resolution opposing SB 560 limiting Tax Increment Districts. Motion carried 4-1. (*Smith was the dissenting vote.*)

Adjourn

Motion by Martens, second by Nutting to adjourn the meeting. Motion carried unanimously. Meeting adjourned at 6:30 pm.

**JT. RESOLUTION OF AIRPORT COMMITTEE
AND FINANCE COMMITTEE**

Authorizing the execution of Airport Ground Lease – Learn Build Fly Inc.

Committee Action: Airport Approved

Finance Approved

Fiscal Impact: Annual lease and tax revenues

File Number:

Date Introduced:

RESOLUTION

WHEREAS, your Airport Committee, at their January 14, 2020 meeting, approved construction of a 60' x 75' hangar in the Wausau Downtown Airport hangar development area by Learn Build Fly Inc., a certified Wisconsin charitable organization exempt under IRC Section 501(c)(3); and

WHEREAS, your Finance Committee, at their January 28, 2020, meeting, approved entering into a ground lease with Learn Build Fly Inc., a copy of which lease is attached and incorporated herein by reference, and in general, provides for a twenty (20) year lease with the opportunity for renewal, a lease payment of 12¢ per square foot adjusted annually, and a payment to the City of real estate taxes as a building on lease land.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wausau that the proper City officials are hereby authorized and directed to execute the original of the attached standard ground lease between the City of Wausau and Learn Build Fly Inc., allowing for construction of the aforementioned hangar.

Approved:

Robert B. Mielke, Mayor

AIRPORT GROUND LEASE

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the City of Wausau, a Wisconsin municipal corporation, hereinafter referred to as "CITY," and Learn Build Fly Inc., a certified Wisconsin charitable organization exempt under IRC Section 501(c)(3), 917 North 6th Avenue, Wausau, Wisconsin 54401, hereinafter referred to as "TENANT;"

WITNESSETH:

WHEREAS, CITY owns and operates an airport within the corporate limits of the City of Wausau known as the Wausau Downtown Airport, hereinafter referred to as "Airport;" and

WHEREAS, TENANT wishes to lease a parcel of land on Airport described in "Exhibit A," hereinafter referred to as "parcel," and TENANT wishes to construct an airplane hangar for the storage of aircraft and their appurtenances and for TENANT's use on that parcel.

NOW, THEREFORE, for and in consideration of the rents, covenants, and agreements herein contained, CITY and TENANT agree as follows:

1. Premises. CITY hereby leases to TENANT the parcel depicted on "Exhibit A," attached hereto.

TENANT shall construct within one (1) year of the date first above written, improvements in accordance with the plans and specs on said parcel described in "Exhibit A," attached hereto. All improvements, now and any in the future, must meet all applicable state and local building codes, and shall be approved by CITY. TENANT shall use the improvements and premises for aeronautical purposes in accordance with the provisions of paragraph 34.

Within sixty (60) days after the completion of the building, TENANT shall complete preparation of appropriate excavation and installation of base course in preparation for asphalt pavement extending from the building to the taxiway and Eighty feet (80') wide. TENANT shall pay for 100 percent of the preparation and base course, and CITY shall pay for the asphalt and the cost of laying the asphalt down. All site preparations for the road shall be done pursuant to CITY specifications and shall be approved by CITY prior to CITY paving the area.

2. Lease Fees. TENANT shall pay to CITY for the lease of the parcel twelve cents (12¢) per square foot (60' x 75') per year, which payment shall be paid to the City Treasurer on an annual basis no later than the 5th day of January in the year for which the payment is due. The lease payment for 2020 shall be prorated and shall reflect the months from the date of occupancy to the end of the year. (Taxes shall reflect the improvements as of the legal date of assessment value [currently January 1]). This lease amount shall be adjusted annually to reflect the change in the Consumer Price Index from September 30 the previous year.

3. Term of Agreement. The initial term of this Agreement shall be for a period of twenty (20) years commencing on the date above first written. This lease shall be automatically renewed, without notice from either party, on identical terms for a like successive term, unless

either party shall, at least forty-five (45) days before the expiration of the lease, notify the other in writing of the termination of the lease.

4. Utilities and Taxes. TENANT agrees to pay all utilities, taxes, and phone bills, including but not limited to bills for electricity, gas, sewer, and water. TENANT agrees to install or cause to be installed on the leased premises meters for all utilities to be used on the leased premises and to pay any and all costs and expenses incurred as a result of the installation and use of such utilities.

5. Improvements. Except as provided in paragraph 1, TENANT shall not make any structural alterations, additions or improvements to the building or leased premises without the consent of CITY, which consent will not unreasonably be withheld, in those cases where TENANT provides it with plans and specifications for the same evidencing alterations, additions, and improvements of substantially the same appearance, standards, and quality as the construction specified in paragraph 1 and there is sufficient, in the opinion of CITY, land for the improvements. TENANT shall have the right to make, without CITY's consent, such nonstructural alterations, additions, and improvements to the building and leased premises that TENANT desires in order to conduct its operations on the leased premises.

6. Compliance with Laws. TENANT shall at all times comply with the airport rules and regulations, federal, state, and municipal laws, ordinances, codes, and other regulatory measures, now in existence or as may be hereafter modified and amended, applicable to the specific type of operation contemplated by it. TENANT shall procure and maintain during the term of this agreement all licenses, permits, and other similar authorizations required for the conduct of its aircraft operations.

7. Liens. TENANT agrees to promptly pay all sums legally due and payable on account of any labor performed on or materials furnished for the leased premises. TENANT shall not permit any liens to be placed against the leased premises on account of labor performed or material furnished; and in the event such a lien is placed against the leased premises, TENANT agrees to save CITY harmless from any and all such asserted claims and liens and to remove or cause to be removed any and all such asserted claims or liens as soon as reasonably possible.

8. Development. CITY reserves the right to further develop or improve the landing and public areas, including ramp space of the airport, as it sees fit regardless of the desires or views of TENANT and without interference or hindrance; provided, however, that no such development or improvement shall for a period in excess of sixty (60) days limit or violate TENANT's rights under this lease agreement or otherwise violate any federal, state, or local law, ordinance, rule, or regulation.

9. Subordination. This lease agreement shall be subordinate to the provisions of any existing or future agreement between CITY and the United States Government relative to the operation or maintenance of the airport, the execution of which has been, or may be, required as a condition precedent to the expenditure of federal funds for the development of the airport. Should the effect of any such agreement with the United States Government be to take the leased premises or building or any portion of either or substantially destroy the commercial value of either, then, within thirty (30) days after the occurrence of such event, CITY shall terminate this lease

agreement and purchase the building from TENANT, which purchase price shall be the fair market value of the building as of the day of the "taking."

10. Air and Noise. CITY hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the leased premises, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of the airport, and the right to pursue all operations of the airport; provided, however, that no such rights or the exercise thereof shall limit or violate TENANT's rights under this lease agreement.

11. Restrictions on Obstructions. CITY reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent TENANT from erecting, or permitting to be erected, any building or other structure on the airport, which, in the opinion of CITY, would limit the usefulness of the airport, or constitute a hazard to aircraft.

12. Assignment. Subject to paragraph 25, TENANT shall not assign its rights and obligations under this lease agreement nor assign any part of the leased premises to a third party, but may sublet the leased premises to a third party without CITY approval, provided that the leased premises is used solely for aircraft storage.

13. Automobile Parking Lot. TENANT and TENANT's guests may use the parking lot area along with other members of the public and individuals utilizing the Airport.

14. Signs. TENANT agrees that no signs, lighting or advertising matter shall be erected without the written consent of CITY.

15. Insurance. TENANT shall maintain on the parcel and its improvements fire and extended coverage insurance in an amount at least equal to the assessed valuation of the improvements as well as liability coverage with a minimum combined single limit in an amount not less than \$1 million dollars of liability per occurrence for Bodily Injury and Property Damage. The liability coverage amount shall be raised by TENANT when and as necessary, during the term of the lease, to correspond to requirements of CITY.

16. Hold Harmless. TENANT agrees to indemnify and hold harmless CITY, its employees, agents, officers and officials, whether hired, appointed or elected, free and harmless from and against any and all judgments, damages, losses, costs, claims, expenses, suits, demands, deaths, actions and/or causes of action to which they may be exposed by reason of injury or injuries to anyone or of the death or deaths of anyone, or by reason of any personal injury and/or real property damage, or by reason of any other liability imposed by law or by anything or by anyone else upon the above-referenced entities and/or individuals as the result of and/or due to TENANT's operations on the demised premises or on any premises owned by CITY and adjacent thereto and/or as a result of and/or due to the presence of TENANT on the demised premises or on premises owned by CITY and adjacent thereto, and/or due to the existence of this Agreement; specifically included within this indemnification and hold harmless section are attorneys' fees and other costs of defense which may be sustained by and/or occasioned to the above-referenced entities and/or individuals.

17. Release. TENANT agrees to release CITY, its employees, agents, officers and officials, whether hired, appointed or elected, from and against any and all judgments, damages, losses, costs, claims, expenses, suits, demands, deaths, actions and/or causes of action of any kind or of any nature which may be sustained or to which they may be exposed by reason of injury or injuries to anyone or of the death or deaths of anyone, or by reason of any personal injury and/or real property damage, or by reason of any other liability imposed by law or by anything or by anyone else upon the above-referenced entities and/or individuals as the result of and/or due to TENANT's operations on the demised premises or on any premises owned by CITY and adjacent thereto and/or as a result of and/or due to the presence of TENANT on the demised premises or on premises owned by CITY and adjacent thereto, and/or due to the existence of this Agreement; specifically included within this release section are attorneys' fees and other costs of defense which may be sustained by and/or occasioned to the above-referenced entities and/or individuals.

18. Rights in Common with Others. TENANT shall have the right, in common with others authorized so to do, to use all common areas of Airport, including runways, taxiways, aprons, roadways, parking lots, and any other common areas.

19. Obligations of CITY.

A. CITY shall plow snow promptly and as necessary for the operation of an airport, on the runways, hangar areas, tie-down areas, and any areas in the parking lot necessary for use by TENANT. CITY shall plow to within six (6) feet of TENANT's hangar door.

B. CITY shall maintain the surface of the runways, hangar areas, tie-down areas, and necessary areas of the parking lot in a condition which is reasonable, taking into consideration the required use.

20. City's Right of Entry. CITY shall have the right to, upon 24 hours' notice, inspect the premises during normal business hours in the company of TENANT or an agent or employee of TENANT for the purpose of examining the same and to ascertain if they are in good and safe repair and in compliance with the requirements contained herein, including compliance with all federal, state and local codes. In the event of an emergency, CITY shall have the right to enter the premises without advance notice to TENANT.

21. Acceptance of Premises. TENANT, by the execution of this Agreement, represents that it has inspected Airport and the leased parcel, and that it accepts the condition of the same as they now exist, and fully assumes all risks incident to the use thereof.

22. Outside Storage and Removal of Trash. TENANT will not store in a location susceptible to view by the public, any equipment, materials, supplies, or damaged or partially dismantled aircraft or other vehicles on the leased or adjacent premises. Any screens or other devices used to keep equipment, materials or supplies from view shall be subject to prior consent by CITY.

TENANT further agrees to remove or cause to be removed, at TENANT's expense, any trash, garbage or debris generated by TENANT's use of the leased premises and agrees not to

deposit any trash, garbage or debris on any part of Airport or the leased premises except temporarily in connection with collection or removal of the same.

23. Repair of Premises. TENANT shall, at its expense, keep, maintain, and repair the leased premises, the building and all improvements in good condition subject to normal wear and tear. Included in TENANT's obligations is cutting grass, weeds and other vegetation. In the event TENANT fails to comply with this subparagraph, CITY shall give notice to TENANT specifying the nature of TENANT's failure. In the event that TENANT fails within thirty (30) days of CITY's notice to cure such failure, CITY shall have the option either to cure such failure and to assess the costs thereof against TENANT, or to terminate this Agreement upon five (5) days' notice to TENANT. TENANT hereby agrees to pay any and all such assessments, including all costs, disbursements and reasonable attorneys' fees incurred by CITY in curing such failure within thirty (30) days after CITY's demand therefor.

24. Security. The parties hereby agree that TENANT assumes all responsibility and obligation for providing security on the leased premises.

TENANT shall not permit any security code provided by CITY to TENANT to be provided to any other person unless such person has been identified to and approved in advance by LANDLORD, or is an authorized employee of TENANT. Any guest or passenger of TENANT shall be personally escorted by the TENANT, or an authorized employee of TENANT, into and out of security gates of the Airport security fence.

25. Title and Right of First Refusal to Leasehold Improvements. TENANT shall retain the title to all buildings and other improvements constructed by TENANT on the leased premises. During the term of the lease, ownership may be transferable by TENANT upon CITY's written approval, which shall not be unreasonably withheld.

d 26. Termination of Lease. Upon termination at the end of the 20-year term or of any

26. Termination of Lease. Upon termination at the end of the 20-year term or of any successive terms, TENANT shall have the following options:

A. At TENANT's option, all buildings and improvements may be removed from the leased premises at no cost to the CITY. TENANT shall restore leased premises to orderly condition.

B. At TENANT's option, all buildings and improvements located on the leased premises may be sold. CITY shall have the first right to purchase such buildings and improvements. In the event TENANT receives a bona fide written offer to purchase said buildings and improvements from a third party, CITY shall have the first right to purchase said buildings and improvements at the same price and on the same terms and conditions as are contained in such an offer to purchase. In the event CITY elects not to exercise its option of first right of refusal to purchase the buildings and improvements, the party purchasing said buildings and improvements will agree to lease the premises from the CITY, upon terms acceptable to CITY.

27. Cancellation by CITY. CITY may cancel this Agreement by giving TENANT sixty (60) days' advance, written notice upon or after any one of the following events of default:

A. The failure of TENANT to pay rent in the amount and at the times and in the manner herein provided, and where such failure shall continue for thirty (30) days or more after written notice thereof shall have been given to TENANT.

B. The abandonment by TENANT of the leased premises, except in connection with its surrender to an approved assignee, sublessee, mortgagee, or other party succeeding to TENANT's interests or portion thereof hereunder.

C. The default by TENANT in the performance of any covenant or agreement required herein to be performed by TENANT, and TENANT's failure to commence and diligently continue to correct such default after written notice of the default given by CITY, as above provided.

Failure of CITY to declare this Agreement terminated upon the default of TENANT for any of the reasons set out above shall not operate to bar or destroy the right of CITY to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement. Further, the acceptance of rental by CITY for any period after a default of any of the terms, covenants or conditions by TENANT shall not be deemed a waiver of any right on the part of CITY to cancel this agreement.

Upon cancellation by CITY, CITY shall have the right to enter upon premises and building and, at its option, commence an action to take title.

28. Force Majeure. If, by reason of force majeure, either party is unable, in whole or in part, to carry out the agreements of such party on its part herein contained, such party shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockout or threats of orders of any kind of the government of the United States or of Wisconsin, or any of their departments, agencies or officials, or any civil (except, in the case of CITY only, CITY) or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government (except, in the case of CITY only, CITY) and people; civil disturbances; explosions; damage, loss, breakage or accident to the buildings, leased premises or Airport; partial or entire failure of utilities; or any other cause or event not reasonably within the control of such party, it being agreed that the settlement strikes, lockouts and other industrial disturbances shall be entirely within the discretion of such party and such party shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties in such matters when such course is, in the judgment of such party, unfavorable to such party.

29. Nothing in this lease shall serve to transfer title to the land in any manner, from CITY to TENANT.

30. TENANT shall pay to CITY real estate taxes on the building and other improvements, as "Building on Leased Land."

31. Motor Vehicle Parking. TENANT may park motor vehicles inside the hangar or outside the hangar in an area that will not impede access to other hangars or block aircraft from

safely using the taxi-lane to taxi. Long term parking of vehicles or trailers outside the hangar is not permitted.

32. Visitors. TENANT shall be responsible for and cause TENANT's passengers, guests or employees to act in a manner that will not disturb other users of the Airport and to pay all reasonable charges for maintenance and repair of damages to the leased premises or Airport caused by TENANT or TENANT's passengers, guests or employees.

33. Notices. All notices required herein shall be in writing and shall be deemed given when mailed by registered or certified mail, postage prepaid, properly addressed to the party to be notified as follows:

If to TENANT: _____

If to CITY: City Clerk
 407 Grant Street
 Wausau, WI 54403

34. Hangar Use.

A. The hangar shall be used for aeronautical purposes which include:

- (i.) Storage of active aircraft;
- (ii.) Final assembly of aircraft under construction;
- (iii.) Non-commercial construction of amateur-built or kit-built aircraft;
- (iv.) Maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
- (v.) Storage of aircraft handling equipment such as towbars, glider tow equipment, workbenches, and tools and materials used in the servicing, maintenance, repair or outfitting of aircraft.

B. Provided the hangar is used primarily for aeronautical purposes, non-aeronautical items may be stored in hangars provided the items do not interfere with the aeronautical use of the hangar. No items may be store outside of the hangar. Non-aeronautical items will be deemed to interfere with the aeronautical use of the hangar where the item or items:

- (i.) Impede the movement of aircraft in and out of the hangar or impede access to aircraft or other aeronautical contents of the hangar;
- (ii.) Displace the aeronautical contents of the hangar. A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft;
- (iii.) Impede access to aircraft or other aeronautical contents of the hangar;
- (iv.) Are used for the conduct of a non-aeronautical business;
- (v.) Are stored in violation of airport rules and regulations, building codes or local

STATE OF WISCONSIN)
) ss.
COUNTY OF MARATHON)

Personally came before me this_____day of_____, 20____, the above-named Robert B. Mielke, Mayor, and Mary Goede, Deputy Clerk of the City of Wausau, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Wisconsin
My commission:_____

STATE OF WISCONSIN)
) ss.
COUNTY OF MARATHON)

Personally came before me this_____day of_____, 20____, the above-named _____
_____,
to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Notary Public, Wisconsin
My commission:_____

This instrument was drafted by Nathan K. Miller,
Assistant City Attorney for the City of Wausau.

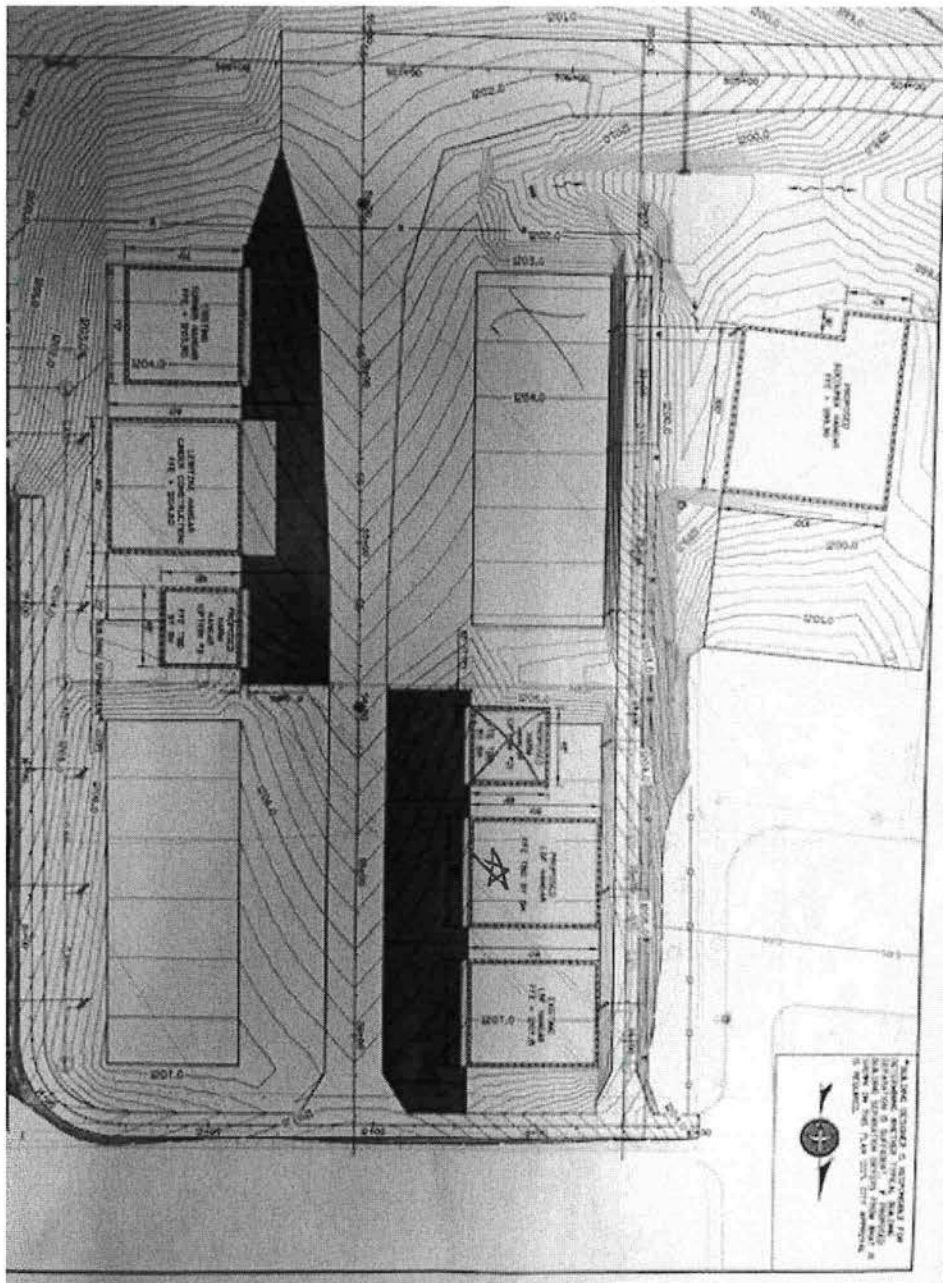


Exhibit A

AIRPORT COMMITTEE

Date and Time: Thursday, November 13, 2019 @ 6:00 pm., at the Wausau Downtown Airport

Members Present: Peckham (C), Rasmussen, Lawrence, Doug Diny, Dennis Seitz, and Fred Prehn

Members Excused: Smith

Others Present: John Chmiel, Tara Alfonso, Nathan Miller

Discussion and Possible Action Regarding Construction Request of a 48' X 48' Hangar in the East Hangar Development Area by Dave Harm – Chmiel

Chmiel stated Dave Harm is a pilot who flies out of Wausau and is requesting to build a privately owned hangar in the East Hangar Development Area, which would be just south of the current Learn Build Fly Hangar by Airport Park. He indicated Mr. Harm understands the stipulations that all the previous lease holders have, which includes that the hangar has to match the color and the general structure look. Harm is set to prepare the apron between his building and the existing taxiway for pavement, which will be installed when his hangar is complete.

