



OFFICIAL NOTICE AND AGENDA
of a meeting of a City Board, Commission, Department
Committee, Agency, Corporation, Quasi-Municipal
Corporation, or Sub-unit thereof.

A Meeting of Wausau Water Works Commission will be held in the
Council Chambers, 1st Floor City Hall, Wausau, WI 54403 at 11:00 a.m. on
Tuesday, January 7, 2025.

Members: Doug Diny (President), Sarah Watson, Jim Force, Joe Gehin, John Robinson

AGENDA

1. Approve Minutes of December 3, 2024 Meeting.
2. Director's Report on Utility Operations
 - Update on LSL Replacement
 - Update on Meter Installation/Replacement and Scheduling
 - Wastewater Staffing Interview Update
 - Wastewater Collections System Technician Readvertised
3. Discussion and Possible Action Approving Sole Source Request, Associated Budget Modification and Contract with Asterra to Perform Leak Detection Satellite Imagery and Leak Detection.
4. Update on Operating and Capital Borrowing Financials for the Water and Sewer Utility.
5. Discussion and Possible Action Approving Budget Modification for Replacement of Water Main Under Railroad Bridge at Grand and Thomas.
6. Discussion and Possible Action Approving Amendment #1 to the Master Partnership Agreement with Community Infrastructure Partners.
7. Discussion and Possible Action on Leachate Acceptance Pilot Project.

Adjourn.

Next meeting scheduled for **February 4th 2025 @ 11:00 AM.*

Signed by: /s/ Doug Diny, Mayor
Presiding Officer or Designee

THIS NOTICE POSTED AT CITY HALL AND EMAILED TO CITY PAGES AND DAILY HERALD: January 6, 2025 at 7:30 a.m.

This meeting is being held in person. Members of the public who do not wish to appear in person may view the meeting live over the internet, cable TV, Channel 981, and a video is available in its entirety and can be accessed at <https://tinyurl.com/wausaucitycouncil>. Any person wishing to offer public comment not appearing in person may e-mail gina.vang@wausauwi.gov with "Water Commission Public Comment" in the subject line prior to the meeting start. All public comment, either by email or in person, will be limited to items on the agenda at this time. The messages related to agenda items received prior to the start of the meeting will be provided to the Chair.

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (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 ADA Coordinator at (715) 261-6622 or ADAServices@wausauwisconsin.gov to discuss your accessibility needs. We ask your request be provided a minimum of 72 hours before the scheduled event or meeting. If a request is made less than 72 hours before the event the City of Wausau will make a good faith effort to accommodate your request.



Minutes of December 3, 2024

A meeting of the Wausau Water Works Commission was called to order at 11:03 a.m. in City Hall on Tuesday, December 3, 2024. In compliance with Wisconsin Statutes, this meeting was posted and receipted for by the Wausau Daily Herald on December 2, 2024.

Members Present: President Diny, Commissioners Gehin, Force,

Member Excused: Commissioner Watson

Webex: Commissioner Robinson, Andrew Dow/Donohue, Dr. Griffin Cole. DDS, NMD, Dr. Ashley Malin/Assistant Professor- Dept. of Epidemiology

Others Present: Eric Lindman, Scott Boers, Ben Brooks, Brad Wendtland, Susan

Wojtkiewicz/Donohue, Christy Schweiss/Wausau Resident, Sandy & Michael Bautsch/ Wausau Resident

Public Comment

Schweiss commented a study of 299 mother/child pairs in Mexico, higher prenatal exposure to fluoride in pregnant woman are associated with lower cognitive function in the children 4-6-12 years old. It's a major public health threat. Fluoride exposure in utero is toxic and the damage to children's brain are greater in fluoride than it is to lead, mercury and arsenic. I hope we could stop this fluoridation and other states are getting rid of the fluoridation too.

Bautsch commented the EPA must make some regulatory changes but wanted to play a couple of minutes an interview regarding fluoridation. See [Youtube](#) at 5:33. As the next level of administration coming in, we should look at fluoridation, vaccinations and everything.