Prehn stated it was his understanding that Learn Build Fly was planning to build a hangar next door. Chmiel indicated he spoke with Dave Conrad, of Learn Build Fly, who was disappointed where Dave Harm wants to build; however, they have no current plans or funds to build an additional hangar right away, so he is okay with it. He added Conrad was not opposed to building a hangar directly across from Learn Build Fly. He noted Harm would not be building until the spring, so if Conrad came up with funding for another hangar before then and wanted to be adjacent, the committee could consider approving it in such a way as to allow the location of hangars to shift to accommodate both of them. Chmiel felt that Harm would not have a problem with it, he just wanted to be near Learn Build Fly. Consensus was to approve the hangar request and another meeting could be held to amend the location in the event that Learn Build Fly would be ready for another hangar in the spring.

Motion by Prehn, second by Seitz to approve a 48' X 48' hangar in the location requested. Motion carried 6-0.

AIRPORT COMMITTEE

Date and Time: Wednesday, January 8, 2020 @ 6:00 pm., at the Wausau Downtown Airport

Members Present: Peckham (C), Rasmussen, Lawrence, Smith, Dennis Seitz, Fred Prehn

Members Excused: Doug Diny

Others Present: John Chmiel, Nathan Miller, Karl Kemper

Discussion and Possible Action Regarding Construction Request of a 60' X 75' Hangar in the East Hangar Development Area by Learn Build Fly - Conrad/Chmiel

Chmiel explained at the last meeting there was a question of whether Learn Build Fly had interest in building another hangar. He indicated he received a phone call the next day from them confirming they did want to build another one. They would like to build the hangar 20 feet away from their current hangar. They do not have the funding for it for 2020, but they strongly believe they will have the funding in 2021. He felt the right thing to do was to give them Right of First Refusal in order to build a 60' X 75' hangar on that property.

Motion by Prehn, second by Rasmussen to give Learn Build Fly the Right of First Refusal on the parcel immediately to the south of their present hangar. Motion carried 6-0.

Discussion and Possible Action Regarding Construction Request of a 48' X 48' Hangar change of location in the East Hangar Development Area by Dave Harm – Chmiel

Chmiel referred to a map, stating Mr. Harm's first choice for hangar location was right next to the Lewitzky hangar and the existing Turner hangar. Chmiel indicated Harm would like to be in line with the Lewitzky hangar. He explained the East Hangar Development Area was planned with quadrants in mind and those quadrants were there to specify the amount of square footage of hangar that could be built in that area. The current location that is shown for the Harm hangar on the east side is Option #1 and extends slightly outside of the quadrant.

Chmiel stated discussion took place with the Attorney's Office, Karl Kemper, and Bill Hebert of the Building/Zoning/Inspections Department regarding this issue. It was determined whether that hangar can be there or not is based upon the design of the hangar because the separation between buildings is determined by the building code. If the builder and designer design the hangar in such a way that it can be 20 feet away from a hangar, then Option #1 is where Harm wants to be located. If the design of the hangar does not meet the code for 20 foot separation, then they need to look at Option #2 which he felt is located in the wrong area on the map. *Discussion followed regarding the two options and other possible locations and their impact.*

Motion by Rasmussen, second by Seitz to approve the request for Option #1 contingent upon meeting the zoning and setback requirements stipulated by Inspections; if it does not comply and a second location is necessary, it will be the first available parcel straight across the taxiway. *(Chmiel indicated he would mark the location on the map with an X.)* Motion carried 6-0.

Discussion and Possible Action Regarding Construction Request of a 100' X 100' Hangar in the East Hangar Development Area by Kocourek – Chmiel

Chmiel stated they already approved a hangar for Kocourek, just not in the current location that is proposed. He reviewed there is another jet coming to the Wausau Airport. Originally when that jet was ordered, it was to replace a jet we already fly for that customer; however, the economy is good and a lot of people are flying, so he wants that jet to be in addition to the jet already located here. The problem is the corporate hangar space the city has cannot accommodate with the number of tenants that we have now. A new hangar needs to be built, but Wausau Flying Service and the owner of the aircraft doesn't want to be in the hangar business. He indicated Keith Kocourek was interested in having his own hangar and agreed to build it. It will be on southeast corner of the apron and the door will face west and will be

the biggest privately owned hangar at the Wausau Airport. Chmiel noted the dimensions need to be adjusted include the corner dimension of 16' X 32'.

Motion by Rasmussen, second by Prehn to approve the Kocourek hangar in the new location with the modified dimensions. Motion carried 6-0.

**JT. RESOLUTION OF AIRPORT COMMITTEE
AND FINANCE COMMITTEE**

Authorizing the execution of Airport Ground Lease – Dave Harm

Committee Action: Airport Approved
Finance

Fiscal Impact: Annual lease and tax revenues

File Number:

Date Introduced:

RESOLUTION

WHEREAS, your Airport Committee, at their January 14, 2020 meeting, approved construction of a 48' x 48' hangar in the Wausau Downtown Airport hangar development area by Dave Harm; and

WHEREAS, your Finance Committee, at their January 28, 2020, meeting, approved entering into a ground lease with Dave Harm, a copy of which lease is attached and incorporated herein by reference, and in general, provides for a twenty (20) year lease with the opportunity for renewal, a lease payment of 12¢ per square foot adjusted annually, and a payment to the City of real estate taxes as a building on lease land.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wausau that the proper City officials are hereby authorized and directed to execute the original of the attached standard ground lease between the City of Wausau and Dave Harm, allowing for construction of the aforementioned hangar.

Approved:

Robert B. Mielke, Mayor

AIRPORT GROUND LEASE

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the City of Wausau, a Wisconsin municipal corporation, hereinafter referred to as "CITY," and Dave Harm, _____, hereinafter referred to as "TENANT;"

WITNESSETH:

WHEREAS, CITY owns and operates an airport within the corporate limits of the City of Wausau known as the Wausau Downtown Airport, hereinafter referred to as "Airport;" and

WHEREAS, TENANT wishes to lease a parcel of land on Airport described in "Exhibit A," hereinafter referred to as "parcel," and TENANT wishes to construct an airplane hangar for the storage of aircraft and their appurtenances and for TENANT's use on that parcel.

NOW, THEREFORE, for and in consideration of the rents, covenants, and agreements herein contained, CITY and TENANT agree as follows:

1. Premises. CITY hereby leases to TENANT the parcel depicted on "Exhibit A," attached hereto.

TENANT shall construct within one (1) year of the date first above written, improvements in accordance with the plans and specs on said parcel described in "Exhibit A," attached hereto. All improvements, now and any in the future, must meet all applicable state and local building codes, and shall be approved by CITY. TENANT shall use the improvements and premises for aeronautical purposes in accordance with the provisions of paragraph 34.

Within sixty (60) days after the completion of the building, TENANT shall complete preparation of appropriate excavation and installation of base course in preparation for asphalt pavement extending from the building to the taxiway and Eighty feet (80') wide. TENANT shall pay for 100 percent of the preparation and base course, and CITY shall pay for the asphalt and the cost of laying the asphalt down. All site preparations for the road shall be done pursuant to CITY specifications and shall be approved by CITY prior to CITY paving the area.

2. Lease Fees. TENANT shall pay to CITY for the lease of the parcel twelve cents (12¢) per square foot (48' x 48'/60') per year, which payment shall be paid to the City Treasurer on an annual basis no later than the 5th day of January in the year for which the payment is due. The lease payment for 2020 shall be prorated and shall reflect the months from the date of occupancy to the end of the year. (Taxes shall reflect the improvements as of the legal date of assessment value [currently January 1]). This lease amount shall be adjusted annually to reflect the change in the Consumer Price Index from September 30 the previous year.

3. Term of Agreement. The initial term of this Agreement shall be for a period of twenty (20) years commencing on the date above first written. This lease shall be automatically renewed, without notice from either party, on identical terms for a like successive term, unless

either party shall, at least forty-five (45) days before the expiration of the lease, notify the other in writing of the termination of the lease.

4. Utilities and Taxes. TENANT agrees to pay all utilities, taxes, and phone bills, including but not limited to bills for electricity, gas, sewer, and water. TENANT agrees to install or cause to be installed on the leased premises meters for all utilities to be used on the leased premises and to pay any and all costs and expenses incurred as a result of the installation and use of such utilities.

5. Improvements. Except as provided in paragraph 1, TENANT shall not make any structural alterations, additions or improvements to the building or leased premises without the consent of CITY, which consent will not unreasonably be withheld, in those cases where TENANT provides it with plans and specifications for the same evidencing alterations, additions, and improvements of substantially the same appearance, standards, and quality as the construction specified in paragraph 1 and there is sufficient, in the opinion of CITY, land for the improvements. TENANT shall have the right to make, without CITY's consent, such nonstructural alterations, additions, and improvements to the building and leased premises that TENANT desires in order to conduct its operations on the leased premises.

6. Compliance with Laws. TENANT shall at all times comply with the airport rules and regulations, federal, state, and municipal laws, ordinances, codes, and other regulatory measures, now in existence or as may be hereafter modified and amended, applicable to the specific type of operation contemplated by it. TENANT shall procure and maintain during the term of this agreement all licenses, permits, and other similar authorizations required for the conduct of its aircraft operations.

7. Liens. TENANT agrees to promptly pay all sums legally due and payable on account of any labor performed on or materials furnished for the leased premises. TENANT shall not permit any liens to be placed against the leased premises on account of labor performed or material furnished; and in the event such a lien is placed against the leased premises, TENANT agrees to save CITY harmless from any and all such asserted claims and liens and to remove or cause to be removed any and all such asserted claims or liens as soon as reasonably possible.

8. Development. CITY reserves the right to further develop or improve the landing and public areas, including ramp space of the airport, as it sees fit regardless of the desires or views of TENANT and without interference or hindrance; provided, however, that no such development or improvement shall for a period in excess of sixty (60) days limit or violate TENANT's rights under this lease agreement or otherwise violate any federal, state, or local law, ordinance, rule, or regulation.

9. Subordination. This lease agreement shall be subordinate to the provisions of any existing or future agreement between CITY and the United States Government relative to the operation or maintenance of the airport, the execution of which has been, or may be, required as a condition precedent to the expenditure of federal funds for the development of the airport. Should the effect of any such agreement with the United States Government be to take the leased premises or building or any portion of either or substantially destroy the commercial value of either, then, within thirty (30) days after the occurrence of such event, CITY shall terminate this lease

agreement and purchase the building from TENANT, which purchase price shall be the fair market value of the building as of the day of the "taking."

10. Air and Noise. CITY hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the leased premises, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of the airport, and the right to pursue all operations of the airport; provided, however, that no such rights or the exercise thereof shall limit or violate TENANT's rights under this lease agreement.

11. Restrictions on Obstructions. CITY reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent TENANT from erecting, or permitting to be erected, any building or other structure on the airport, which, in the opinion of CITY, would limit the usefulness of the airport, or constitute a hazard to aircraft.

12. Assignment. Subject to paragraph 25, TENANT shall not assign its rights and obligations under this lease agreement nor assign any part of the leased premises to a third party, but may sublet the leased premises to a third party without CITY approval, provided that the leased premises is used solely for aircraft storage.

13. Automobile Parking Lot. TENANT and TENANT's guests may use the parking lot area along with other members of the public and individuals utilizing the Airport.

14. Signs. TENANT agrees that no signs, lighting or advertising matter shall be erected without the written consent of CITY.

15. Insurance. TENANT shall maintain on the parcel and its improvements fire and extended coverage insurance in an amount at least equal to the assessed valuation of the improvements as well as liability coverage with a minimum combined single limit in an amount not less than \$1 million dollars of liability per occurrence for Bodily Injury and Property Damage. The liability coverage amount shall be raised by TENANT when and as necessary, during the term of the lease, to correspond to requirements of CITY.

16. Hold Harmless. TENANT agrees to indemnify and hold harmless CITY, its employees, agents, officers and officials, whether hired, appointed or elected, free and harmless from and against any and all judgments, damages, losses, costs, claims, expenses, suits, demands, deaths, actions and/or causes of action to which they may be exposed by reason of injury or injuries to anyone or of the death or deaths of anyone, or by reason of any personal injury and/or real property damage, or by reason of any other liability imposed by law or by anything or by anyone else upon the above-referenced entities and/or individuals as the result of and/or due to TENANT's operations on the demised premises or on any premises owned by CITY and adjacent thereto and/or as a result of and/or due to the presence of TENANT on the demised premises or on premises owned by CITY and adjacent thereto, and/or due to the existence of this Agreement; specifically included within this indemnification and hold harmless section are attorneys' fees and other costs of defense which may be sustained by and/or occasioned to the above-referenced entities and/or individuals.

17. Release. TENANT agrees to release CITY, its employees, agents, officers and officials, whether hired, appointed or elected, from and against any and all judgments, damages, losses, costs, claims, expenses, suits, demands, deaths, actions and/or causes of action of any kind or of any nature which may be sustained or to which they may be exposed by reason of injury or injuries to anyone or of the death or deaths of anyone, or by reason of any personal injury and/or real property damage, or by reason of any other liability imposed by law or by anything or by anyone else upon the above-referenced entities and/or individuals as the result of and/or due to TENANT's operations on the demised premises or on any premises owned by CITY and adjacent thereto and/or as a result of and/or due to the presence of TENANT on the demised premises or on premises owned by CITY and adjacent thereto, and/or due to the existence of this Agreement; specifically included within this release section are attorneys' fees and other costs of defense which may be sustained by and/or occasioned to the above-referenced entities and/or individuals.

18. Rights in Common with Others. TENANT shall have the right, in common with others authorized so to do, to use all common areas of Airport, including runways, taxiways, aprons, roadways, parking lots, and any other common areas.

19. Obligations of CITY.

A. CITY shall plow snow promptly and as necessary for the operation of an airport, on the runways, hangar areas, tie-down areas, and any areas in the parking lot necessary for use by TENANT. CITY shall plow to within six (6) feet of TENANT's hangar door.

B. CITY shall maintain the surface of the runways, hangar areas, tie-down areas, and necessary areas of the parking lot in a condition which is reasonable, taking into consideration the required use.

20. City's Right of Entry. CITY shall have the right to, upon 24 hours' notice, inspect the premises during normal business hours in the company of TENANT or an agent or employee of TENANT for the purpose of examining the same and to ascertain if they are in good and safe repair and in compliance with the requirements contained herein, including compliance with all federal, state and local codes. In the event of an emergency, CITY shall have the right to enter the premises without advance notice to TENANT.

21. Acceptance of Premises. TENANT, by the execution of this Agreement, represents that it has inspected Airport and the leased parcel, and that it accepts the condition of the same as they now exist, and fully assumes all risks incident to the use thereof.

22. Outside Storage and Removal of Trash. TENANT will not store in a location susceptible to view by the public, any equipment, materials, supplies, or damaged or partially dismantled aircraft or other vehicles on the leased or adjacent premises. Any screens or other devices used to keep equipment, materials or supplies from view shall be subject to prior consent by CITY.

TENANT further agrees to remove or cause to be removed, at TENANT's expense, any trash, garbage or debris generated by TENANT's use of the leased premises and agrees not to

deposit any trash, garbage or debris on any part of Airport or the leased premises except temporarily in connection with collection or removal of the same.

23. Repair of Premises. TENANT shall, at its expense, keep, maintain, and repair the leased premises, the building and all improvements in good condition subject to normal wear and tear. Included in TENANT's obligations is cutting grass, weeds and other vegetation. In the event TENANT fails to comply with this subparagraph, CITY shall give notice to TENANT specifying the nature of TENANT's failure. In the event that TENANT fails within thirty (30) days of CITY's notice to cure such failure, CITY shall have the option either to cure such failure and to assess the costs thereof against TENANT, or to terminate this Agreement upon five (5) days' notice to TENANT. TENANT hereby agrees to pay any and all such assessments, including all costs, disbursements and reasonable attorneys' fees incurred by CITY in curing such failure within thirty (30) days after CITY's demand therefor.

24. Security. The parties hereby agree that TENANT assumes all responsibility and obligation for providing security on the leased premises.

TENANT shall not permit any security code provided by CITY to TENANT to be provided to any other person unless such person has been identified to and approved in advance by LANDLORD, or is an authorized employee of TENANT. Any guest or passenger of TENANT shall be personally escorted by the TENANT, or an authorized employee of TENANT, into and out of security gates of the Airport security fence.

25. Title and Right of First Refusal to Leasehold Improvements. TENANT shall retain the title to all buildings and other improvements constructed by TENANT on the leased premises. During the term of the lease, ownership may be transferable by TENANT upon CITY's written approval, which shall not be unreasonably withheld.

26. Termination of Lease. Upon termination at the end of the 20-year term or of any successive terms, TENANT shall have the following options:

A. At TENANT's option, all buildings and improvements may be removed from the leased premises at no cost to the CITY. TENANT shall restore leased premises to orderly condition.

B. At TENANT's option, all buildings and improvements located on the leased premises may be sold. CITY shall have the first right to purchase such buildings and improvements. In the event TENANT receives a bona fide written offer to purchase said buildings and improvements from a third party, CITY shall have the first right to purchase said buildings and improvements at the same price and on the same terms and conditions as are contained in such an offer to purchase. In the event CITY elects not to exercise its option of first right of refusal to purchase the buildings and improvements, the party purchasing said buildings and improvements will agree to lease the premises from the CITY, upon terms acceptable to CITY.

27. Cancellation by CITY. CITY may cancel this Agreement by giving TENANT sixty (60) days' advance, written notice upon or after any one of the following events of default:

A. The failure of TENANT to pay rent in the amount and at the times and in the manner herein provided, and where such failure shall continue for thirty (30) days or more after written notice thereof shall have been given to TENANT.

B. The abandonment by TENANT of the leased premises, except in connection with its surrender to an approved assignee, sublessee, mortgagee, or other party succeeding to TENANT's interests or portion thereof hereunder.

C. The default by TENANT in the performance of any covenant or agreement required herein to be performed by TENANT, and TENANT's failure to commence and diligently continue to correct such default after written notice of the default given by CITY, as above provided.

Failure of CITY to declare this Agreement terminated upon the default of TENANT for any of the reasons set out above shall not operate to bar or destroy the right of CITY to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement. Further, the acceptance of rental by CITY for any period after a default of any of the terms, covenants or conditions by TENANT shall not be deemed a waiver of any right on the part of CITY to cancel this agreement.

Upon cancellation by CITY, CITY shall have the right to enter upon premises and building and, at its option, commence an action to take title.

28. Force Majeure. If, by reason of force majeure, either party is unable, in whole or in part, to carry out the agreements of such party on its part herein contained, such party shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockout or threats of orders of any kind of the government of the United States or of Wisconsin, or any of their departments, agencies or officials, or any civil (except, in the case of CITY only, CITY) or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government (except, in the case of CITY only, CITY) and people; civil disturbances; explosions; damage, loss, breakage or accident to the buildings, leased premises or Airport; partial or entire failure of utilities; or any other cause or event not reasonably within the control of such party, it being agreed that the settlement strikes, lockouts and other industrial disturbances shall be entirely within the discretion of such party and such party shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties in such matters when such course is, in the judgment of such party, unfavorable to such party.

29. Nothing in this lease shall serve to transfer title to the land in any manner, from CITY to TENANT.

30. TENANT shall pay to CITY real estate taxes on the building and other improvements, as "Building on Leased Land."

31. Motor Vehicle Parking. TENANT may park motor vehicles inside the hangar or outside the hangar in an area that will not impede access to other hangars or block aircraft from

safely using the taxi-lane to taxi. Long term parking of vehicles or trailers outside the hangar is not permitted.

32. Visitors. TENANT shall be responsible for and cause TENANT's passengers, guests or employees to act in a manner that will not disturb other users of the Airport and to pay all reasonable charges for maintenance and repair of damages to the leased premises or Airport caused by TENANT or TENANT's passengers, guests or employees.

33. Notices. All notices required herein shall be in writing and shall be deemed given when mailed by registered or certified mail, postage prepaid, properly addressed to the party to be notified as follows:

If to TENANT: _____

If to CITY: City Clerk
 407 Grant Street
 Wausau, WI 54403

34. Hangar Use.

A. The hangar shall be used for aeronautical purposes which include:

- (i.) Storage of active aircraft;
- (ii.) Final assembly of aircraft under construction;
- (iii.) Non-commercial construction of amateur-built or kit-built aircraft;
- (iv.) Maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
- (v.) Storage of aircraft handling equipment such as towbars, glider tow equipment, workbenches, and tools and materials used in the servicing, maintenance, repair or outfitting of aircraft.

B. Provided the hangar is used primarily for aeronautical purposes, non-aeronautical items may be stored in hangars provided the items do not interfere with the aeronautical use of the hangar. No items may be store outside of the hangar. Non-aeronautical items will be deemed to interfere with the aeronautical use of the hangar where the item or items:

- (i.) Impede the movement of aircraft in and out of the hangar or impede access to aircraft or other aeronautical contents of the hangar;
- (ii.) Displace the aeronautical contents of the hangar. A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft;
- (iii.) Impede access to aircraft or other aeronautical contents of the hangar;
- (iv.) Are used for the conduct of a non-aeronautical business;
- (v.) Are stored in violation of airport rules and regulations, building codes or local

ordinances.

C. Hangars shall not be used as a residence.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day
of _____, 20__.

CITY:

CITY OF WAUSAU

BY _____
Robert B. Mielke, Mayor

BY _____
Mary Goede, Deputy Clerk

TENANT:

BY _____

STATE OF WISCONSIN)
) ss.
COUNTY OF MARATHON)

Personally came before me this _____ day of _____, 20____, the above-named Robert B. Mielke, Mayor, and Mary Goede, Deputy Clerk of the City of Wausau, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Wisconsin
My commission: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF MARATHON)

Personally came before me this _____ day of _____, 20____, the above-named _____
_____,
to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Notary Public, Wisconsin
My commission: _____

This instrument was drafted by Nathan K. Miller,
Assistant City Attorney for the City of Wausau.

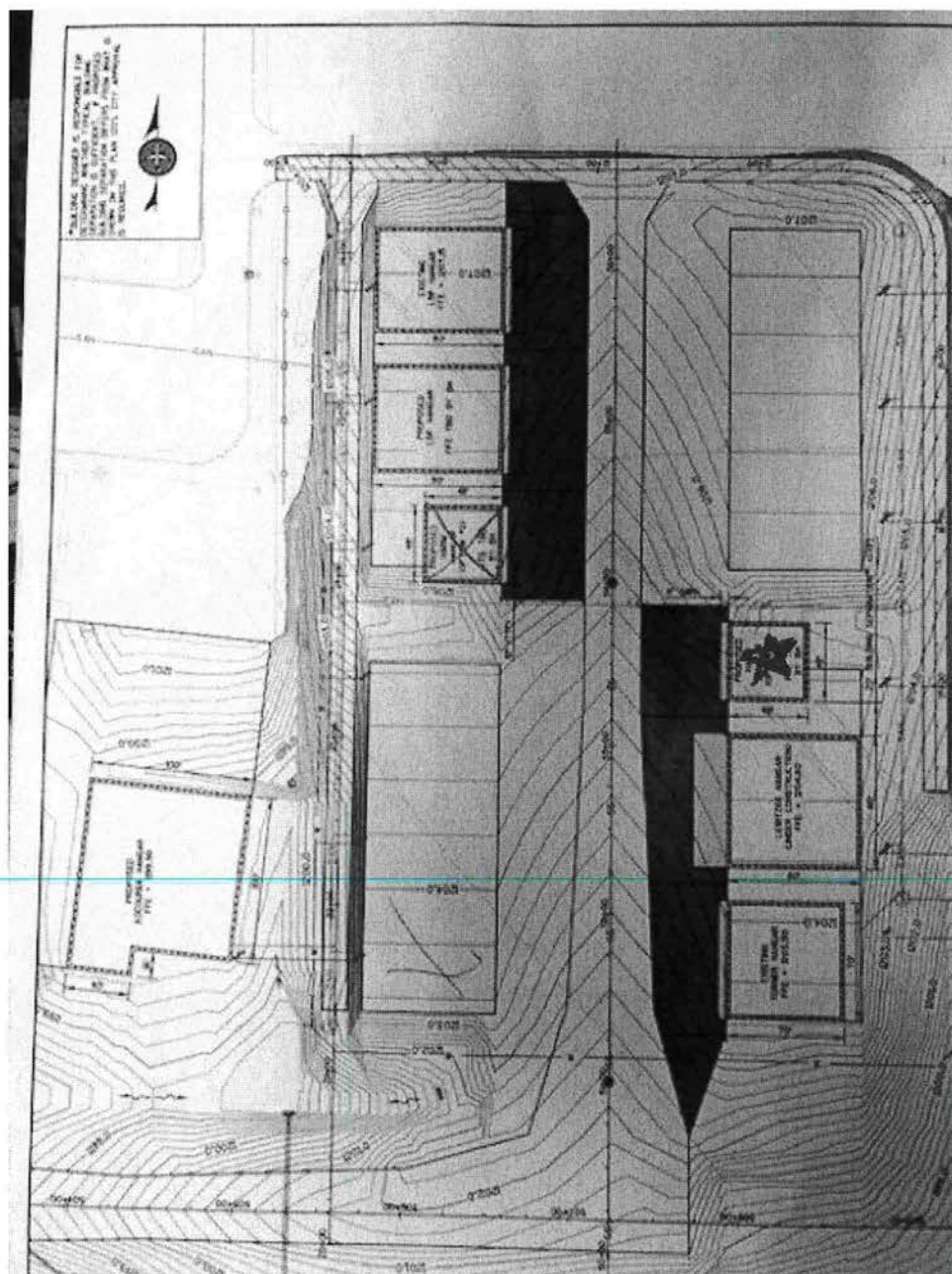


Exhibit A

**JT. RESOLUTION OF AIRPORT COMMITTEE
AND FINANCE COMMITTEE**

Authorizing the execution of Airport Ground Lease – Kocourek Holdings, LLC

Committee Action: Airport Approved

Finance

Fiscal Impact: Annual lease and tax revenues

File Number:

Date Introduced:

RESOLUTION

WHEREAS, your Airport Committee, at their January 14, 2020 meeting, approved construction of a 100' x 100' hangar in the Wausau Downtown Airport hangar development area by Kocourek Holdings, LLC, a Wisconsin limited liability company; and

WHEREAS, your Finance Committee, at their January 28, 2020, meeting, approved entering into a ground lease with Kocourek Holdings, LLC, a copy of which lease is attached and incorporated herein by reference, and in general, provides for a twenty (20) year lease with the opportunity for renewal, a lease payment of 12¢ per square foot adjusted annually, and a payment to the City of real estate taxes as a building on lease land.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wausau that the proper City officials are hereby authorized and directed to execute the original of the attached standard ground lease between the City of Wausau and Kocourek Holdings, LLC, allowing for construction of the aforementioned hangar.

Approved:

Robert B. Mielke, Mayor

AIRPORT GROUND LEASE

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the City of Wausau, a Wisconsin municipal corporation, hereinafter referred to as "CITY," and Kocourek Holdings, LLC, a Wisconsin limited liability company, 2727 North 20th Avenue, Wausau, Wisconsin, 54401, hereinafter referred to as "TENANT;"

WITNESSETH:

WHEREAS, CITY owns and operates an airport within the corporate limits of the City of Wausau known as the Wausau Downtown Airport, hereinafter referred to as "Airport;" and

WHEREAS, TENANT wishes to lease a parcel of land on Airport described in "Exhibit A," hereinafter referred to as "parcel," and TENANT wishes to construct an airplane hangar for the storage of aircraft and their appurtenances and for TENANT's use on that parcel.

NOW, THEREFORE, for and in consideration of the rents, covenants, and agreements herein contained, CITY and TENANT agree as follows:

1. Premises. CITY hereby leases to TENANT the parcel depicted on "Exhibit A," attached hereto.

TENANT shall construct within one (1) year of the date first above written, improvements in accordance with the plans and specs on said parcel described in "Exhibit A," attached hereto. All improvements, now and any in the future, must meet all applicable state and local building codes, and shall be approved by CITY. TENANT shall use the improvements and premises for aeronautical purposes in accordance with the provisions of paragraph 34.

Within sixty (60) days after the completion of the building, TENANT shall complete preparation of appropriate excavation and installation of base course in preparation for asphalt pavement extending from the building to the taxiway and Eighty feet (126') wide. TENANT shall pay for 100 percent of the preparation and base course, and CITY shall pay for the asphalt and the cost of laying the asphalt down. All site preparations for the road shall be done pursuant to CITY specifications and shall be approved by CITY prior to CITY paving the area.

2. Lease Fees. TENANT shall pay to CITY for the lease of the parcel twelve cents (12¢) per square foot (116' x 132') per year, which payment shall be paid to the City Treasurer on an annual basis no later than the 5th day of January in the year for which the payment is due. The lease payment for 2020 shall be prorated and shall reflect the months from the date of occupancy to the end of the year. (Taxes shall reflect the improvements as of the legal date of assessment value [currently January 1]). This lease amount shall be adjusted annually to reflect the change in the Consumer Price Index from September 30 the previous year.

3. Term of Agreement. The initial term of this Agreement shall be for a period of twenty (20) years commencing on the date above first written. This lease shall be automatically renewed, without notice from either party, on identical terms for a like successive term, unless

either party shall, at least forty-five (45) days before the expiration of the lease, notify the other in writing of the termination of the lease.

4. Utilities and Taxes. TENANT agrees to pay all utilities, taxes, and phone bills, including but not limited to bills for electricity, gas, sewer, and water. TENANT agrees to install or cause to be installed on the leased premises meters for all utilities to be used on the leased premises and to pay any and all costs and expenses incurred as a result of the installation and use of such utilities.

5. Improvements. Except as provided in paragraph 1, TENANT shall not make any structural alterations, additions or improvements to the building or leased premises without the consent of CITY, which consent will not unreasonably be withheld, in those cases where TENANT provides it with plans and specifications for the same evidencing alterations, additions, and improvements of substantially the same appearance, standards, and quality as the construction specified in paragraph 1 and there is sufficient, in the opinion of CITY, land for the improvements. TENANT shall have the right to make, without CITY's consent, such nonstructural alterations, additions, and improvements to the building and leased premises that TENANT desires in order to conduct its operations on the leased premises.

6. Compliance with Laws. TENANT shall at all times comply with the airport rules and regulations, federal, state, and municipal laws, ordinances, codes, and other regulatory measures, now in existence or as may be hereafter modified and amended, applicable to the specific type of operation contemplated by it. TENANT shall procure and maintain during the term of this agreement all licenses, permits, and other similar authorizations required for the conduct of its aircraft operations.

7. Liens. TENANT agrees to promptly pay all sums legally due and payable on account of any labor performed on or materials furnished for the leased premises. TENANT shall not permit any liens to be placed against the leased premises on account of labor performed or material furnished; and in the event such a lien is placed against the leased premises, TENANT agrees to save CITY harmless from any and all such asserted claims and liens and to remove or cause to be removed any and all such asserted claims or liens as soon as reasonably possible.

8. Development. CITY reserves the right to further develop or improve the landing and public areas, including ramp space of the airport, as it sees fit regardless of the desires or views of TENANT and without interference or hindrance; provided, however, that no such development or improvement shall for a period in excess of sixty (60) days limit or violate TENANT's rights under this lease agreement or otherwise violate any federal, state, or local law, ordinance, rule, or regulation.

9. Subordination. This lease agreement shall be subordinate to the provisions of any existing or future agreement between CITY and the United States Government relative to the operation or maintenance of the airport, the execution of which has been, or may be, required as a condition precedent to the expenditure of federal funds for the development of the airport. Should the effect of any such agreement with the United States Government be to take the leased premises or building or any portion of either or substantially destroy the commercial value of either, then, within thirty (30) days after the occurrence of such event, CITY shall terminate this lease

agreement and purchase the building from TENANT, which purchase price shall be the fair market value of the building as of the day of the "taking."

10. Air and Noise. CITY hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the leased premises, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of the airport, and the right to pursue all operations of the airport; provided, however, that no such rights or the exercise thereof shall limit or violate TENANT's rights under this lease agreement.

11. Restrictions on Obstructions. CITY reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent TENANT from erecting, or permitting to be erected, any building or other structure on the airport, which, in the opinion of CITY, would limit the usefulness of the airport, or constitute a hazard to aircraft.

12. Assignment. Subject to paragraph 25, TENANT shall not assign its rights and obligations under this lease agreement nor assign any part of the leased premises to a third party, but may sublet the leased premises to a third party without CITY approval, provided that the leased premises is used solely for aircraft storage.

13. Automobile Parking Lot. TENANT and TENANT's guests may use the parking lot area along with other members of the public and individuals utilizing the Airport.

14. Signs. TENANT agrees that no signs, lighting or advertising matter shall be erected without the written consent of CITY.

15. Insurance. TENANT shall maintain on the parcel and its improvements fire and extended coverage insurance in an amount at least equal to the assessed valuation of the improvements as well as liability coverage with a minimum combined single limit in an amount not less than \$1 million dollars of liability per occurrence for Bodily Injury and Property Damage. The liability coverage amount shall be raised by TENANT when and as necessary, during the term of the lease, to correspond to requirements of CITY.

16. Hold Harmless. TENANT agrees to indemnify and hold harmless CITY, its employees, agents, officers and officials, whether hired, appointed or elected, free and harmless from and against any and all judgments, damages, losses, costs, claims, expenses, suits, demands, deaths, actions and/or causes of action to which they may be exposed by reason of injury or injuries to anyone or of the death or deaths of anyone, or by reason of any personal injury and/or real property damage, or by reason of any other liability imposed by law or by anything or by anyone else upon the above-referenced entities and/or individuals as the result of and/or due to TENANT's operations on the demised premises or on any premises owned by CITY and adjacent thereto and/or as a result of and/or due to the presence of TENANT on the demised premises or on premises owned by CITY and adjacent thereto, and/or due to the existence of this Agreement; specifically included within this indemnification and hold harmless section are attorneys' fees and other costs of defense which may be sustained by and/or occasioned to the above-referenced entities and/or individuals.

17. Release. TENANT agrees to release CITY, its employees, agents, officers and officials, whether hired, appointed or elected, from and against any and all judgments, damages, losses, costs, claims, expenses, suits, demands, deaths, actions and/or causes of action of any kind or of any nature which may be sustained or to which they may be exposed by reason of injury or injuries to anyone or of the death or deaths of anyone, or by reason of any personal injury and/or real property damage, or by reason of any other liability imposed by law or by anything or by anyone else upon the above-referenced entities and/or individuals as the result of and/or due to TENANT's operations on the demised premises or on any premises owned by CITY and adjacent thereto and/or as a result of and/or due to the presence of TENANT on the demised premises or on premises owned by CITY and adjacent thereto, and/or due to the existence of this Agreement; specifically included within this release section are attorneys' fees and other costs of defense which may be sustained by and/or occasioned to the above-referenced entities and/or individuals.

18. Rights in Common with Others. TENANT shall have the right, in common with others authorized so to do, to use all common areas of Airport, including runways, taxiways, aprons, roadways, parking lots, and any other common areas.

19. Obligations of CITY.

A. CITY shall plow snow promptly and as necessary for the operation of an airport, on the runways, hangar areas, tie-down areas, and any areas in the parking lot necessary for use by TENANT. CITY shall plow to within six (6) feet of TENANT's hangar door.

B. CITY shall maintain the surface of the runways, hangar areas, tie-down areas, and necessary areas of the parking lot in a condition which is reasonable, taking into consideration the required use.

20. City's Right of Entry. CITY shall have the right to, upon 24 hours' notice, inspect the premises during normal business hours in the company of TENANT or an agent or employee of TENANT for the purpose of examining the same and to ascertain if they are in good and safe repair and in compliance with the requirements contained herein, including compliance with all federal, state and local codes. In the event of an emergency, CITY shall have the right to enter the premises without advance notice to TENANT.

21. Acceptance of Premises. TENANT, by the execution of this Agreement, represents that it has inspected Airport and the leased parcel, and that it accepts the condition of the same as they now exist, and fully assumes all risks incident to the use thereof.

22. Outside Storage and Removal of Trash. TENANT will not store in a location susceptible to view by the public, any equipment, materials, supplies, or damaged or partially dismantled aircraft or other vehicles on the leased or adjacent premises. Any screens or other devices used to keep equipment, materials or supplies from view shall be subject to prior consent by CITY.

TENANT further agrees to remove or cause to be removed, at TENANT's expense, any trash, garbage or debris generated by TENANT's use of the leased premises and agrees not to

deposit any trash, garbage or debris on any part of Airport or the leased premises except temporarily in connection with collection or removal of the same.

23. Repair of Premises. TENANT shall, at its expense, keep, maintain, and repair the leased premises, the building and all improvements in good condition subject to normal wear and tear. Included in TENANT's obligations is cutting grass, weeds and other vegetation. In the event TENANT fails to comply with this subparagraph, CITY shall give notice to TENANT specifying the nature of TENANT's failure. In the event that TENANT fails within thirty (30) days of CITY's notice to cure such failure, CITY shall have the option either to cure such failure and to assess the costs thereof against TENANT, or to terminate this Agreement upon five (5) days' notice to TENANT. TENANT hereby agrees to pay any and all such assessments, including all costs, disbursements and reasonable attorneys' fees incurred by CITY in curing such failure within thirty (30) days after CITY's demand therefor.

24. Security. The parties hereby agree that TENANT assumes all responsibility and obligation for providing security on the leased premises.

TENANT shall not permit any security code provided by CITY to TENANT to be provided to any other person unless such person has been identified to and approved in advance by LANDLORD, or is an authorized employee of TENANT. Any guest or passenger of TENANT shall be personally escorted by the TENANT, or an authorized employee of TENANT, into and out of security gates of the Airport security fence.

25. Title and Right of First Refusal to Leasehold Improvements. TENANT shall retain the title to all buildings and other improvements constructed by TENANT on the leased premises. During the term of the lease, ownership may be transferable by TENANT upon CITY's written approval, which shall not be unreasonably withheld.

26. Termination of Lease. Upon termination at the end of the 20-year term or of any successive terms, TENANT shall have the following options:

A. At TENANT's option, all buildings and improvements may be removed from the leased premises at no cost to the CITY. TENANT shall restore leased premises to orderly condition.

B. At TENANT's option, all buildings and improvements located on the leased premises may be sold. CITY shall have the first right to purchase such buildings and improvements. In the event TENANT receives a bona fide written offer to purchase said buildings and improvements from a third party, CITY shall have the first right to purchase said buildings and improvements at the same price and on the same terms and conditions as are contained in such an offer to purchase. In the event CITY elects not to exercise its option of first right of refusal to purchase the buildings and improvements, the party purchasing said buildings and improvements will agree to lease the premises from the CITY, upon terms acceptable to CITY.

27. Cancellation by CITY. CITY may cancel this Agreement by giving TENANT sixty (60) days' advance, written notice upon or after any one of the following events of default:

A. The failure of TENANT to pay rent in the amount and at the times and in the manner herein provided, and where such failure shall continue for thirty (30) days or more after written notice thereof shall have been given to TENANT.

B. The abandonment by TENANT of the leased premises, except in connection with its surrender to an approved assignee, sublessee, mortgagee, or other party succeeding to TENANT's interests or portion thereof hereunder.

C. The default by TENANT in the performance of any covenant or agreement required herein to be performed by TENANT, and TENANT's failure to commence and diligently continue to correct such default after written notice of the default given by CITY, as above provided.

Failure of CITY to declare this Agreement terminated upon the default of TENANT for any of the reasons set out above shall not operate to bar or destroy the right of CITY to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement. Further, the acceptance of rental by CITY for any period after a default of any of the terms, covenants or conditions by TENANT shall not be deemed a waiver of any right on the part of CITY to cancel this agreement.

Upon cancellation by CITY, CITY shall have the right to enter upon premises and building and, at its option, commence an action to take title.

28. Force Majeure. If, by reason of force majeure, either party is unable, in whole or in part, to carry out the agreements of such party on its part herein contained, such party shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockout or threats of orders of any kind of the government of the United States or of Wisconsin, or any of their departments, agencies or officials, or any civil (except, in the case of CITY only, CITY) or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government (except, in the case of CITY only, CITY) and people; civil disturbances; explosions; damage, loss, breakage or accident to the buildings, leased premises or Airport; partial or entire failure of utilities; or any other cause or event not reasonably within the control of such party, it being agreed that the settlement strikes, lockouts and other industrial disturbances shall be entirely within the discretion of such party and such party shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties in such matters when such course is, in the judgment of such party, unfavorable to such party.

29. Nothing in this lease shall serve to transfer title to the land in any manner, from CITY to TENANT.

30. TENANT shall pay to CITY real estate taxes on the building and other improvements, as "Building on Leased Land."

31. Motor Vehicle Parking. TENANT may park motor vehicles inside the hangar or outside the hangar in an area that will not impede access to other hangars or block aircraft from

safely using the taxi-lane to taxi. Long term parking of vehicles or trailers outside the hangar is not permitted.

32. Visitors. TENANT shall be responsible for and cause TENANT's passengers, guests or employees to act in a manner that will not disturb other users of the Airport and to pay all reasonable charges for maintenance and repair of damages to the leased premises or Airport caused by TENANT or TENANT's passengers, guests or employees.