Diny requested an email be sent for the source of that interview played.

Bautsch commented fluoridation should not be ingested, looking at toothpaste, if you swallow a pea size amount it is recommended to contact poison control. There's a lot of exposure throughout the day from when you get up and shower, coffee, cook pasta in water, brush teeth, all of it there's fluoride in it, then Dentists topically apply it. Some products in history have been deemed safe like lead, cigarettes, alcohol, cocaine were once healthy as fluoride but we find out its not, so with children and babies getting formula, where are the safety studies that prove there is no harm?

1) Approve Minutes of November 4, 2024 Meetings.

Gehin motioned to approve minutes. Seconded by Force.

Motion carried 3-0.

2) Director's Report on Utility Operations.

Lindman highlighted the first items are the WDNR's Safe Drinking Water Loan and the Clean Water Loan used to build the new water treatment facility and upgrade the wastewater treatment facility. Clean water fund loan has been closed with the DNR, we are finalizing close out documents within the next month or two. The water treatment is still open, some warranty items

and lockout tagout project items ongoing, but hope to have that completed next 30-45 days. Both loans should be closing out shortly. Update of the GAC, placed online since last week, our PFAS level have been below DHS recommendation and non-detect. This was our long-term solution so we could stay below any upcoming regulations for PFAS but there's still some programming updates over the next month or so.

Robinson questioned short chain PFAS break through and follow up on the bacteria issue from the last tank last month?

Boers replied with the caustic soak on that vessel, issue was resolved. We tested between ion exchange and GAC during start up and those PFAS samples came back non-detect, so we did not have any short chain breakthroughs at that point. We did sampling at each of the 6 GAC vessels that were non-detect as well.

Force requested a complete report on the GAC system, possibly January or February in how the system is working, what the numbers are, and information related to build up of PFAS on the carbon.

Lindman commented an update related to our proposed leachate meeting is scheduled with the DNR next Tuesday, minutes are included in the packet from last meeting. We continue moving forward on cooperation with marathon county landfill toward the start of the pilot. Wastewater has the operations technician interviews and we sold the tv van on the government auction.

Force commented we haven't had great track record with onboarding and the willingness to accept the offers and starting wage.

Brooks replied it depended on the individual's need for job and willingness to learn.

Lindman replied, if we had experienced people apply, we would run into the issue of where we can offer them wages and typically cannot adequately pay for past experience. If we have someone with little to no experience, it's their personal preference.

Director's Report Placed on File.

3) Discussion and Update with Presentation on the Final Results of the GAC Pilot Study.

Dow presented the slides in the packet starting page 32-42. See [Youtube](#) at 21:28 with discussion.

Robinson questioned the gallons used before the changeouts and requested full presentation on GAC life cycle cost liability and expected and reactivated carbon vs virgin carbon.

Dow replied after 1 billion gallons treated. Reactivated carbon removes PFAS just as well. We'll have more data in the next couple of weeks.

Gehin requested that we tour the facility as it's beneficial to visually observe this process.

Boers suggested that the full report is best done in February that will allow time to get information from running the plant. PFAS samples are taking anywhere from 3-4 weeks to get results, we'll have another set coming up so 2 results back by then, we can run a tour between now and then.

Force replied, February sounds good.

No Action Taken.

4) Presentation on Fluoridation in Drinking Water.

Diny commented there's a couple of presentations and reminded Presenters of the 10 minutes allotted, with that, Presenter Dr. Cole started with page 43-60. See [Youtube](#) at 50:18.

Gehin questioned if New Hampshire and Vermont had natural fluoride in their water?

Dr. Cole replied that every source of water whether groundwater or surface water has natural fluoride and calcium fluoride. The lethal amount of calcium fluoride would be 3,750mg/kg of body weight but when looking at silicon fluoride, its 125mg/kg.

Force questioned where the onset of fluoridation in drinking water occurred.

Dr. Cole replied there's supposed to be a 15-year study where they added sodium fluoride but after 5 years, they just started fluoridating. The American Dental Association (ADA) were against this in 1944 but three months later, they started adding this and that's how it got rolling.

Presenter Dr. Malin started with page 61-77 at [Youtube](#) at 1:11:35.

Dr. Malin stated fluoride in toothpaste is high so if more than pea sized amount is ingested you are to contact poison control.

Robinson recapped that there is reason for concern and questioned if Dr. Cole utilized fluoride topically and if studies differentiate between the types of fluorides and their impact on neurological development?

Dr. Cole replied he sold his practice 3 years ago but had never used the fluoride topically.

Dr. Malin replied studies looked at fluoride from all sources, measured in urine or sometimes plasma. EPA reports that fluoride exposures are from community drinking water in most adults in the States.

Force questioned the data with the court ruling, studies in China and Mexico were cited. The information presented today were from studies in USA, why didn't the judge utilize these reports when making the decision for the case in California?

Dr. Cole replied, the judge was relaying on the NTP report, trying to condense so that both parties could agree on what reports were acceptable. As Dr. Malin mentioned, there is a study in the country in Los Angeles but it was too late to make it into that NTP report.

Dr. Malin commented that the report was included in the legal proceedings in the trial against the EPA.

Diny thanked the community that were in attendance and stated Wausau Water Works will continue to ensure the safety of our drinking water.

No Action Taken.

5) Update on Financial Operating and Capital Budgets.

Diny commented the request was from Force.

Force commented he was ok with postponing this to next month.

No Action Taken.

6) Update on Meter Replacements and Schedule Moving Forward into 2025.

Boers started we removed a meter from 1973 and have things to catch up on and improve.

Diny commented good news, we previously had low meter supply issues and now we are catching up on dead and under reporters and have a goal of around 4,000 meter replacements in 2025, so we are doing more.

Gehin questioned the reading for the 1973 meter and if we tested all meters according to the PSC. It'd be interesting to see what the revenue change would be and if we are extending the day to accommodate the meter exchanges.

Boers replied PSC only requires us to partially test meters but since we're finding such a big disparity from installing the new meter and removing the old dead meter we test all of them on the way out so we have meter accuracy over billing with the new meters. It'd be hard to know what kind of water usage we are losing just from the testing. We are doing our best to keep meter change outs within our normal business hours but have made exceptions for customers to meet them after hours.

No Action Taken.

7) Update on the Lead Service Line Replacement for 2024 and the Proposed 2025 Schedule.

Lindman commented for the 2025 LSL replacements we brought a Reimbursement Resolution and proposed DNR funding allocation to the Finance Committee for their approval to begin work. We did well in principal forgiveness at \$8.8 million and \$6.1 million in loan. We're working to amend some language in the CIP agreement and will have a closing date coming up with the DNR for both the 2024 funding and 2025 funding. For 2025, we'll discuss with Ehlers on how much can be paid from utility annually vs tid vs general obligation and other possible funding sources because the loan portion is strictly for public side, principal forgiveness we received covers 100% of private side.

Robinson questioned worst case scenario when looking at the \$6.1 million loan repayment?

Lindman replied we'll have to look at that with Ehlers, it's a 20-year loan at .25%. We want the commission to be aware of what's happening moving forward as things happen through the Finance Committee to the City Council on any potential projects moving forward.

Diny commented there's several options, the loan portion could go onto rate side or other potential that hasn't been fully vetted out but we'll have to balance that out.

No Action Taken.

8) Discussion and Possible Action Approving a Sole Source and Contract with Asterra for Leak Detection Satellite Imagery and Leak Location.