33. Notices. All notices required herein shall be in writing and shall be deemed given when mailed by registered or certified mail, postage prepaid, properly addressed to the party to be notified as follows:

If to TENANT: _____

If to CITY: City Clerk
 407 Grant Street
 Wausau, WI 54403

34. Hangar Use.

A. The hangar shall be used for aeronautical purposes which include:

- (i.) Storage of active aircraft;
- (ii.) Final assembly of aircraft under construction;
- (iii.) Non-commercial construction of amateur-built or kit-built aircraft;
- (iv.) Maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
- (v.) Storage of aircraft handling equipment such as towbars, glider tow equipment, workbenches, and tools and materials used in the servicing, maintenance, repair or outfitting of aircraft.

B. Provided the hangar is used primarily for aeronautical purposes, non-aeronautical items may be stored in hangars provided the items do not interfere with the aeronautical use of the hangar. No items may be store outside of the hangar. Non-aeronautical items will be deemed to interfere with the aeronautical use of the hangar where the item or items:

- (i.) Impede the movement of aircraft in and out of the hangar or impede access to aircraft or other aeronautical contents of the hangar;
- (ii.) Displace the aeronautical contents of the hangar. A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft;
- (iii.) Impede access to aircraft or other aeronautical contents of the hangar;
- (iv.) Are used for the conduct of a non-aeronautical business;
- (v.) Are stored in violation of airport rules and regulations, building codes or local

ordinances.

C. Hangars shall not be used as a residence.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day
of _____, 20__.

CITY:

CITY OF WAUSAU

BY _____
Robert B. Mielke, Mayor

BY _____
Mary Goede, Deputy Clerk

TENANT:

BY _____

STATE OF WISCONSIN)

) SS.

COUNTY OF MARATHON)

Personally came before me this _____ day of _____, 20____, the above-named Robert B. Mielke, Mayor, and Mary Goede, Deputy Clerk of the City of Wausau, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Wisconsin

My commission: _____

STATE OF WISCONSIN)

) SS.

COUNTY OF MARATHON)

Personally came before me this _____ day of _____, 20____, the above-named _____

to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Notary Public, Wisconsin

My commission: _____

This instrument was drafted by Nathan K. Miller,
Assistant City Attorney for the City of Wausau.

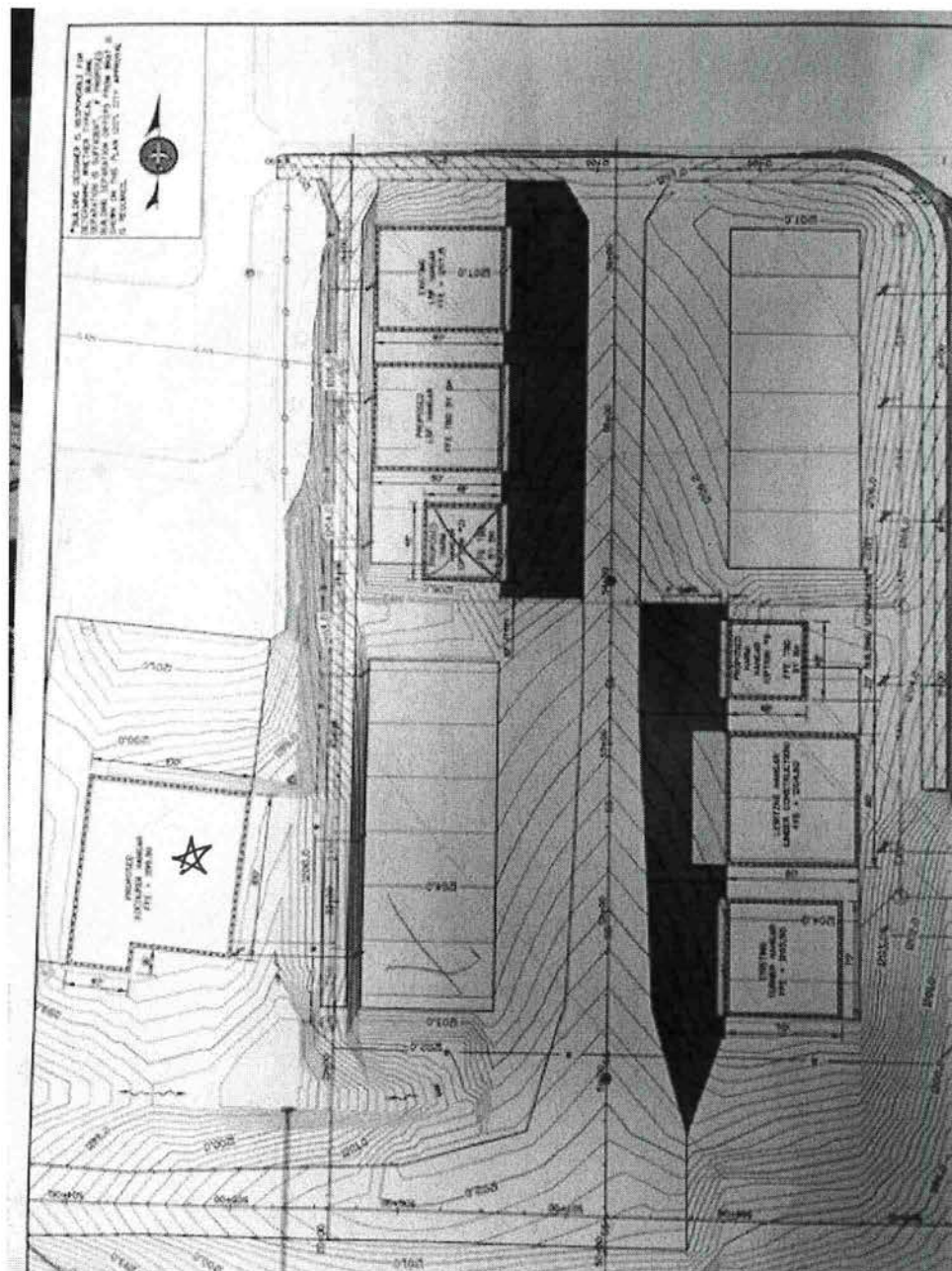


Exhibit A



CITY OF WAUSAU
SOLE SOURCE PURCHASE JUSTIFICATION
REQUIRED FORM PURCHASE OF GOODS OR SERVICES EXCEEDING \$5,000

Purchase of goods or services for no more than \$25,000 may be made without competition when it is agreed *in advance* between the Department Head and the Finance Director. Sole source purchasing allows for the procurement of goods and services from a single source without soliciting quotes or bids from multiple sources. Sole source procurement cannot be used to avoid competition, rather it is used in certain situations when it can be documented that a vendor or contractor holds a unique set of skills or expertise, that the services are highly specialized or unique in character or when alternate products are unavailable or unsuitable from any other source. Sole source purchasing should be avoided unless it is clearly necessary and justifiable. The justification must withstand public and legislative scrutiny. The Department Head is responsible for providing written documentation justifying the valid reason to purchase from one source or that only one source is available. Sole source purchasing criteria include: urgency due to public safety, serious injury financial or other, other unusual and compelling reasons, goods or service is available from only one source and no other good or service will satisfy the City's requirements, legal services provided by an attorney, lack of acceptable bids or quotes, an alternate product or manufacturer would not be compatible with current products resulting in additional operating or maintenance costs, standardization of a specific product or manufacturer will result in a more efficient or economical operation or aesthetics, or compatibility is an overriding consideration, the purchase is from another governmental body, continuity is achieved in a phased project, the supplier or service demonstrates a unique capability not found elsewhere, the purchase is more economical to the city on the basis of time and money of proposal development.

1. Sole source purchase under \$5,000 shall be evaluated and determined by the Department Head.
2. Sole source purchase of \$5,000 to \$25,000 a formal written justification shall be forwarded to the Finance Director who will concur with the sole source or assist in locating additional competitive sources.
3. Sole source purchase exceeding \$25,000 must be approved by the Finance Committee.

☐

Ongoing Sole Source – 365 days

☒

One Time Sole Source Request

1. Provide a detailed explanation of the good or service to be purchased and vendor.

This sole source justification is being prepared to support entering into a contract with Ayres Associates for professional services for the rehabilitation of the Bridge Street Bridge over the Wisconsin River.

2. Provide a brief description of the intended application for the service or goods to be purchased.

Ayres Associates will be providing professional structural engineering services to include plans and specifications for restoration of the Bridge Street Bridge. The plans will include removing and replacing the expansion joints and repair of delaminated concrete. Ayres will also provide alternative bid packages for an epoxy over and a concrete overlay.

3. State why other products or services that compete in the market will not or do not meet your needs or comply with your specifications.

Ayres Associates provided the engineering department professional services to evaluate the bridge and provided cost estimates for repairs. These cost estimates were used to apply for Marathon County bridge aid. The Engineering Department applied for the county bridge aid based upon the work and estimate prepared by Ayres Associates. The City received \$400,000 in bridge aid. In accordance with the contract signed with Ayres Associates, these services to evaluate the structure and prepare the cost estimates cost the City \$2,800. The contract also outlined a fee of \$19,600 to complete the plans and specifications for bidding if bridge aid was received. During the structure evaluation and cost estimating phase, additional bridge rehabilitation needs were discovered. It was determined an epoxy overlay or a concrete overlay to preserve the concrete deck of the bridge is an appropriate measure. The preparation of plans and specifications for the epoxy or concrete overlay was not included in the original design fee. Ayres is requesting an additional \$4,900 for the additional design services. This additional fee would bring the total contact to \$27,300. In accordance with the procurement policy a sole source is needed for professional services over \$25,000.

4. Describe your efforts to identify other vendors to furnish the product or services.

Other engineering firms around the state are capable of performing the work. However, given the fact that Ayres has done all the preliminary cost estimating and have become very familiar with the structure, engineering feels it is logical to continue with Ayres for the final design. Engineering also feels the additional fees requested are warranted given the increase in project scope.

5. How did you determine that the sole source vendor's price was reasonable?

The construction estimate for the project is approximately \$800 – 900K. Typical engineering costs range from 8-12% of the construction estimate. The current design fee is approximately 3% of the construction estimate.

6. Which of the following best describes this sole source procurement? Select all that apply.

- ☐ Product or vendor is uniquely qualified with capability not found elsewhere.
- ☐ Urgency due to public safety, serious financial injury or other. (explain)
- ☐ The procurement is of such a specialized nature that by virtue of experience, expertise, proximity or ownership of intellectual property
- ☐ Lack of acceptable quotes or bids.
- ☐ Product compatibility or the standardization of a product.
- ☒ Continuation of a phased project.
- ☐ Proposal development is uneconomical.

Department: Public Works-Engineering

Preparer: Allen M. Wesolowski, P.E., City Engineer

Vendor Name: Ayres Associates

Expected amount of purchase or contract: \$27,300

Department Head Signature:

Date:

Finance Director Signature:

Date:

September 4, 2019

Allen Wesolowski, PE
City of Wausau Engineering Department
407 Grant Street
Wausau, WI 54403
Via email: Allen.Wesolowski@ci.wausau.wi.us

Re: Bridge Street over Wisconsin River (B-37-232)
Bridge Rehabilitation Cost Estimate and Repair Plans

Dear Mr. Wesolowski:

Thank you for the opportunity to submit this proposal for professional services for rehabilitation of the Bridge Street Bridge over the Wisconsin River in the City of Wausau. This letter presents our proposed scope of services, time schedule, fee, and contract terms and conditions.

Project Description

We understand from email correspondence and discussions with city engineering staff that the City of Wausau (Owner) is requesting structural engineering services by a Wisconsin Licensed Professional Engineer to assist in developing cost estimates and plans for rehabilitation of the Bridge Street Bridge. In general, the bridge rehabilitation work is anticipated to include replacement of three (3) expansion joints and repair of delaminated portions of the bridge deck.

Scope of Services

Phase 1 – Site Visit and Cost Estimate

1. Review available as-built plans, inspection reports, and other available information about the bridge.
2. Conduct a site visit by a structural engineer to observe the condition of readily accessible structural features of the bridge and assist the city in developing the bridge rehabilitation scope of work.
3. Prepare a preliminary cost estimate using findings from the site visit and city-provided deck repair quantity for city's County Bridge Aid application.

Phase 2 – Final Design and Construction Documents (If Authorized)

4. Design replacement of the expansion joints including replacement of abutment backwalls and approximately 4-foot wide width of deck, sidewalk, and parapet at the joints. Design and construction documents to allow two traffic lanes on the bridge during staged construction.
5. Provide structure plan sheets to the city for incorporation into roadway and traffic control plans being prepared by the city.
6. Provide bridge-related technical specifications referencing WisDOT Standard Specification.
7. Develop a schedule of bridge quantities and an opinion of probable construction costs.
8. Assist the city in answering bridge-related construction questions by phone during bidding and construction.
9. Review expansion joint shop drawings.

Responsibilities of Owner and Others

Owner shall provide all criteria and requirements and furnish available pertinent information as required and as follows:

1. Survey data, if required.
2. Approach roadway and traffic control design and plans.
3. Utility coordination, if necessary.
4. Assembling of the bid documents and receiving bids.
5. Permit applications.
6. Construction contract administration.

It is hereby agreed that Consultant is not responsible for work completed by others on the project or any other services not specifically indicated in this authorization.

Additional Services

Services not specifically included in the scope of services above are considered additional services. The cost for these additional services is not included in our proposed fee. If additional services are requested by the Owner, our fee will be adjusted by a mutually agreed upon amount.

Time Schedule

Ayres Associates will complete the work described in the Phase 1 Scope of Services within three (3) weeks after authorization to proceed and Phase 2 Scope of Services within four (4) months after authorization to proceed and receipt of the information to be provided as listed in the Responsibility of Owner and Others.

Allen Wesolowski, PE
City of Wausau
September 4, 2019
Page 3 of 3

If the Owner has requested significant modifications or changes in the general scope, extent or character of the project, the time of performance on CONSULTANT's services shall be adjusted equitably.

Fee

We will perform the above services for a lump sum amount of \$2,800.00 for Phase 1 and \$19,600.00 for Phase 2. (If Authorized).

Contract Terms and Conditions

Attached are "Contract Terms and Conditions" which will apply to the services and which are incorporated into this proposal by reference.

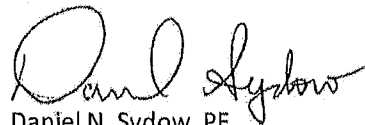
Acceptance

If this proposal and terms and conditions are acceptable to you, a signature on the enclosed copy of this letter will serve as our authorization to proceed.

This proposal is valid until October 1, 2019 unless extended by us in writing.

Proposed by Consultant:

Ayres Associates Inc



Daniel N. Sydow, PE
Supervisor – Structural Engineering

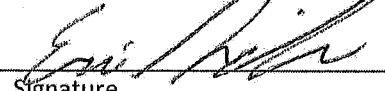


David H. Pantzloff, PE
Manager – WI Structural Engineering

Accepted by Owner:

City of Wausau

Owner's Name



Signature

Eric Lindman

Name

Director of Public Works & Utilities

Title

9-13-19

Date

Attachments: Contract Terms and Conditions

**AYRES ASSOCIATES
CONTRACT TERMS AND CONDITIONS**

- 1. Performance of Services:** Consultant shall perform the services outlined in its proposal to Owner in consideration of the stated fee and payment terms.
- 2. Billing and Payment:** Invoices for Consultant's services shall be submitted to Owner on a monthly basis. Invoices shall be due and payable within 30 days from date of invoice. If any invoice is not paid within 30 days, Consultant may, without waiving any claim or right against Owner, and without liability whatsoever to Owner, suspend or terminate the performance of services. Accounts unpaid 30 days after the invoice date will be subject to a monthly service charge of 1.5% on the unpaid balance, or the maximum rate of interest permitted by law, if less. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to Consultant's compensation. No deductions or offsets shall be made from Consultant's compensation or expenses on account of any setoffs or back charges.
- 3. Access to Site:** Owner shall furnish right-of-entry on the project site for Consultant and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. Consultant will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.
- 4. Location of Utilities:** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information or instructions which have been furnished to Consultant by others.
- 5. Hazardous Materials:** In the event that unanticipated potentially hazardous materials are encountered during the course of the project, Owner agrees to negotiate a revision to the scope of services, time schedule, fee, and contract terms and conditions. If a mutually satisfactory agreement cannot be reached between both parties, the contract shall be terminated and Owner agrees to pay Consultant for all services rendered, including reasonable termination expenses.
- 6. Insurance:** Consultant shall maintain Workers' Compensation, General Liability, and Automobile Liability Insurance during its services for Owner. Consultant shall furnish a Certificate of Insurance to Owner upon written request. Owner agrees that Consultant shall not be liable or responsible to Owner for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance.
- 7. Limitation of Professional Liability:** Owner agrees to limit Consultant's professional liability to an amount of \$50,000 or Consultant's fee, whichever is greater. In the event that Owner does not wish to limit Consultant's professional liability to this sum, Consultant agrees to raise the limitation of liability to a sum not to exceed \$1,000,000 for increased consideration of ten percent (10%) of the total fee or \$500, whichever is greater, upon receiving Owner's written request prior to the start of Consultant's services.
- 8. Opinions of Probable Costs:** Consultant's opinions of probable project costs are made on the basis of Consultant's experience, qualifications and judgment; but Consultant cannot and does not guarantee that actual project costs will not vary from opinions of probable cost.
- 9. Construction Review:** Consultant does not accept responsibility for the design of a construction project unless the Consultant's contract includes review of the contractor's shop drawings, product data, and other documents, and includes site visits during construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents.
- 10. Construction Observation:** On request, Consultant shall provide personnel to observe construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents. This construction observation shall not make Consultant a guarantor of the contractor's work. The contractor shall continue to be responsible for the accuracy and adequacy of all construction performed. In accordance with generally accepted practice, the contractor will be solely responsible for the methods of construction, direction of personnel, control of machinery, and falsework, scaffolding, and other temporary construction aids. In addition, all matters related to safety in, on, or about the construction site shall be under the direction and control of the contractor and Consultant shall have no responsibility in that regard. Consultant shall not be required to verify any part of the work performed unless measurements, readings, and observations of that part of the construction are made by Consultant's personnel.
- 11. Standard of Performance:** The standard of care for all professional services performed or furnished by Consultant under this contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant does not make any warranty or guarantee, expressed or implied, nor is this contract subject to the provisions of any uniform commercial code. Similarly, Consultant will not accept those terms and conditions offered by Owner in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

12. Ownership of Documents: All documents produced by Consultant under this contract are instruments of Consultant's professional service and shall remain the property of Consultant and may not be used by Owner for any other purpose without the prior written consent of Consultant.

13. Electronic Files: Owner and Consultant agree that any electronic files furnished by either party shall conform to the specifications agreed to at the time this contract is executed. Electronic files furnished by either party shall be subject to an acceptance period of 60 days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy documents. In the event of a conflict between the hard-copy documents prepared by Consultant and electronic files, the hard-copy documents shall govern.

14. Financial and Legal Services: Consultant's services and expertise do not include the following services, which shall be provided by Owner if required: (1) Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services; (2) Legal services with regard to issues pertaining to the Project as Owner requires, Contractor(s) raises, or Consultant reasonably requests; and (3) Such auditing services as Owner requires to ascertain how or for what purpose any Contractor has used the money paid.

15. Termination of Services: This contract may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, Owner shall pay Consultant for all services rendered to the date of termination, all reimbursable expenses incurred prior to termination, and reasonable termination expenses incurred as the result of termination.

16. Controlling Law: This contract is to be governed by the law of the place of business of Consultant at the address in its proposal to Owner.

17. Assignment of Rights: Neither Owner nor Consultant shall assign, sublet or transfer any rights under or interest in this contract (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this contract. Nothing contained in this paragraph shall prevent Consultant from employing such independent subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

18. Third Party Benefits: This contract does not create any benefits for any third party.

19. Dispute Resolution: Owner and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under the following dispute resolution provision. If direct negotiations fail, Owner and Consultant agree that they shall submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this contract or the breach thereof to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association effective on the date of this contract prior to exercising other rights under law.

20. Exclusion of Special, Indirect, Consequential, and Liquidated Damages: Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

21. Betterment: If, due to Consultant's negligence, a required item or component of the project is omitted from the construction documents, Consultant's liability shall be limited to the reasonable cost of correction of the construction, less what Owner's cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that Consultant will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

22. Amendments: This contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument.



Ingenuity, Integrity,
and Intelligence.

December 16, 2019

Allen Wesolowski, PE
City of Wausau Engineering Department
407 Grant Street
Wausau, WI 54403
Via email: Allen.Wesolowski@ci.wausau.wi.us

Re: Contract Amendment No. 1
Bridge Street over Wisconsin River (B-37-232)
Bridge Rehabilitation Cost Estimate and Repair Plans

Dear Mr. Wesolowski:

The purpose of this amendment is for reduction of work associated with construction phase services and additional work associated with incorporating a deck overlay on the existing bridge.

The City of Wausau plans to construct the bridge rehabilitation in 2020. The city budget for the project includes incorporating a polymer overlay on the bridge in addition to other previously planned deck repairs and expansion joint replacements. The city would like a polymer overlay or concrete overlay incorporated into the project as project alternates. Overlaying the bridge deck requires that the bridge be load rated. Details for overlaying the bridge and load rating the bridge were not included in the original design scope. In addition, the city requested that construction related services included in the original design contract be removed.