Lindman stated there's no cost received yet, but it would be collaboration with Village of Weston, City of Schofield, City of Wausau, and Village of Rib Mountain. It's a technology that's newer using satellite imagery to determine potential leaks using ground penetrating radio waves. Green Bay has been using this for 6 years and there's other municipalities beginning to use this as well. It identifies smaller specific areas to look for leaks vs looking at an entire subdivision or section of the city. Its great technology that's been proven. We're thinking it may be about \$40-\$50 thousand but there's no details and cost at this point so we'll bring it back if you're not comfortable with the sole source without specific numbers.

Force stated he'd like numbers before approving the sole source but it looks promising.

Diny replied, we'll bring this back with numbers.

No Action Taken.

9) Discussion on the WDNR, Bi-Annual Wastewater Treatment Plant Inspection and Class A Exceptional Quality Biosolids Final Determination.

Brooks commented DNR representatives visited November 20th for the inspection and the inspection went well. We've been approved for class A biosolids verbally and we are waiting on the formal letter from the DNR. Class A biosolids can be distributed on land without DNR pre-approval. There's was talk of excluding Wausau's current mercury limit during inspection in the next 5-year WPDES term. After the inspection we received an email that both mercury and copper will be excluded from our next permit. We are expecting to receive the next draft permit in June/July and we'll send it to legal at that time.

Lindman commented staff has done an exceptional job with all new processes and treatment, effluent has been high quality and now getting the Class A Classification.

No Action Taken.

10) Recognition of Award Recipient Brad Wendtland, Wastewater Plant Operations Supervisor. WWOA Operator of the Year.

Brooks commented Wendtland received the Northcentral District Wisconsin Wastewater Operator of the Year Award for his dedication, skills, expertise and going above and beyond.

Wendtland commented it was a long process to get the upgrade completed for the plant with lots of hours for call ins and early mornings with late nights from all of us. I've been here about 14 years. Lindman stated this was well deserved and congratulations. Gehin and Force both acknowledged this is a significant award and congratulated Brad and thanked him for his dedication

No Action Taken.

11) Discussion and Possible Action Approving a Sole Source with Kocourek Ford for Cargo Van.

Boers summarized this is for the vehicle approved at the last commission meeting and bringing it back as a sole source through Kocourek Ford. We could go to different markets and get quotes but wanted to stay local.

Robinson questioned the cost. Boers replied \$60,118.50.

Motion Carried 3-0.

12) Adjourn.

Force motioned to adjourn. Seconded by Gehin.

Motion carried 3-0.

Link to view meeting in its entirety: <https://tinyurl.com/wausaucitycouncil>

Gina Vang, Recording Secretary

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MEMORANDUM

TO: President Diny
Commissioner Watson
Commissioner Force
Commissioner Gehin
Commissioner Robinson

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

SUBJECT: Director's Report – January 2025

Update LSL Replacement:

- The City Council passed the Reimbursement Resolution for the 2025 LSL funding, \$6.1 million loan & \$8.9 million principal forgiveness. This funding covers the private side replacements 100% for 2025.
- First Amendment to the City/CIP Master Partnership Agreement for the 2024 AND 2025 LSL Replacement Project has been approved by the DNR and will be brought to the BPW for approval. No change in costs or change in scope of work have been made. The changes in the language were to better align the Agreement with how the DNR administers and pays for work through their loan program.
- The proposed debt service is being considered to be paid by any or all of the following: TID, GO, utility. Options for the debt service payment will be considered at upcoming meetings of Finance and Council.
- CIP and city staff have begun public outreach and additional inventory verification. City staff has also prepared and sent out press releases about Wausau's Equiflow Lead Free program and ways to help with inventory and get on the list for replacement. Continued outreach will happen through the winter months and into the spring prior to construction.

WATER DIVISION

1. Update on Meter installation/replacements, and scheduling.

WASTEWATER DIVISION

1. Interviews for the one additional staff to the Wastewater team update. Job offer was made to the most qualified candidate and offer was declined due to personal reasons. Second offer was made to the second most qualified candidate on 12/18/24 and waiting on a response.
2. Collections System Technician update. None of the candidates interviewed were selected to fill the additional staff position due to- little to no applicable experience. Readvertising for this position commenced on 12/11/24 and will close on 1/3/25.