This letter presents the changes to our proposed scope of services and cost of proposed services in the professional engineering design services agreement dated September 4, 2019.

Scope of Services Changes – Phase 2

The following scope of services changes are amended as follows:

8. Services related to construction questions during bidding and construction are deleted.
9. Services related to expansion joint shop drawing review are deleted.
10. Incorporate as bid alternates a polymer or concrete overlay of the existing bridge into the plans and specifications.
11. Load rate the existing bridge for both of the proposed overlay alternates.
12. Include painting of the girders at expansion joints into the plans and specifications.

Fee

Cost of proposed scope of services changes included in this amendment: \$4,900.00

Cost of total proposed Phase 2 services including Amendment No. 1: \$24,500.00

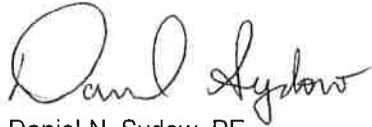


Acceptance

If this amendment is acceptable to you, a signature on the enclosed copy of this letter will serve as our authorization to proceed.

Proposed by Consultant:

Ayres Associates Inc



Daniel N. Sydow, PE
Supervisor – Structural Engineering



David H. Pantzlaff, PE
Manager – WI Structural Engineering

Accepted by Owner:

City of Wausau

Owner's Name

Signature

Name

Title

Date

Good Morning,

I am requesting that the City increase the hourly rate of election poll workers.

2020 will be a huge election year. We rely on the poll workers to manage the election sites and process the ballots efficiently and accurately. We have seen in the news over the years the political fallout that happens when election problems occur.

I have been an advocate of paying our election workers fairly because the long hours and busy elections are exhausting and concentration during the transaction processing is extremely important.

I reached out to some of our neighboring communities and you can see that we are the lowest paying community. We are in direct competition for pollworkers since we are now able to recruit workers that reside anywhere in the county. Our multiple polling sites results in less supervision so we rely on our pollworkers to work more independently. Our size also makes the work more challenging.

I would recommend we implement the same rates as Rib Mountain. I would be happy to meet to discuss further. Thank you!

		Chief	Deputy Chief	Others
Kronenwetter		10.51		9.91
Rib Mountain		12.19		10.30
Weston	Daily Rate \$160		Daily Rate \$140	
Rothschild		11.00		10.00
City of Wausau		9.75		8.75

DRAFT

**CITY OF WAUSAU HUMAN RESOURCES COMMITTEE
MINUTES OF OPEN SESSION**

DATE/TIME: January 13, 2020 at 4:30 p.m.
LOCATION: City Hall (407 Grant Street) – Council Chambers
MEMBERS PRESENT: Becky McElhaney (C), Gary Gisselman, Dawn Herbst, Michael Martens, Tom Neal
MEMBERS ABSENT:
Also Present: Mayor Mielke, T. Vanderboom

Discussion and Possible Action Amending Salary Rates for the Temporary Positions of Election Chief Inspector and Election Inspector.

Vanderboom said this request was brought forward by the Finance Director to increase the Election Inspector hourly rate from \$8.75 to \$9.75, and Chief Election Inspector hourly rate from \$10.30 to \$12.19. Human Resources conducted a survey of similar sized municipalities and found this request to be in line with other municipalities surveyed and at the forefront in pay. The estimated fiscal impact to the budget would be \$12,000 for 2020.

Motion by Gisselman to approve amending the salary rates for the temporary positions of Election Chief Inspector and Election Inspector. Second by Herbst. All ayes. Motion passed 5-0.

Human Resource Committee Packet

January 13, 2020

Agenda Item
Discussion and Possible Action Amending Salary Rates for the Temporary Positions of Election Chief Inspector and Election Inspector
Background
In 2019, the Common Council took action approving the Part-Time, Temporary, and Seasonal Wage rates. A copy of this document is included in the packet for your convenience. Among the adjustments, each position's pay was adjusted using according to the guidelines established in the 2019 Wage Study. No other comparable data was solicited as that time. In December, Finance Director MaryAnne Groat submitted a request to increase the rate of pay for our election employees, specifically the positions of Election Chief Inspector and Election Inspector (included in the packet). Finance Director Groat has requested that the hourly pay rate for Election Worker be raised from \$8.75 to \$10.30 and the hourly pay rate for Chief Election Worker be raised from \$9.75 to \$12.19 for Human Resources staff also contacted comparable cities to solicit their current pay rates for these positions (included in the packet).
Fiscal Impact
Estimated \$12,000 for 2020 due to significant elections
Staff Recommendation
The requested changes would place Wausau at the second highest pay for Election Workers from the surveyed municipalities, behind Steven's Point. Increasing the Chief Election Worker pay as requested would place Wausau behind four other municipalities in pay for that position. If Wausau wished to be at the forefront in pay for these positions, the requested increase would do so.
Staff contact: MaryAnne Groat (715-261-6645) and Toni Vanderboom (715-261-6634)

CITY OF WAUSAU PART-TIME, TEMPORARY, AND SEASONAL WAGE RATES

Effective April 21, 2019

Adopted by Council May 14, 2019

City of Wausau Handbook Section 4.01 – Employment Categories

Part-time: A part-time employee is an employee whose schedule consists of less than twenty hours per week. A part-time employee is not eligible for employment benefits from the City unless specifically identified in the City's policies or as required by law.

Seasonal or Temporary: Employees in the service of the City on a temporary basis for fewer than fifty-two (52) consecutive weeks per year. Such employees are compensated at an hourly rate and are not eligible for employee benefits. Such employees are also not eligible for Wisconsin Retirement benefits nor are contributions made by the City unless the employee exceeds the required hours in a 12 month rolling period which at that time the employee will be eligible for WRS benefits including any contributions required to be made by the City. Hours worked will be reviewed periodically to verify the accuracy of an employee's employment classification. If reclassification is necessary, the employee will be notified.

PART-TIME RATES

DEPARTMENT	POSITION	HOURLY WAGE
DPW – PARKING 9012 (221)	Parking Cashier – 1 st Year	\$8.99
	Parking Cashier – 2 nd Year	\$9.52
	Parking Cashier – 3 rd Year	\$10.05
	Parking Cashier – 4 th Year	\$10.58
PUBLIC ACCESS 9005 (730)	Production Assistant – 1 st Year	\$12.85
	Production Assistant – 2 nd Year	\$13.60
	Production Assistant – 3 rd Year	\$14.36
	Production Assistant – 4 th Year	\$15.12
PUBLIC ACCESS 9007 (740)	Production Specialist – 1 st Year	\$14.91
	Production Specialist – 2 nd Year	\$15.78
	Production Specialist – 3 rd Year	\$16.66
	Production Specialist – 4 th Year	\$17.53

TEMPORARY RATES

DEPARTMENT	POSITION	HOURLY WAGE
ASSESSMENT 9010	Board of Review Member	\$85.00/day
FINANCE 9002	Election Chief Inspector	\$9.75
	Election Inspector	\$8.75
POLICE 9008	Substitute Crossing Guard	\$12.80
PUBLIC ACCESS 9005	Production Assistant	\$12.85

CITY OF WAUSAU PART-TIME, TEMPORARY, AND SEASONAL WAGE RATES

Effective April 21, 2019

Adopted by Council May 14, 2019

SEASONAL RATES

DEPARTMENT	POSITION	HOURLY WAGE
POLICE 9100 (710)	Community Services Officer – 1 st Year	\$11.63
	Community Services Officer – 2 nd Year	\$12.21
	Community Services Officer – 3 rd Year	\$12.82
	Community Services Officer – 4 th Year	\$13.45
POLICE 9120 (710)	Community Communications Specialist – 1 st Year	\$11.63
	Community Communications Specialist – 2 nd Year	\$12.21
	Community Communications Specialist – 3 rd Year	\$12.82
	Community Communications Specialist – 4 th Year	\$13.45
POLICE 9008 (700)	Crossing Guard – 1 st Year	\$12.80
	Crossing Guard – 2 nd Year	\$13.56
	Crossing Guard – 3 rd Year	\$14.30
	Crossing Guard – 4 th Year	\$15.06
POLICE 9045 (700)	Crossing Guard Manager	\$16.08
CITY WIDE 9060 (200)	Seasonal Aide – 1 st Year	\$12.80
	Seasonal Aide – 2 nd Year	\$13.56
	Seasonal Aide – 3 rd Year	\$14.30
	Seasonal Aide – 4 th Year	\$15.06
CITY WIDE 9070 (210)	Seasonal Technician – 1st Year	\$14.07
	Seasonal Technician – 2nd Year	\$15.48
	Seasonal Technician – 3rd Year	\$16.88
	Seasonal Technician – 4th Year	\$18.29
DPW – GIS 9018 (240)	GIS Intern – 1 st Year	\$15.47
	GIS Intern – 2 nd Year	\$17.00
	GIS Intern – 3 rd Year	\$18.55
	GIS Intern – 4 th Year	\$20.10

Part-time and Seasonal rates are adjusted annually as employee salary mid-points are adjusted.
Temporary rates remain fixed until adjustments are proposed and adopted by Council.

CITY OF WAUSAU - HUMAN RESOURCES DEPARTMENT SURVEY - ELECTION WORKER PAY RATES

CITY OR VILLAGE	ELECTION WORKER	CHIEF ELECTION WORKER
Appleton	\$8.58/\$8.86/\$9.19/\$9.47	\$9.47/\$10.04/\$10.67/\$11.34
Beloit		
Brookfield		
De Pere		
Eau Claire	\$8.25	\$10.00
Fitchburg	\$8.00	\$10.00
Fond du Lac	\$104.50 per day	\$150 per day
Franklin	\$8.00	\$8.25
Green Bay	\$140 per day	\$175 per day
Greenfield	\$10.00	
Janesville		
Kenosha		
Kronenwetter	\$9.91	\$10.51
La Crosse		
Marshfield	\$9.50	\$18.19
Muskego	\$9.00	\$10.00
Neenah	\$120 per day non-federal elections \$150 per day federal elections	\$180 per day non-federal \$215 per day federal
New Berlin	\$8.25	\$10.00
Oak Creek	\$7.25 to \$10.00	\$7.25 to \$10.00
Oshkosh	\$8.25/\$9.75/\$11.50	
Rib Mountain	\$10.30	\$12.19
Rothschild	\$10.00	\$11.00
Sheboygan		
Stevens Point	\$11.00	\$13.50
Sun Prairie	\$10.75	\$13.75
Waukesha	\$8.50	\$9.50
Wausau	\$8.75	\$9.75
Wauwatosa		
West Allis	\$110 per day	\$140 per day
West Bend	\$9.00	\$10.50
Weston	\$140 per day	\$160 per day
Wisconsin Rapids	\$9.25	\$15.00
	4 municipalities at a lower rate	2 municipalities at a lower rate

NOTES:

4-step system, anticipate 2% increase of rates for 2020

\$125 per day for co-chair; \$8/hr for greeters and registration people

\$7.25/hr. for training time

\$9.00 for Back-up Chief Inspector

rate determined on duties as election worker

\$11.75/hr for certified election workers

includes 2% incentive for West Allis citizens
2020 rates are listed

CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403

JOINT RESOLUTION OF THE FINANCE AND HUMAN RESOURCES COMMITTEES

Resolution to Amend the Salary Rates for the Temporary Positions of Election Chief Inspector and Election Inspector.

Committee Action:

Fiscal Impact: \$12,000

File Number:

Date Introduced: January 28, 2020

FISCAL IMPACT SUMMARY

COSTS	Budget Neutral	Yes ☐	No ☒	
	Included in Budget:	Yes ☐	No ☐	Budget Source:
	One-time Costs:	Yes ☐	No ☐	Amount:
	Recurring Costs:	Yes ☐	No ☐	Amount:
SOURCE	Fee Financed:	Yes ☐	No ☐	Amount:
	Grant Financed:	Yes ☐	No ☐	Amount:
	Debt Financed:	Yes ☐	No ☐	Amount Annual Retirement
	TID Financed:	Yes ☐	No ☐	Amount:
	TID Source: Increment Revenue ☐ Debt ☐ Funds on Hand ☐ Interfund Loan ☐			

RESOLUTION

WHEREAS, in 2019 the Common Council approved updating the Part-Time, Temporary, and Seasonal Wage Rates; and

WHEREAS, those positions were adjusted according to the guidelines established in the 2019 Wage Study, but no comparable data for these positions was collected as part of the Wage Study; and

WHEREAS, your Human Resources Department recommends amending the hourly rate for Election Worker be raised from \$8.75 to \$10.30 and the hourly pay rate for Chief Election Worker be raised from \$9.75 to \$12.19;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wausau that the hourly pay rate for Election Worker be amended to \$10.30 and Chief Election Worker be amended to \$12.19.

Approved:

Robert B. Mielke, Mayor

Department of Public Works



Eric Lindman, P.E.
Director of Public Works and Utilities

TO: Finance Committee

FROM: Eric Lindman, P.E.
Director of Public Works & Utilities

DATE: January 21, 2020

SUBJECT: Oblique Imagery – Sole Source with Pictometry

The approved CIP for 2020 included funding for providing oblique imagery with the new photography to be taken in the spring of 2020. The oblique imagery is unique and Pictometry Corp. holds certain patent information and other vendors that can do this unique work cannot integrate into some of our existing systems.

Staff recommends entering into an agreement with Pictometry Imagery Corp. to provide Oblique Imagery.



CITY OF WAUSAU
SOLE SOURCE PURCHASE JUSTIFICATION
REQUIRED FORM PURCHASE OF GOODS OR SERVICES EXCEEDING \$5,000

Purchase of goods or services for no more than \$25,000 may be made without competition when it is agreed *in advance* between the Department Head and the Finance Director. Sole source purchasing allows for the procurement of goods and services from a single source without soliciting quotes or bids from multiple sources. Sole source procurement cannot be used to avoid competition, rather it is used in certain situations when it can be documented that a vendor or contractor holds a unique set of skills or expertise, that the services are highly specialized or unique in character or when alternate products are unavailable or unsuitable from any other source. Sole source purchasing should be avoided unless it is clearly necessary and justifiable. The justification must withstand public and legislative scrutiny. The Department Head is responsible for providing written documentation justifying the valid reason to purchase from one source or that only one source is available. Sole source purchasing criteria include: urgency due to public safety, serious injury financial or other, other unusual and compelling reasons, goods or service is available from only one source and no other good or service will satisfy the City's requirements, legal services provided by an attorney, lack of acceptable bids or quotes, an alternate product or manufacturer would not be compatible with current products resulting in additional operating or maintenance costs, standardization of a specific product or manufacturer will result in a more efficient or economical operation or aesthetics, or compatibility is an overriding consideration, the purchase is from another governmental body, continuity is achieved in a phased project, the supplier or service demonstrates a unique capability not found elsewhere, the purchase is more economical to the city on the basis of time and money of proposal development.

1. Sole source purchase under \$5,000 shall be evaluated and determined by the Department Head.
2. Sole source purchase of \$5,000 to \$25,000 a formal written justification shall be forwarded to the Finance Director who will concur with the sole source or assist in locating additional competitive sources.
3. Sole source purchase exceeding \$25,000 must be approved by the Finance Committee.

☐

Ongoing Sole Source – 365 days

☒

One Time Sole Source Request

1. Provide a detailed explanation of the good or service to be purchased and vendor.

Pictometry provides digital imagery captured by low flying airplanes. The imagery includes both orthogonal and oblique. Oblique imagery is what makes this product unique because it is acquired at an angle. Specs include a 0.75 inch (or better) ground sample distance (GSD) orthogonal digital images and 1 inch (or better) digital oblique images (4 way) available as a mosaic tile and a mosaic SID digital format. The ability to see structures and features from an angle is an invaluable tool.

2. Provide a brief description of the intended application for the service or goods to be purchased.

Pictometry imagery is currently used in all of our GIS applications: ArcGIS Pro, ArcMap, and Geocortex Web View. A Pictometry extension is also used in the mapping product of Central Square (Superion) software for use by Marathon County E911 Dispatch.

Internal users such as city staff are able to utilize useful tools within the imagery to measure area, distance, bearing, elevation and export images in various file formats. Pictometry is used by the following city departments: assessment, attorney, inspections, police, planning, and public works.

Public users are able to download their own separate application for mobile devices in the Google Play Store and Apple Store. Pictometry would also include two end user training sessions.

The image below is an example of a digital oblique image and was acquired by Pictometry on April 16, 2016 for use by the City of Wausau.



3. State why other products or services that compete in the market will not or do not meet your needs or comply with your specifications.

Pictometry was founded in 2000 and was the first company to provide oblique imagery on a large scale. They have acquired technology patents for their services since 2002. Oblique imagery is mostly a unique product. The city did an RFP for this product in 2015 and Pictometry International Corporation was the only company to respond.

4. Describe your efforts to identify other vendors to furnish the product or services.

GIS staff reached out to other vendors and found that Ayres Associates, Sanborn Map Company Inc. and NearMap offer oblique imagery. However, their products were not able to integrate into some of our existing systems; Geocortex and/or Central Square (Superion). These systems require special plug-ins and widgets for them to operate properly and Pictometry meets those requirements.

5. How did you determine that the sole source vendor's price was reasonable?

The city paid \$32,256.00 for oblique imagery in 2016. However, after the 2016 flight the city then annexed several large tracts of land west of the business park. This annexation has increased the size of the city the project area. The project for 2020 also seeks to increase enhancements in resolution for a more useful product. The imagery for this project is owned by the city and has historical value as well.

6. Which of the following best describes this sole source procurement? Select all that apply.

- ☒ Product or vendor is uniquely qualified with capability not found elsewhere.
- ☐ Urgency due to public safety, serious financial injury or other. (explain)
- ☒ The procurement is of such a specialized nature that by virtue of experience, expertise, proximity or ownership of intellectual property

- ☐ Lack of acceptable quotes or bids.
- ☒ Product compatibility or the standardization of a product.
- ☐ Continuation of a phased project.
- ☐ Proposal development is uneconomical.

Department: DPW / GIS

Preparer: Dan Kerntop / GIS Analyst

Vendor Name: Pictometry International Corporation

Expected amount of purchase or contract: \$49,079.00

Department Head Signature:

Date:

Finance Director Signature:

Date:

**AGREEMENT BETWEEN
PICTOMETRY INTERNATIONAL CORP. ("PICTOMETRY") AND
CITY OF WAUSAU, WI ("CUSTOMER")**

1. This order form ("Order Form"), in combination with the contract components listed below:

Section A: Product Descriptions, Prices and Payment Terms

Section B: License Terms:

- Delivered Content Terms and Conditions of Use
- Online Services General Terms and Conditions
- Web Visualization Offering Terms and Conditions
- Software License Agreement

Section C: Non-Standard Terms and Conditions

(all of which, collectively, constitute this "Agreement") set forth the entire understanding between Pictometry and Customer with respect to the subject matter hereof and supersedes all prior representations, agreements and arrangements, whether oral or written, relating to the subject matter hereof. Any modifications to this Agreement must be made in writing and be signed by duly authorized officers of each party. Any purchase order or similar document issued by Customer in connection with this Agreement is issued solely for Customer's internal administrative purposes and the terms and conditions set forth on any such purchase order shall be of no force or effect as between the parties.

2. In the event of any conflict among any contract components comprising this Agreement, order of precedence for resolving such conflict shall be, from highest (i.e., supersedes all others) to lowest (i.e., subordinate to all others): Non-Standard Terms and Conditions; Product Descriptions, Prices and Payment Terms; License Terms in order as listed above under the heading 'Section B: License Terms'; and Order Form.
3. All notices under this Agreement shall be in writing and shall be sent to the following respective addresses:

CUSTOMER NOTICE ADDRESS	PICTOMETRY NOTICE ADDRESS
407 Grant St	25 Methodist Hill Drive
Wausau, WI 54403	Rochester, NY 14623
Attn: Dan Kerntop, GIS Analyst	Attn: General Counsel
Phone: (715) 261-6757	Phone: (585) 486-0093 Fax: (585) 486-0098

Either party may change their respective notice address by giving written notice of such change to the other party at the other party's then-current notice address. Notices shall be given by any of the following methods: personal delivery; reputable express courier providing written receipt; or postage-paid certified or registered United States mail, return receipt requested. Notice shall be deemed given when actually received or when delivery is refused.

4. This Agreement, including all licenses granted pursuant to it, shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not be assignable by either party except that (i) Pictometry shall have the right to assign its right to receive Fees under this Agreement, provided no such assignment shall affect Pictometry's obligations hereunder, and (ii) Pictometry shall have the right to assign all its rights under this Agreement to any person or entity, provided the assignee has assumed all of Pictometry's obligations under this Agreement.
5. IN NO EVENT SHALL EITHER PARTY BE LIABLE, UNDER ANY CAUSE OF ACTION OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING UNDER THEORIES INVOLVING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR BREACH OF WARRANTY), FOR ANY LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY OR OTHERS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. With respect to any claims that Customer may have or assert against Pictometry on any matter relating to this Agreement, the total liability of Pictometry shall, in the aggregate, be limited to the aggregate amount received by Pictometry pursuant to this Agreement.
7. The waiver by either party of any default by the other shall not waive subsequent defaults of the same or different kind.
8. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force and effect.

9. Pictometry shall not be responsible for any failure on its part to perform due to unforeseen circumstances or to causes beyond Pictometry's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, weather, floods, accidents, strikes, failure to obtain export licenses or shortages or delays of transportation, facilities, fuel, energy, supplies, labor or materials. In the event of any such delay, Pictometry may defer performance for a period of time reasonably related to the time and nature of the cause of the delay.
10. In consideration of, and subject to, payment by Customer of the Fees specified in Section A of this Agreement, Pictometry agrees to provide Customer with access to and use of the products specified in Section A of this Agreement, subject to the terms and conditions set forth in this Agreement. Customer hereby agrees to pay the Fees specified in Section A of this Agreement in accordance with the stated payment terms and accepts and agrees to abide by the terms of this Agreement.

This Agreement shall become effective upon execution by duly authorized officers of Customer and Pictometry and receipt by Pictometry of such fully executed document, such date of receipt by Pictometry being the "Effective Date."

PARTIES:

CUSTOMER	PICTOMETRY
CITY OF WAUSAU, WI	PICTOMETRY INTERNATIONAL CORP.
(entity type)	a Delaware corporation
SIGNATURE:	SIGNATURE:
NAME:	NAME:
TITLE:	TITLE:
DATE:	EXECUTION DATE:
	DATE OF RECEIPT (EFFECTIVE DATE):

SECTION A

PRODUCT DESCRIPTIONS, PRICES AND PAYMENT TERMS

Pictometry International Corp.
25 Methodist Hill Drive
Rochester, NY 14623

ORDER #

C13346018

BILL TO
City of Wausau, WI
Dan Kerntop, GIS Analyst
407 Grant St
Wausau, WI 54403
(715) 261-6757
dan.kerntop@ci.wausau.wi.us

SHIP TO
City of Wausau, WI
Dan Kerntop, GIS Analyst
407 Grant St
Wausau, WI 54403
(715) 261-6757
dan.kerntop@ci.wausau.wi.us

CUSTOMER ID	SALES REP
A122427	DLars

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT
65	IMAGERY - Reveal 1000 - R2 per square mile	Product includes: 0.75-inch (or better) GSD orthogonal images and 1-inch (or better) oblique images (4-way), available online via an active CONNECT account (purchased separately). Applicable Terms and Conditions: Online Services General Terms and Conditions	\$795.00	\$636.00 (20%)	\$41,340.00
3	Pictometry Connect - CA - 50	Pictometry Connect - CA - 50 (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. Term commences on date of activation. The quantity represents the number of years in the Connect term. Applicable Terms and Conditions: Online Services General Terms and Conditions; Software License Agreement	\$2,200.00	\$1,500.00 (31.818%)	\$4,500.00
3	Pictometry Connect View - CA	Pictometry Connect View - CA (Custom Access) provides visualization-only access to the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web application or server based integration. Requires a customer-provided web application or server based application. With respect to imagery available through this product to third parties or the Public, Pictometry reserves the right to reduce the resolution of the imagery available. Term commences on date of activation. The quantity represents the number of years in the Connect term. Applicable Terms and Conditions: Web Visualization Offering Terms and Conditions	\$750.00	\$500.00 (33.333%)	\$1,500.00
70	Tiles - Standard (3in GSD; JPG format) Per Sector	Available with corresponding 3" GSD imagery purchase. 3-inch GSD Mosaic Tiles in JPG Format. Tiles are provided "as is." Refer to Product Parameters for additional details. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$20.00		\$1,400.00
1	Media Drive Capacity 931G - Drive Model 1T - EXTPOWER	External USB 2.0 / eSATA Externally Powered. Delivery media prices include copying a complete image library onto media. Sub-warehousing sold separately. Applicable Terms and Conditions: Order Form	\$199.00		\$199.00
70	Mosaic - Area Wide (3in GSD; MrSID format; individual) Per Sector	Available with purchase of corresponding tile product. New processing or re-processing to MrSID of individual tiles of 3-inch GSD imagery. Tiles are provided "as is." Refer to Product Parameters for additional details. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$2.00		\$140.00
1	Oblique Imagery Bundle with Three (3) Years of Maintenance & Support	Includes two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, and fifteen (15) hours of telephone support. Applicable Terms and Conditions: Software License Agreement	\$0.00		\$0.00

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Applicable Terms and Conditions: Order Form	\$0.00		\$0.00
5	Existing Imagery	Refer to non-standard product specifications for details on existing imagery to be provided. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	\$0.00		\$0.00
1	Pictometry Connect - EarlyAccess	Pictometry Connect - EarlyAccess provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. Applicable Terms and Conditions: Online Services General Terms and Conditions	\$10,000.00	\$0.00 (100%)	\$0.00

Thank you for choosing Pictometry as your service provider.	TOTAL	\$49,079.00
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*Amount per product = ((1-Discount %) * Qty * List Price)

The following is a modification to the standard Product Description listed above:

Existing Imagery: Projected Imagery for City of Schofield, WI

FEES; PAYMENT TERMS

All amounts due to Pictometry pursuant to this Agreement ("Fees") are expressed in United States dollars and do not include any duties, taxes (including, without limitation, any sales, use, ad valorem or withholding, value added or other taxes) or handling fees, all of which are in addition to the amounts shown above and, to the extent applicable to purchases by Customer, shall be paid by Customer to Pictometry without reducing any amount owed to Pictometry unless documents satisfactory to Pictometry evidencing exemption from such taxes is provided to Pictometry prior to billing. To the extent any amounts properly invoiced pursuant to this Agreement are not paid within thirty (30) days following the invoice due date, such unpaid amounts shall accrue, and Customer shall pay, interest at the rate of 1.5% per month (or at the maximum rate allowed by law, if less). In addition, Customer shall pay Pictometry all costs Pictometry incurs in collecting past due amounts due under this Agreement including, but not limited to, attorneys' fees and court costs.

Due by January 31, 2020	\$4,089.90
Due at Initial Shipment of Imagery	\$12,269.76
Due at First Anniversary of Shipment of Imagery	\$16,359.67
Due at Second Anniversary of Shipment of Imagery	\$16,359.67
Total Payments	\$49,079.00

PRODUCT PARAMETERS

IMAGERY

Product: IMAGERY - Reveal 1000 - R2 per square mile
Leaf: Leaf Off: Less than 30% leaf cover

Product: Existing Imagery
Leaf: Leaf Off: Less than 30% leaf cover

STANDARD ORTHO MOSAIC PRODUCTS

Pictometry standard ortho mosaic products are produced through automated mosaicking processes that incorporate digital elevation data with individual Pictometry ortho frames to create large-area mosaics on an extremely cost-effective basis. Because these products are produced through automated processes, rather than more expensive manual review and hand-touched corrective processes, there may be inherent artifacts in some of the resulting mosaics. While Pictometry works to minimize such artifacts, the Pictometry standard ortho mosaic products are provided on an 'AS IS' basis with respect to visible cutlines along mosaic seams resulting from the following types of artifacts:

- Disconnects in non-elevated surfaces generally caused by inaccurate elevation data;
- Disconnects in elevated surfaces (e.g., roadways, bridges, etc.) generally caused by elevated surfaces not being represented in the elevation data;
- Building intersect and clipping generally caused by buildings not being represented in the elevation data;
- Seasonal variations caused by images taken at different times during a season, or during different seasons;
- Ground illumination variations caused by images taken under different illumination (e.g., sunny, high overcast, morning light, afternoon light, etc.) within one flight day or during different flight days;

- vi. Single GSD color variations caused by illumination differences or multiple-aircraft/camera captures;
- vii. Mixed GSD color variations caused by adjacent areas being flown at different ground sample distances (GSDs); and
- viii. Water body color variations caused by multiple individual frames being used to create a mosaic across a body of water (e.g., lakes, ponds, rivers, etc.).

Other Pictometry products may be available that are less prone to such artifacts than the Pictometry standard ortho mosaic products.

CONNECT

Product:	Pictometry Connect - CA - 50
<i>Admin User Name:</i>	Dan Kerntop
<i>Admin User Email:</i>	dan.kerntop@ci.wausau.wi.us
<i>Geofence:</i>	WI Marathon

Product:	Pictometry Connect View - CA
<i>Admin User Name:</i>	Dan Kerntop
<i>Admin User Email:</i>	dan.kerntop@ci.wausau.wi.us
<i>Geofence:</i>	WI Marathon

RapidAccess—Disaster Response Program (“DRP”)

Customer is eligible for DRP described below from the Effective Date through the second anniversary of the initial Project delivery. Following payment to Pictometry of amounts due with respect to each subsequent Project, Customer will be eligible for the then-current DRP for a period of two years from delivery of such subsequent Project. Customer must be in good-standing with Pictometry to maintain eligibility for DRP.

- A. Disaster Coverage Imagery at No Additional Charge** – Pictometry will, upon request of Customer and at no additional charge, provide standard quality imagery of up to 200 square miles of affected areas (as determined by Pictometry) upon the occurrence of any of the following events during any period Customer is eligible for DRP:
- ☐ **Hurricane:** areas affected by hurricanes of Category 2 and higher.
 - ☐ **Tornado:** areas affected by tornados rated EF4 and higher.
 - ☐ **Terrorist:** areas affected by damage from terrorist attack.
 - ☐ **Earthquake:** areas affected by damage to critical infrastructure resulting from earthquakes measured at 6.0 or higher on the Richter scale.
 - ☐ **Tsunami:** areas affected by damage to critical infrastructure resulting from tsunamis.
- B. Discounted Rate** – Coverage for areas affected by the events set forth above exceeding 200 square miles will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates. Also, coverage for areas affected by hurricanes below Category II, tornadoes below EF4 or earthquakes rated below 6.0 on the Richter scale will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates.
- C. Online Services – Use of Pictometry Connect Explorer™** – Pictometry’s DRP includes the use of Connect Explorer for a term of ninety days from the date of delivery of the DRP imagery. Customer shall have access to the DRP imagery for as long as they maintain an active Connect account.

**PICTOMETRY DELIVERED CONTENT
TERMS AND CONDITIONS OF USE**

These Pictometry Delivered Content Terms and Conditions of Use (the "Delivered Content Terms and Conditions"), in combination with the corresponding Agreement into which these terms are incorporated, collectively set forth the terms and conditions that govern use of Delivered Content (as hereinafter defined) for use within computing environments operated by parties other than Pictometry. As used in the Delivered Content Terms and Conditions the terms "you" and "your" in uppercase or lowercase shall mean the Customer that entered into the Agreement into which the Delivered Content Terms and Conditions are incorporated.

1. DEFINITIONS

- 1.1 "Authorized Subdivision" means, if you are a county or a non-state consortium of counties, any political unit or subdivision located totally or substantially within your boundaries that you authorize to have access to Delivered Content pursuant to the Delivered Content Terms and Conditions.
- 1.2 "Authorized System" means a workstation or server that meets each of the following criteria (i) it is owned or leased by you or an Authorized Subdivision, (ii) it is located within and only accessible from facilities that are owned or leased by you or an Authorized Subdivision, and (iii) it is under the control of and may only be used by you or Authorized Subdivisions.
- 1.3 "Authorized User" means any employee of you or Authorized Subdivisions that is authorized by you to have access to the Delivered Content through an Authorized System.
- 1.4 "Delivered Content" means the images, metadata, data layers, models, reports and other geographic or structural visualizations or embodiments included in, provided with, or derived from the information delivered to you by or on behalf of Pictometry pursuant to the Agreement.
- 1.5 "Project Participant" means any employee or contractor of persons or entities performing services for compensation for you or an Authorized Subdivision that has been identified by written notice to Pictometry prior to being granted access to Delivered Content and, unless Pictometry expressly waives such requirement for any individual, has entered into a written agreement with Pictometry authorizing such access.

2. GRANT OF RIGHTS; RESTRICTIONS ON USE; OWNERSHIP

- 2.1 Subject to the terms and conditions of the Agreement, you are granted nonexclusive, nontransferable, limited rights to:
 - (a) install the Delivered Content on Authorized Systems;
 - (b) permit access and use of the Delivered Content through Authorized Systems by:
 - (i) Authorized Users for performance of public responsibilities of you or Authorized Subdivisions that are to be performed entirely within facilities of you or Authorized Subdivisions;
 - (ii) Project Participants under the supervision of Authorized Users for performance of tasks or preparation of materials using only hard copies (or jpg copies) of Delivered Content solely for fulfilling public responsibilities of you or Authorized Subdivisions to be performed entirely within facilities of you or Authorized Subdivisions; and
 - (iii) individual members of the public, but only through Authorized Users and solely for the purpose of making hard copies or jpg copies of images of individual properties or structures (but not bulk orders of multiple properties or structures) to the individual members of the public requesting them.
- 2.2 You may not reproduce, distribute or make derivative works based upon the Delivered Content in any medium, except as expressly permitted in the Delivered Content Terms and Conditions.
- 2.3 You may not offer any part of the Delivered Content for commercial resale or commercial redistribution in any medium.
- 2.4 You may not distribute or otherwise make available any Delivered Content to Google or its affiliates, either directly or indirectly.
- 2.5 You may not exploit the goodwill of Pictometry, including its trademarks, service marks, or logos, without the express written consent of Pictometry.
- 2.6 You may not remove, alter or obscure copyright notices or other notices contained in the Delivered Content.
- 2.7 All right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in Delivered Content in all media belong to Pictometry or its third party suppliers. Neither you nor any users of the Delivered Content acquire any proprietary interest in the Delivered Content, or any copies thereof, except the limited use rights granted herein.

3. OBLIGATIONS OF CUSTOMER

- 3.1 **Geographic Data.** If available, you agree to provide to Pictometry geographic data in industry standard format (e.g., shape, DBF) including, but not limited to, digital elevation models, street centerline maps, tax parcel maps and centroids, which data, to the extent practicable, shall be incorporated into the Delivered Content. You agree that any of this data that is owned by you may be distributed and modified by Pictometry as part of its products and services, provided that at no time shall Pictometry claim ownership of that data.
- 3.2 **Notification.** You shall (a) notify Pictometry in writing of any claims or proceedings involving any of the Delivered Content within ten (10) days after you learn of the claim or proceeding, and (b) report promptly to Pictometry all claimed or suspected defects in Delivered Content.
- 3.3 **Authorized User Compliance.** You shall at all times be responsible for compliance by each Authorized User with the Delivered Content Terms and Conditions.
- 3.4 **Authorized Subdivision Compliance.** You shall at all times be responsible for compliance by each Authorized Subdivision with the Delivered Content Terms and Conditions.
- 3.5 **Project Participants.** Each notice to Pictometry identifying a potential Project Participant shall include a detailed description of the scope and nature of the Project Participants' planned work and the intended use of the Delivered Content in such work. Pictometry retains the right to restrict or revoke access to Delivered Content by any Project Participant who does not comply with the terms of the Delivered Content Terms and Conditions.

4. LICENSE DURATION; EFFECT OF TERMINATION

- 4.1 **Term.** The license granted to you in the Delivered Content Terms and Conditions is perpetual, subject to Pictometry's right to terminate the license in the event you do not pay in full the Fees specified elsewhere in the Agreement, the Agreement is terminated for any reason other than a breach of the Agreement by Pictometry, or as otherwise provided in the Agreement.
- 4.2 **Effect of Termination.** Upon termination of the license granted to you in the Delivered Content Terms and Conditions, you shall immediately cease all use of the Delivered Content, promptly purge all copies of the Delivered Content from all workstations and servers on which any of it may be stored or available at the time, and return hard drive/media containing Delivered Content to Pictometry.

5. TRADEMARKS; CONFIDENTIALITY

- 5.1 **Use of Pictometry's Marks.** You agree not to attach any additional trademarks, trade names, logos or designations to any Delivered Content or to any copies

of any Delivered Content without prior written approval from Pictometry. You may, however, include an appropriate government seal and your contact information so long as the seal and contact information in no way obscure or deface the Pictometry marks. You further agree that you will not use any Pictometry trademark, trade name, logo, or designation in connection with any product or service other than the Delivered Content. Your nonexclusive right to use Pictometry's trademarks, trade name, logos, and designations are coterminous with the license granted to you in the Delivered Content Terms.

- 5.2 Confidentiality of Delivered Content.** The Delivered Content consists of commercially valuable, proprietary products owned by Pictometry, the design and development of which reflect an investment of considerable time, effort, and money. The Delivered Content is treated by Pictometry as confidential and contains substantial trade secrets of Pictometry. You agree that you will not disclose, provide a copy of, or disseminate the Delivered Content (other than as expressly permitted in the Delivered Content Terms and Conditions) or any part thereof to any person in any manner or for any purpose inconsistent with the license granted to you in the Delivered Content Terms and Conditions. You agree to use your best efforts to assure that your personnel, and any others afforded access to the Delivered Content, protect the Delivered Content against unauthorized use, disclosure, copying, and dissemination, and that access to the Delivered Content and each part thereof will be strictly limited.

6. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES

- 6.1 Limited Warranties; Exclusive Remedy.** Pictometry warrants that the Delivered Content will contain true and usable copies of the designated imagery as of the date of capture. As the sole and exclusive remedy for any breach of the foregoing warranty, Pictometry shall use reasonable efforts to correct any deficiency that precludes use of the Delivered Content in the manner intended.
- 6.2 Disclaimer of Other Warranties.** Except as provided in Section 6.1, above, THE DELIVERED CONTENT IS PROVIDED TO YOU "AS IS" AND "WITH ALL FAULTS." PICTOMETRY MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ACCURACY, ARE HEREBY DISCLAIMED AND EXCLUDED BY PICTOMETRY.
- 6.3 Limitation of Liability.** With respect to any other claims that you may have or assert against Pictometry on any matter relating to the Delivered Content, the total liability of Pictometry shall, in the aggregate, be limited to the aggregate amount received by Pictometry in payment for Delivered Content during the immediately preceding twenty-four (24) month period.

7. MISCELLANEOUS PROVISIONS

- 7.1 Restricted Rights.** Delivered Content acquired with United States Government funds or intended for use within or for any United States federal agency is provided with "Restricted Rights" as defined in DFARS 252.227-7013, Rights in Technical Data and Computer Software and FAR 52.227-14, Rights in Data-General, including Alternate III, as applicable.
- 7.2 Governing Law.** This License Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflicts of law principles.

[END OF DELIVERED CONTENT TERMS AND CONDITIONS]

SECTION B

LICENSE TERMS

PICTOMETRY ONLINE SERVICES GENERAL TERMS AND CONDITIONS

These Pictometry Online Services General Terms and Conditions (the "General Terms and Conditions"), in combination with the corresponding Pictometry order form, if any, collectively constitute the license agreement (the "License Agreement") that governs your use of the Pictometry online services (the "Online Services"), the images available in the Online Services, and all associated metadata and data layers included in, provided with, or derived from those images (the "Licensed Content") provided by Pictometry International Corp. and its affiliated companies (collectively, "Pictometry"). The terms "you" and "your" in uppercase or lowercase shall mean the individual, entity (e.g., corporation, limited liability company, partnership, sole proprietor, etc.) or government agency entering into the License Agreement.

1. GRANT OF RIGHTS; RESTRICTIONS ON USE; OWNERSHIP

- 1.1 You are granted a nonexclusive, nontransferable, limited right to access and use the Online Services and the Licensed Content obtained or derived from the Online Services solely for your internal business purposes and not for resale or redistribution. The rights granted to you include, subject to the restrictions set forth below and on the Order Form, the right to copy limited portions of the Licensed Content onto your computer to facilitate preparation of hardcopies and work product records, and the right to make hardcopies of the Licensed Content, provided that the Licensed Content and the permitted copies thereof may not be sold, leased, loaned, distributed, or copied for use by anyone other than you.
- 1.2 You may not make the Online Services available to any other party.
- 1.3 You may not copy the Licensed Content or portions thereof onto any computer or storage device or media for the purpose of creating or maintaining one or more databases of that content for use in substitution for subsequent access to the content through the Online Services.
- 1.4 You may not distribute or otherwise make available any Licensed Content to Google or its affiliates, either directly or indirectly.
- 1.5 You may not exploit the goodwill of Pictometry, including its trademarks, service marks, or logos, without the express written consent of Pictometry.
- 1.6 You may not remove, alter or obscure copyright notices or other notices contained in the Licensed Content.
- 1.7 You may not offer any part of the Online Services or the Licensed Content for commercial resale or commercial redistribution in any medium.
- 1.8 You may not use the Online Services or the Licensed Content to compete with any businesses of Pictometry.
- 1.9 You may not use information included in the Online Services or the Licensed Content to determine an individual consumer's eligibility for (a) credit or insurance for personal, family, or household purposes; (b) employment; or (c) a government license or benefit. The term "consumer" is defined in the United States Fair Credit Reporting Act at 15 USC §1681.
- 1.10 You may not access the Online Services via mechanical, programmatic, robotic, scripted or any other automated means. Unless otherwise agreed by Pictometry in writing, use of the Online Services is permitted only via manually conducted, discrete, human-initiated individual search and retrieval activities.
- 1.11 All right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in the Online Services and the Licensed Content in all media belong to Pictometry or its third party suppliers. Neither you nor any users of the Online Services or the Licensed Content acquire any proprietary interest in the Online Services, the Licensed Content, or any copies thereof, except the limited use rights granted herein.

2. ACCESS TO SERVICES

- 2.1 Only you, your employees, and temporary or contract employees dedicated to performing work exclusively for you (each, an "Eligible User" and collectively, the "Eligible Users") are eligible to access and use the Online Services and the Licensed Content pursuant to the License Agreement. Each Eligible User to be provided access to the Online Service shall be assigned a unique login/password ("Pictometry Credential") for purposes of accessing the Online Services. You agree that each Pictometry Credential shall only be used by the Eligible User to whom it was originally assigned and that Pictometry Credentials may not be shared with, or used by, any other person, including other Eligible Users. You will promptly deactivate an Eligible User's Pictometry Credential in the event the Eligible User no longer meets the eligibility requirements or you otherwise wish to terminate the Eligible User's access to the Online Services. You are responsible for all use of the Online Services accessed with Pictometry Credentials issued to your Eligible Users, including associated charges, whether by Eligible Users or others. You will use reasonable commercial efforts to prevent unauthorized use of Pictometry Credentials assigned to your Eligible Users and will promptly deactivate any Pictometry Credentials you suspect are lost, stolen, compromised, or misused.
- 2.2 The Online Services, the Licensed Content, and features and functionality within the Online Services may be enhanced, added to, withdrawn, or otherwise changed by Pictometry without notice.
- 2.3 You are aware and understand that any user data collected or stored by the Online Services may be accessed by US law enforcement agencies under the US PATRIOT Act. You hereby release, and agree to hold Pictometry harmless from, all claims against Pictometry with respect to such access.

3. DISCLAIMERS

- 3.1 The Online Services and the Licensed Content are provided for visualization purposes only, are not authoritative or definitive, and do not constitute professional engineering or surveying services.
- 3.2 The Online Services and the Licensed Content are not to be relied upon to precisely locate or determine property boundaries and should not be used in lieu of a professional survey where the accuracy of measurements, distance, height, angle, area and volume, may have significant consequences.
- 3.3 All measurements and reports generated by the Online Services or from the Licensed Content are based upon second order visualization and measurement data that do not provide authoritative or definitive measurement results suitable for professional engineering or surveying purposes.
- 3.4 Contour information obtained from the Online Services or contained in the Licensed Content is generated from undersampled elevation data, is provided for informational purposes only, and is not suitable for use as the basis for hydrographic computations, estimations or analyses.
- 3.5 While the Online Services and the Licensed Content may be considered useful supplements for life critical applications, they are not designed or maintained to support such applications and Pictometry and its third party suppliers of the Online Services and the Licensed Content hereby disclaim all liability for damages claims and expenses arising from such use.
- 3.6 Your reliance on the Online Services and the Licensed Content should only be undertaken after an independent review of their accuracy, completeness, efficacy, timeliness and adequacy for your intended purpose.
- 3.7 Pictometry and each third party supplier of any portion of the Online Services or the Licensed Content assume no responsibility for any consequences resulting from the use of the Online Services or the Licensed Content.
- 3.8 Pictometry and each third party supplier of any portion of the Online Services or the Licensed Content hereby disclaim all liability for damages, claims and expenses arising from or in any way related to the accuracy or availability of the Online Services and the Licensed Content.
- 3.9 By accepting these General Terms and Conditions or by using the Online Services or the Licensed Content, you waive any and all rights you may have against Pictometry, each third party supplier of any portion of the Online Services or the Licensed Content, and each of their directors, officers, members and employees, arising out of use of or reliance upon the Online Services or the Licensed Content.

4. LIMITED WARRANTY

- 4.1 Pictometry represents and warrants that it has the right and authority to make the Online Services and the Licensed Content available to you and your Eligible Users as authorized expressly by this License Agreement.
- 4.2 EXCEPT AS OTHERWISE PROVIDED IN SECTION 4.1, THE ONLINE SERVICES AND LICENSED CONTENT ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND PICTOMETRY AND EACH THIRD PARTY SUPPLIER OF LICENSED CONTENT EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. LIMITATION OF LIABILITY

- 5.1 No Covered Party (as defined below) shall be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the Online Services or the Licensed Content, (b) the unavailability or interruption of the Online Services or any features thereof or the Licensed Content, (c) your or an Eligible User's use of the Online Services or the Licensed Content, (d) the loss or corruption of any data or equipment in connection with the Online Services or the Licensed Content, (e) the content, accuracy, or completeness of the Licensed Content, all regardless of whether you received assistance in the use of the Online Service from a Covered Party, (f) any delay or failure in performance beyond the reasonable control of a Covered Party, or (g) any content retrieved from the Internet even if retrieved or linked to from within the Online Services.
- 5.2 "Covered Party" means (a) Pictometry and any officer, director, employee, subcontractor, agent, successor, or assign of Pictometry; and (b) each third party supplier of any Licensed Content, third party alliance entity, their affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of any third party supplier of any Licensed Content or third party alliance entity and their affiliates.
- 5.3 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATING TO THE ONLINE SERVICES OR THE LICENSED CONTENT OR THIS LICENSE AGREEMENT EXCEED THE LESSER OF YOUR ACTUAL DIRECT DAMAGES OR THE AMOUNT YOU PAID FOR THE ONLINE SERVICES IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. YOUR RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST ANY COVERED PARTY.
- 5.4 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER YOU NOR THE COVERED PARTIES WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE ONLINE SERVICES, THE LICENSED CONTENT, OR THE FAILURE OF ANY COVERED PARTY TO PERFORM ITS OBLIGATIONS. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO A PARTY'S INDEMNITY OBLIGATIONS OR YOUR (AND YOUR ELIGIBLE USERS') INFRINGEMENT OF INTELLECTUAL PROPERTY OR MISAPPROPRIATION OF PROPRIETARY DATA BELONGING TO PICTOMETRY OR ITS THIRD PARTY SUPPLIERS.
- 5.5 Notwithstanding anything to the contrary in this Section 5:
- (a) If there is a breach of the warranty in Section 4.1 above, then Pictometry, at its option and expense, shall either defend or settle any action and hold you harmless against proceedings or damages of any kind or description based on a third party's claim of patent, trademark, service mark, copyright or trade secret infringement related to use of the Online Services or the Licensed Content, asserted against you by such third party provided: (i) all use of the Online Services and the Licensed Content was in accordance with this License Agreement; (ii) the claim, cause of action or infringement was not caused by you modifying or combining the Online Services or the Licensed Content with or into other products, applications, images or data not approved by Pictometry; (iii) you give Pictometry prompt notice of such claim; and (iv) you give Pictometry the right to control and direct the investigation, defense and settlement of such claim. You, at Pictometry's expense, shall reasonably cooperate with Pictometry in connection with the foregoing.
- (b) In addition to Section 5.5(a), if the Online Services, the operation thereof or the Licensed Content become, or in the opinion of Pictometry are likely to become, the subject of a claim of infringement, Pictometry may, at its option and expense, either: (i) procure for you the right to continue using the Online Services or the Licensed Content, (ii) replace or modify the Online Services or the Licensed Content so that they become non-infringing; or (iii) terminate the License Agreement on notice to you and grant you a pro-rata refund or credit (whichever is applicable) for any pre-paid fees or fixed charges.
- (c) The provisions of Sections 5.5(a) and (b) shall constitute your sole and exclusive remedy for the respective matters specified therein.

6. MISCELLANEOUS

- 6.1 The terms and conditions of this License Agreement may be changed from time to time immediately upon notice to you. If any changes are made to this License Agreement, such changes will: (a) only be applied prospectively; and (b) not be specifically directed against you or your Eligible Users but will apply to all similarly situated Pictometry customers using the Online Services. You may terminate this License Agreement upon written notice to Pictometry if any change to the terms and conditions of this License Agreement is unacceptable to you. For termination to be effective under this Section 6.1, written notice of termination must be provided to Pictometry within 90 days of the effective date of the change. Continued use of the Online Services following the effective date of any change constitutes acceptance of the change, but does not affect the foregoing termination right. Except as provided above, this License Agreement may not be supplemented, modified or otherwise revised unless signed by duly authorized representatives of both parties. Furthermore, this License Agreement may not be supplemented, modified or otherwise revised by email exchange, even if the email contains a printed name or signature line bearing signature-like font. The foregoing does not prohibit the execution of electronic contracts bearing electronic signatures of authorized representatives of both parties, provided such signatures include digital certifications or are otherwise authenticated.
- 6.2 In the event of a breach of this License Agreement by you, any Eligible User or someone using the Pictometry Credential of an Eligible User, Pictometry may temporarily suspend or discontinue providing access to the Online Services to any or all Eligible Users without notice and Pictometry may pursue any other legal remedies available to it.
- 6.3 All notices and other communications hereunder shall be in writing or displayed electronically in the Online Services by Pictometry. Notices shall be deemed to have been properly given on the date deposited in the mail, if mailed; on the date first made available, if displayed in the Online Services; or on the date received, if delivered in any other manner. Legal notices to Pictometry should be sent to Pictometry, Attn: General Counsel, 25 Methodist Hill Drive, Rochester, New York 14623.
- 6.4 The failure of you, Pictometry, or any third party supplier of the Online Services or any Licensed Content to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- 6.5 Neither you nor any Eligible User may assign or otherwise transfer your rights or delegate your duties under this License Agreement without the prior written consent of Pictometry. Any attempt by you or any Eligible User to assign, transfer or delegate your rights or obligations under this License Agreement without Pictometry's consent shall be void, and shall also void the limited license granted to you by this License Agreement. This License Agreement and any amendment thereto shall be binding on, and will inure to the benefit of the parties and their respective successors and permitted assigns.
- 6.6 This License Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflicts of law principles. Unless you are a government entity, in the event that any legal proceedings are commenced with respect to any matter arising under this License Agreement, the parties specifically consent and agree that the courts of the State of New York or, in the alternative, the Federal Courts located in the State of New York

shall have exclusive jurisdiction over each of the parties and over the subject matter of any such proceedings, and that the venue of any such action shall be in Monroe County, New York or the U.S. District Court for the Western District of New York, as applicable.

- 6.7 This License Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this License Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent and (b) such invalidity or unenforceability will not affect any other provision of this License Agreement.
- 6.8 Where applicable, each affiliated company of Pictometry and each third party supplier of the Online Services or any Licensed Content has the right to assert and enforce the provisions of this License Agreement directly on its own behalf as a third party beneficiary.
- 6.9 In the event of a breach of your obligations under this License Agreement or your payment obligations with respect to access to the Online Services or the Licensed Content, you agree to pay all of Pictometry's costs of enforcement and collection, including court costs and reasonable attorneys' fees.
- 6.10 This License Agreement constitutes the entire agreement of the parties with respect to its subject matter and replaces and supersedes any prior written or verbal communications, representations, proposals or quotations relating to that subject matter.

[END OF ONLINE SERVICES GENERAL TERMS AND CONDITIONS]

**PICTOMETRY WEB VISUALIZATION OFFERING
TERMS AND CONDITIONS**

These Pictometry Web Visualization Offering Terms and Conditions (the "WVO Terms and Conditions"), in combination with the corresponding Pictometry order form, if any, collectively constitute the license agreement (the "WVO License Agreement") that governs your use of Pictometry web visualization offerings (the "WVO Services"), the images available in the WVO Services, and all associated metadata and data layers included in, provided with, or derived from those images (the "WVO Licensed Content") provided by Pictometry International Corp. and its affiliated companies (collectively, "Pictometry"). The terms "you" and "your" in uppercase or lowercase shall mean the individual, entity (e.g., corporation, limited liability company, partnership, sole proprietor, etc.) or government agency entering into the WVO License Agreement.

1. GRANT OF RIGHTS; RESTRICTIONS ON USE; OWNERSHIP

- 1.1 You are granted a nonexclusive, nontransferable, limited right to use and to provide public access to, and use of, the WVO Services solely for purposes of providing access to WVO Licensed Content in response to human-initiated, discrete location-specific requests through a single web site operated exclusively by or for you to serve you and your public constituencies and not for resale or redistribution or commercial use of any nature.
- 1.2 You may not copy or retain copies of the WVO Licensed Content obtained through the WVO Services or portions thereof onto any computer or storage device or media for the purpose of creating or maintaining one or more databases of that content for use in substitution for subsequent access to the content through the WVO Services or any other Pictometry Services, nor will you authorize or permit any user of the WVO Services to do so.
- 1.3 You may not exploit the goodwill of Pictometry, including its trademarks, service marks, or logos without the express written consent of Pictometry.
- 1.4 You may not remove, alter or obscure copyright notices or other notices contained in the WVO Licensed Content.
- 1.5 You may not offer any part of the WVO Services or the WVO Licensed Content for commercial resale or commercial redistribution in any medium.
- 1.6 All right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in the WVO Services and the WVO Licensed Content in all media belong to Pictometry or its third party suppliers. Neither you nor any users of the WVO Services or the WVO Licensed Content acquire any proprietary interest in the WVO Services, the WVO Licensed Content, or any copies thereof, except the limited use rights granted herein.

2. TERMS OF ACCESS TO WVO SERVICES

- 2.1 You shall provide to all end-users of the WVO Services on the page through which they access such services conspicuous notice of the following terms of access: (a) WVO Licensed Content available through the WVO is copyrighted material, (b) end-users of the WVO Services are granted the right to access and view the WVO Licensed Content through the WVO Services for personal use only and not for commercial purposes of any type, (c) end-users of the WVO Services are prohibited from reproducing, reselling, transferring, redistributing or creating derivative works from WVO Licensed Content, (d) all right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in the WVO Services and the WVO Licensed Content in all media belong to Pictometry or its third party suppliers, and (e) THE WVO SERVICES AND WVO LICENSED CONTENT ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND PICTOMETRY AND EACH THIRD PARTY SUPPLIER OF WVO LICENSED CONTENT EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 2.2 The WVO Services, the WVO Licensed Content, and features and functionality within the WVO Services may be enhanced, added to, withdrawn, or otherwise changed by Pictometry without notice.
- 2.3 You are aware and understand that any user data collected or stored by the WVO Services may be accessed by US law enforcement agencies under the US PATRIOT Act. You hereby release, and agree to hold Pictometry harmless from, all claims against Pictometry with respect to such access.

3. DISCLAIMERS

- 3.1 The WVO Services and the WVO Licensed Content are provided for visualization purposes only, are not authoritative or definitive, and do not constitute professional engineering or surveying services.
- 3.2 The WVO Services and the WVO Licensed Content are not to be relied upon to precisely locate or determine property boundaries and should not be used in lieu of a professional survey where the accuracy of measurements, distance, height, angle, area and volume, may have significant consequences.
- 3.3 All measurements and reports generated by the WVO Services or from the WVO Licensed Content are based upon second order visualization and measurement data that do not provide authoritative or definitive measurement results suitable for professional engineering or surveying purposes.
- 3.4 Contour information obtained from the WVO Services or contained in the WVO Licensed Content is generated from undersampled elevation data, is provided for informational purposes only, and is not suitable for use as the basis for hydrographic computations, estimations or analyses.
- 3.5 While the WVO Services and the WVO Licensed Content may be considered useful supplements for life critical applications, they are not designed or maintained to support such applications and Pictometry and its third party suppliers of the WVO Services and the WVO Licensed Content hereby disclaim all liability for damages, claims and expenses arising from such use.
- 3.6 Your reliance on the WVO Services and the WVO Licensed Content should only be undertaken after an independent review of their accuracy, completeness, efficacy, timeliness and adequacy for your intended purpose.
- 3.7 Pictometry and each third party supplier of any portion of the WVO Services or the WVO Licensed Content assume no responsibility for any consequences resulting from the use of the WVO Services or the WVO Licensed Content.
- 3.8 Pictometry and each third party supplier of any portion of the WVO Services or the WVO Licensed Content hereby disclaim all liability for damages, claims and expenses arising from or in any way related to the accuracy or availability of the WVO Services and the WVO Licensed Content.
- 3.9 By accepting these WVO Terms and Conditions or by using the WVO Services or the WVO Licensed Content, you waive any and all rights you may have against Pictometry, each third party supplier of any portion of the WVO Services or the WVO Licensed Content, and each of their directors, officers, members and employees, arising out of use of or reliance upon the WVO Services or the WVO Licensed Content.

4. LIMITED WARRANTY

- 4.1 Pictometry represents and warrants that it has the right and authority to make the WVO Services and the WVO Licensed Content available to you as authorized expressly by this WVO License Agreement.
- 4.2 EXCEPT AS OTHERWISE PROVIDED IN SECTION 4.1, THE WVO SERVICES AND WVO LICENSED CONTENT ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND PICTOMETRY AND EACH THIRD PARTY SUPPLIER OF WVO LICENSED CONTENT EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. LIMITATION OF LIABILITY

- 5.1 No Covered Party (as defined below) shall be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the WVO Services or the WVO Licensed Content, (b) the unavailability or interruption of the WVO Services or any features thereof or the WVO Licensed Content, (c) your or any other party's use of the WVO Services or the WVO Licensed Content, (d) the loss or corruption of any data or equipment in connection with the WVO Services or the WVO Licensed Content, (e) the content, accuracy, or completeness of the WVO Licensed Content,

all regardless of any assistance received in the use of the WVO Service from a Covered Party, (f) any delay or failure in performance beyond the reasonable control of a Covered Party, or (g) any content retrieved from the Internet even if retrieved or linked to from within the WVO Services.

- 5.2 "Covered Party" means (a) Pictometry, its affiliates and any officer, director, employee, subcontractor, agent, successor, or assign of Pictometry or its affiliates; and (b) each third party supplier of any WVO Licensed Content, third party alliance entity, their affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of any third party supplier of any WVO Licensed Content or third party alliance entity and their affiliates.
- 5.3 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATING TO THE WVO SERVICES OR THE WVO LICENSED CONTENT OR THIS WVO LICENSE AGREEMENT EXCEED THE LESSER OF YOUR ACTUAL DIRECT DAMAGES OR THE AMOUNT YOU PAID FOR THE WVO SERVICES IN THE TWENTY-FOUR MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. YOUR RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST ANY COVERED PARTY.
- 5.4 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER YOU NOR THE COVERED PARTIES WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE WVO SERVICES, THE WVO LICENSED CONTENT, OR THE FAILURE OF ANY COVERED PARTY TO PERFORM ITS OBLIGATIONS. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO A PARTY'S INDEMNITY OBLIGATIONS OR YOUR (OR ANY OTHER WVO SERVICES USERS') INFRINGEMENT OF INTELLECTUAL PROPERTY OR MISAPPROPRIATION OF PROPRIETARY DATA BELONGING TO PICTOMETRY OR ITS THIRD PARTY SUPPLIERS.
- 5.5 Notwithstanding anything to the contrary in this Section 5:
- (a) If there is a breach of the warranty in Section 4.1 above, then Pictometry, at its option and expense, shall either defend or settle any action and hold you harmless against proceedings or damages of any kind or description based on a third party's claim of patent, trademark, service mark, copyright or trade secret infringement related to use of the WVO Services or the WVO Licensed Content, asserted against you by such third party provided: (i) all use of the WVO Services and the WVO Licensed Content was in accordance with this WVO License Agreement; (ii) the claim, cause of action or infringement was not caused by you modifying or combining the WVO Services or the WVO Licensed Content with or into other products, applications, images or data not approved by Pictometry; (iii) you give Pictometry prompt notice of such claim; and (iv) you give Pictometry the right to control and direct the investigation, defense and settlement of such claim. You, at Pictometry's expense, shall reasonably cooperate with Pictometry in connection with the foregoing.
- (b) In addition to Section 5.5(a), if the WVO Services, the operation thereof or the WVO Licensed Content become, or in the opinion of Pictometry are likely to become, the subject of a claim of infringement, Pictometry may, at its option and expense, either: (i) procure for you the right to continue using the WVO Services or the WVO Licensed Content, (ii) replace or modify the WVO Services or the WVO Licensed Content so that they become non-infringing; or (iii) terminate the WVO License Agreement on notice to you and grant you a pro-rata refund or credit (whichever is applicable) for any pre-paid fees or fixed charges.
- (c) The provisions of Sections 5.5(a) and (b) shall constitute your sole and exclusive remedy for the respective matters specified therein.

6. MISCELLANEOUS

- 6.1 The terms and conditions of this WVO License Agreement may be changed from time to time immediately upon notice to you. If any changes are made to this WVO License Agreement, such changes will: (a) only be applied prospectively; and (b) not be specifically directed against you but will apply to all similarly situated Pictometry customers using the WVO Services. You may terminate this WVO License Agreement upon written notice to Pictometry if any change to the terms and conditions of this WVO License Agreement is unacceptable to you. For termination to be effective under this Section 6.1, written notice of termination must be provided to Pictometry within 90 days of the effective date of the change. Continued use of the WVO Services following the effective date of any change constitutes acceptance of the change, but does not affect the foregoing termination right. Except as provided above, this WVO License Agreement may not be supplemented, modified or otherwise revised unless signed by duly authorized representatives of both parties. Furthermore, this WVO License Agreement may not be supplemented, modified or otherwise revised by email exchange, even if the email contains a printed name or signature line bearing signature-like font. The foregoing does not prohibit the execution of electronic contracts bearing electronic signatures of authorized representatives of both parties, provided such signatures include digital certifications or are otherwise authenticated.
- 6.2 In the event of a breach of this WVO License Agreement by you or someone using the WVO Services, Pictometry may temporarily suspend or discontinue providing access to the WVO Services without notice and Pictometry may pursue any other legal remedies available to it.
- 6.3 All notices and other communications hereunder shall be in writing. Notices shall be deemed to have been properly given on the date deposited in the mail, if mailed or on the date received, if delivered in any other manner. Legal notices to Pictometry should be sent to Pictometry, Attn: General Counsel, 25 Methodist Hill Drive, Rochester, New York 14623.
- 6.4 The failure of you, Pictometry, or any third party supplier of the WVO Services or any WVO Licensed Content to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- 6.5 You may not assign or otherwise transfer your rights or delegate your duties under this WVO License Agreement without the prior written consent of Pictometry. Any attempt by you to assign, transfer or delegate your rights or obligations under this WVO License Agreement without Pictometry's consent shall be void, and shall also void the limited license granted to you by this WVO License Agreement. This WVO License Agreement and any amendment thereto shall be binding on, and will inure to the benefit of the parties and their respective successors and permitted assigns.
- 6.6 This WVO License Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflicts of law principles. Unless you are a government entity, in the event that any legal proceedings are commenced with respect to any matter arising under this WVO License Agreement, the parties specifically consent and agree that the courts of the State of New York or, in the alternative, the Federal Courts located in the State of New York shall have exclusive jurisdiction over each of the parties and over the subject matter of any such proceedings, and that the venue of any such action shall be in Monroe County, New York or the U.S. District Court for the Western District of New York, as applicable.
- 6.7 This WVO License Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this WVO License Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent and (b) such invalidity or unenforceability will not affect any other provision of this WVO License Agreement.
- 6.8 Where applicable, each affiliated company of Pictometry and each third party supplier of the WVO Services or any WVO Licensed Content has the right to assert and enforce the provisions of this WVO License Agreement directly on its own behalf as a third party beneficiary.
- 6.9 In the event of a breach of your obligations under this WVO License Agreement or your payment obligations with respect to access to the WVO Services or the WVO Licensed Content, you agree to pay all of Pictometry's costs of enforcement and collection, including court costs and reasonable attorneys' fees.
- 6.10 This WVO License Agreement constitutes the entire agreement of the parties with respect to its subject matter and replaces and supersedes any prior written or verbal communications, representations, proposals or quotations relating to that subject matter.

[END OF WEB VISUALIZATION OFFERING TERMS AND CONDITIONS]

**PICTOMETRY SOFTWARE
LICENSE AGREEMENT**

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE. BY USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE.

1. **GENERAL.** The software ("Pictometry Software") and any written materials that accompany the software ("Documentation") in any media or form are licensed, not sold, to you by Pictometry International Corp. ("Pictometry") for use only under the terms of this License. Pictometry reserves all rights not expressly granted to you in this License.
2. **LICENSE.** Subject to the terms and conditions of this License, you are granted a limited, non-transferable, terminable, non-sublicenseable, non-exclusive license to install and use the Pictometry Software and the Documentation (collectively, the "Proprietary Materials") solely for internal use. Use of the functionality provided by the Pictometry Software other than for your internal use is prohibited, except with the prior written approval of Pictometry. You may make one copy of the Pictometry Software in machine-readable form for backup purposes only; provided that the backup copy must include all copyright and other proprietary notices contained in the original. You will not and will not enable others to decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, create derivative works of, or tamper with or disable any security or monitoring features within the Pictometry Software. Any attempt to do so is a violation of the rights of Pictometry and its licensors.
3. **TITLE.** The Proprietary Materials are confidential information of, trade secrets of, and are proprietary to Pictometry. Title to the Proprietary Materials is and will remain in Pictometry and its licensors. All applicable rights to patents, copyrights, trademarks, trade secrets, and other intellectual property rights in the Proprietary Materials are and will remain in Pictometry and its licensors. You will not assert any right, title or interest in the Proprietary Materials provided to you under this License, except for the express license granted to you hereunder. You will not remove any copyright or other proprietary notice or legend contained on or included in any Proprietary Materials and you will reproduce all such information on all copies made hereunder. You will keep the Proprietary Materials free of all claims, liens and encumbrances.
4. **DISCLAIMERS OF WARRANTY.** USE OF THE PICTOMETRY SOFTWARE IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PICTOMETRY SOFTWARE IS PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND PICTOMETRY HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PICTOMETRY SOFTWARE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. PICTOMETRY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN OR PROVIDED BY THE PICTOMETRY SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE PICTOMETRY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PROPRIETARY MATERIALS WILL BE CORRECTED.
5. **LIMITATION OF LIABILITY.** IN NO EVENT WILL PICTOMETRY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE PICTOMETRY SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE), EVEN IF PICTOMETRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL PICTOMETRY'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) CAUSED BY, ARISING OUT OF OR IN ANY WAY RELATED TO THE PICTOMETRY SOFTWARE EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
6. **TERMINATION.** This License will terminate automatically without notice from Pictometry if you fail to comply with any term of this License. Upon the termination of this License, you will cease all use of the Pictometry Software and destroy all copies, full or partial, of the Proprietary Materials.
7. **MISCELLANEOUS PROVISIONS.**
 - A. **Restricted Rights.** Pictometry Software acquired with United States Government funds or intended for use within or for any United States federal agency is provided with "Restricted Rights" as defined in DFARS 252.227-7013, Rights in Technical Data and Computer Software and FAR 52.227-14, Rights in Data-General, including Alternate III, as applicable. Pictometry must be notified in advance of any license grants to United States federal governmental entities. The Pictometry Software is developed for general use in a variety of applications and is not developed or intended for use in any inherently dangerous applications or applications that could lead to property damage, personal injury or death. If you use the Pictometry Software in such applications, then you will be responsible for taking all appropriate fail-safe, backup, redundancy, and other measures to ensure the safe use of the Pictometry Software in such applications, including but not limited to, in any nuclear, aviation, mass transit, public safety or medical applications.
 - B. **Foreign Trade Restrictions.** The parties acknowledge that certain information, software technology, accompanying documentation and technical information may be subject to United States export control laws. You will not directly or indirectly export or re-export the Pictometry Software in violation of the Export Administration Regulations of the U.S. Department of Commerce.
 - C. **Governing Law.** This License will be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflict of laws principles.
 - D. **Assignment.** You may not assign this License without Pictometry's prior written consent. Any assignment in violation of this License will be null, void and of no force and effect. For all purposes under this License, any merger, consolidation, spin-off, acquisition or change-in-control will be deemed an assignment.
 - E. **Partial Invalidity; Survival.** If any provision of this License is held invalid or unenforceable by competent authority, that provision will be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it will then appear. The total invalidity or unenforceability of any particular provision of this License will not affect its other provisions and this License will be construed in all respects as if the invalid or unenforceable provision were omitted. The provisions of this License that by their nature would survive its termination will survive indefinitely.

- F. **Force Majeure.** Neither party will be liable for any costs or damages due to nonperformance under this License arising out of any cause not within the reasonable control of such party and without its fault or negligence. Neither party will be liable for any delay or failure in the performance of its obligations under this License that directly results from any failure of the other party to perform its obligations as set forth in this License.
- G. **Waiver.** No waiver of a breach of any term of this License will be effective unless in writing and duly executed by the waiving party. No such waiver will constitute a waiver of any subsequent breach of the same or any other term of this License. No failure on the part of a party to exercise, and no delay in exercising any of its rights hereunder will operate as a waiver thereof, nor will any single or partial exercise by a party of any right preclude any other or future exercise thereof or the exercise of any other right. No course of dealing between the parties will be deemed effective to modify, amend or discharge any part of this License or the rights or obligations of any party hereunder.
- H. **Entire Agreement; Construction.** This License contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous understandings regarding that subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Pictometry. There are no representations, warranties, or obligations of any party not expressly contained herein. The headings in this License are for convenience only. They do not constitute a portion of this License and will not be used in any construction of it.

[END OF SOFTWARE LICENSE AGREEMENT]

SECTION C

NON-STANDARD TERMS AND CONDITIONS

1. Online Services Eligible Users: Notwithstanding anything in the Online Services General Terms and Conditions incorporated in this Agreement to the contrary, the terms 'Eligible User' and 'Eligible Users' as defined in those Online Services General Terms and Conditions shall, for the purposes of this Agreement, also include each 'Authorized User' as that term is defined in the Delivered Content Terms and Conditions of Use incorporated in this Agreement.
2. Applicable Law: Notwithstanding anything herein to the contrary, this Agreement and any modifications, amendments or alterations shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Wisconsin. Each party irrevocably consents to the exclusive jurisdiction of the courts of the State of Wisconsin in connection with any action to enforce the provisions of this Agreement, to recover damages or other relief for breach or default under this Agreement, or otherwise arising under or by reason of this Agreement.
3. Project Contingency: The underlying imagery required to produce the Existing (Projected) Imagery, Tiles-Standard and Mosaic-Area Wide deliverables ("Contingent Deliverables") set forth in Section A to this Agreement, is contingent upon Pictometry completing a project for the City of Schofield (the "Schofield Project"). In the event the Schofield Project does not occur, Pictometry is under no obligation to provide the Contingent Deliverables.

Pictometry Delivered Content Terms and Conditions of Use:

4. Section 6. Limited Warranty; Disclaimer of Warranties, 6.1 Limited Warranties; Exclusive Remedy: Section 6.1 shall be deleted in its entirety and replaced with the following: Pictometry warrants that the Delivered Content will contain true and useable copies of the designated imagery as of the date of capture. As the sole and exclusive remedy for any breach of the foregoing warranty, Pictometry shall use reasonable efforts to correct any deficiency that precludes use of the Delivered Content in the manner intended. During the initial term of the Agreement, if Customer notifies Pictometry that Customer is unable to use the Delivered Content for the general purposes intended (hereinafter the "Non-usable Licensed Product"), Pictometry will use reasonable efforts to make the Non-usable Licensed Product usable for the general purposes intended. If Pictometry is not able to make the Non-usable Licensed Product usable for the general purposes intended, Customer shall immediately cease use of the Non-usable Licensed Product, purge the Non-usable Licensed Product from all Customer computers, and return the Non-usable Product to Pictometry. Upon receipt of the Non-usable Product from Customer, Pictometry will refund all funds paid by Customer to Pictometry for the Non-usable Licensed Product.

Pictometry Online Services General Terms and Conditions:

5. Section 2. Access to Services, 2.2: Section 2.2 shall be deleted in its entirety and replaced with the following: The Online Services, the Licensed Content, and features and functionality within the Online Services may be enhanced, added to, withdrawn, or otherwise changed by Pictometry without notice. Pictometry warrants that if a withdrawn or otherwise changed feature significantly reduces the value of the Online Services to Customer, Customer shall have the option to terminate the Online Services, without penalty, and shall receive a prorated refund for any amounts prepaid up until the time of termination. Customer shall notify Pictometry within thirty (30) days of the date upon which the feature or functionality is withdrawn or changed.
6. Section 5. Limitation of Liability, 5.3: Section 5.3 shall be deleted in its entirety and replaced with the following: TO THE EXTENT PERMISSIBLE BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATING TO THE ONLINE SERVICES OR THE LICENSED CONTENT OR THIS LICENSE AGREEMENT EXCEED THE LESSER OF YOUR ACTUAL DIRECT DAMAGES OR DOUBLE THE AMOUNT YOU PAID FOR THE ONLINE SERVICES IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. YOUR RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST ANY COVERED PARTY.
7. Section 6. Miscellaneous, 6.9: Section 6.9 is deleted in its entirety.

Pictometry Web Visualization Offering Terms and Conditions:

8. Section 2. Terms of Access to WVO Services, 2.2: Section 2.2 shall be deleted in its entirety and replaced with the following: The WVO Services, the WVO Licensed Content, and features and functionality within the WVO Services may be enhanced, added to, withdrawn, or otherwise changed by Pictometry without notice. Pictometry warrants that if a withdrawn or otherwise changed feature significantly reduces the value of the WVO Services to Customer, Customer has the option to terminate the WVO Services, without penalty, and shall receive a prorated refund for any amounts prepaid up until the time

of termination. Customer shall notify Pictometry within thirty (30) days of the date upon which the feature or functionality is withdrawn or changed.

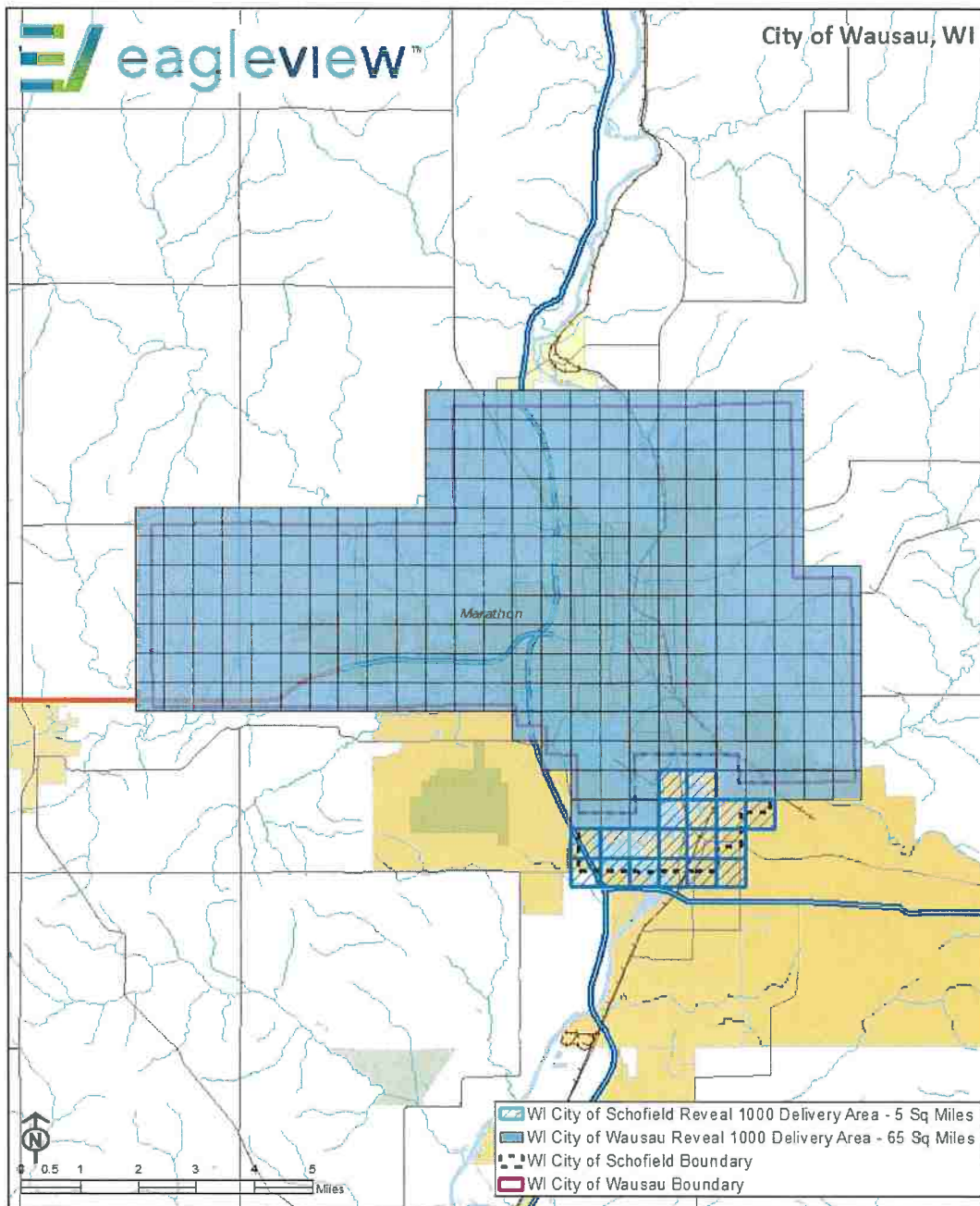
9. Section 6. Miscellaneous, 6.9: Section 6.9 is deleted in its entirety.

Pictometry Software License Agreement:

10. Section 6. Termination: Section 6 shall be deleted in its entirety and replaced with the following: "In the event that you fail to comply with any term of this License, this License shall be automatically suspended. Pictometry shall notify you of your noncompliance, outlining the factual basis for its good faith belief that there has been a failure to comply with its terms and shall work together with you in good faith to attempt to resolve the situation that triggered such suspension and reinstate this License on mutually agreeable terms. Should this not be resolved within ten (10) days, this License will be terminated. Upon the termination of this License, you will cease use of all use of the Pictometry Software and destroy all copies, full or partial, of the Proprietary Materials."

[END OF NON-STANDARD TERMS AND CONDITIONS]

MAP(S)



CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403

RESOLUTION OF THE FINANCE COMMITTEE

Approving City's Waiver of First Right of Refusal to Repurchase property at 8101 International Drive from Packaging Tape, Inc. n/k/a Rocket Industrial, Inc. to Rocket Properties, LLC

Committee Action: Pending

Fiscal Impact: None

File Number: 07-0210

Date Introduced: January 28, 2020

FISCAL IMPACT SUMMARY

COSTS	<i>Budget Neutral</i>	Yes ☒ No ☐	
	<i>Included in Budget:</i>	Yes ☐ No ☐	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes ☐ No ☐	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes ☐ No ☐	<i>Amount:</i>
SOURCE	<i>Fee Financed:</i>	Yes ☐ No ☐	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes ☐ No ☐	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes ☐ No ☐	<i>Amount</i> <i>Annual Retirement</i>
	<i>TID Financed:</i>	Yes ☐ No ☐	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> ☐ <i>Debt</i> ☐ <i>Funds on Hand</i> ☐ <i>Interfund Loan</i> ☐		

RESOLUTION

WHEREAS, Packaging Tape, Inc. n/k/a Rocket Industrial, Inc. and Rocket Properties, LLC have entered into a Purchase and Sale Agreement for \$3,450,000 to transfer 8101 International Drive to Rocket Properties, LLC for continued growth and expansion; and

WHEREAS, deed restrictions on the property give the City first right of refusal to repurchase the property; and

WHEREAS, the City continues to have no said interest in repurchasing the named property; and

WHEREAS, your Finance Committee, at their January 28, 2020 meeting, considered the matter and wishes to decline to exercise the right to repurchase the property.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wausau that the City hereby declines to exercise its right to repurchase the property at 8101 International Drive in the Wausau Business Campus in order to allow the transfer of title of the property to Rocket Properties, LLC.

BE IT FURTHER RESOLVED by the Common Council of the City of Wausau that the Mayor and Clerk are hereby authorized to execute an appropriate Waiver of First Right of Refusal to Repurchase Property and execute all documents reasonably necessary to consummate the transaction contemplated by the Purchase and Sale Agreement.

Approved:

Robert B. Mielke, Mayor

**WAIVER OF FIRST RIGHT OF REFUSAL
TO REPURCHASE PROPERTY**

Document Number

Recording Area

Name and Return Address:

Attorney Steven Lipowski
Ruder Ware
P O Box 8050
Wausau WI 54402-8050

PIN: 291.2906.253.0956

The undersigned hereby waives its first right of refusal to purchase the property located at 8101 International Drive, Wausau, Marathon County, Wisconsin, as set forth in the Restrictions: (i) recorded as Exhibit A with the Warranty Deed from City of Wausau to Packaging Tape, Inc., dated April 4, 2007 and recorded in the office of the Register of Deeds for Marathon County, Wisconsin, on April 10, 2007, as Document No. 1474061; and (ii) as included or incorporated by reference in the Warranty Deed between such parties dated October 19, 2007 and recorded in the office of the Register of Deeds for Marathon County, Wisconsin, on October 19, 2007, as Document No. 1493010, and as further included or incorporated by reference in the Warranty Deed between such parties dated October 24, 2007 and recorded in such Register of Deeds office on October 25, 2007, as Document No. 1493458; all of said property more particularly described as follows:

See Exhibit A

Packaging Tape, Inc. n/k/a Rocket Industrial, Inc. has received an offer to purchase the Property from Rocket Properties, LLC, a summary of which offer has been provided to the City of Wausau, and intends to transfer title to the Property to Rocket Properties, LLC or its assignee(s) (the "Transfer").

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the City of Wausau, Wisconsin, hereby waives any right to exercise its option to repurchase the Property with respect to or as a result of this Transfer, consents to the Transfer. The City of Wausau, Wisconsin, hereby states that to the best of its knowledge there are presently no conditions related to the Property that violate any deed restriction in the Warranty Deeds.

Dated this _____ day of January, 2020.

CITY OF WAUSAU

ATTEST:

By: _____
Robert B. Mielke, Mayor

By: _____
Mary A. Goede, Deputy City Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF MARATHON)

Personally came before me this _____ day of January, 2020, Robert B. Mielke, Mayor and Mary A. Goede, Deputy City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

_____, Notary Public
Marathon County, Wisconsin

My Commission _____.

This instrument was drafted by Anne L.
Jacobson, City Attorney 407 Grant Street
Wausau, Wisconsin 54403

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lot one (1) of Certified Survey Map No. 14734 recorded in the office of the Register of Deeds for Marathon County, Wisconsin, in Volume 66 of Certified Survey Maps on page 6, as Document No. 1473161; being part of the Northeast quarter (NE 1/4) of the Southwest quarter (SW 1/4); and part of the Northwest quarter (NW 1/4) of the Southeast quarter (SE 1/4), all in Section twenty-five (25), Township twenty-nine (29) North, Range six (6) East, in the City of Wausau, Marathon County, Wisconsin; including parcel described in Warranty Deed dated October 24, 2007 and recorded in said Register's office on October 25, 2007, as Document No. 1493458; subject to easements of record.