**ASTERRA Statement of Work
&
Software Terms of Use**

Provided to:

City of Wausau, WI

December 13th, 2024

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Statement of Work (SOW)

This Statement of Work (“**SOW**”) is provided in connection with the Terms of Use governing the use of ASTERRA’s Services and Platform.

Capitalized terms not defined herein shall have the respective meanings as set forth in the Terms of Use.

A. ROLES, RESPONSIBILITIES AND SERVICES – ASTERRA

1. GENERAL

ASTERRA offers its Clients, a patented technology operated by **Utilis Inc.** for pipe replacement modeling, and leak detection in urban and rural water networks, using L-band synthetic aperture radar (SAR) mounted on a satellite. The technology is based on a proprietary algorithm that detects soil moisture through the analysis of SAR data.

2. ASTERRA’S PRODUCTS OVERVIEW

ASTERRA will provide Client with the following Products available through the Platform: “Recover”, “MasterPlan” (the “**Products**”), and their related Service Tiers: “Detect”, “Prevent” or “Advise” (the “**Service Tiers**”).

2.1 Recover - Satellite-Based Leak Detection and Analysis

ASTERRA Recover provides customers with leak detection monitoring for drinking and wastewater systems utilizing Synthetic Aperture Radar (SAR) signals from satellites to illuminate the area of interest and collect the resulting reflected signals. These signals are analyzed with the ASTERRA patented algorithm and processed to identify specific indicators of wet soil saturated with potable or wastewater, screening out the signal noise and other interference. The result is a map showing likely leak locations, or Points of Interest (POI). These results typically encompass 5 – 10 % of the entire system length, so that the clients time and resource cost to inspect is much lower than traditional inspection methods. Recover is available as a subscription with various levels of service to match client’s needs.

2.2 MasterPlan – Pipeline Monitoring and Deficiency Assessment

Similar to Recover, ASTERRA MasterPlan utilizes Synthetic Aperture Radar (SAR) signals from satellites to illuminate the area of interest and collect the resulting reflected signals over time. These signals are analyzed with the ASTERRA patented algorithm and processed to identify the condition of underground water infrastructure, with pipes scored on a 1 – 5 scale, from a low level of deficiency observed to high levels of deficiency. The algorithm scores pipe segments exhibiting non-surfacing leaks and analyzes leak clusters over time contributing to the development of long-term maintenance and pipe replacement plans. MasterPlan is compatible with all GIS-based asset planning model tools and easily integrates with attribute



data such as pipe age, material, and work orders from surfacing leaks. MasterPlan is available in the Advise level subscription or as an additional service to Clients in the Prevent tier.

B. ROLES, RESPONSIBILITIES – CLIENT

1. GENERAL

Client is responsible for providing baseline system data, work order history and in some cases, an acoustic field verification team to inspect points of interests (POI) identified by ASTERRA. **Client** shall identify a primary contact person for technical, administrative, and field inspection coordination.

2. CLIENT RESPONSIBILITIES:

Client shall provide ASTERRA with the following materials (“**Materials**”):

2.1 Area of interest (AOI): the Client will provide ASTERRA with an area of interest (AOI). Unless agreed otherwise by the parties, the AOI is a designated geographical area to be surveyed using ASTERRA technology. AOI is required for all Products. AOI is attached as **Annex A** hereto and as agreed upon number of linear miles or area defined in Section E herein.

2.2 Recover Product/MasterPlan Pipe System Information: prior to image acquisition, the Client shall provide ASTERRA with a detailed and accurate GIS pipe system layer in the form of a shapefile or KML/KMZ. ASTERRA will use this layer to identify POI locations. The GIS layer should include pipe material, pipe age, pressure zone, and diameter, length of pipeline, trunk, main and service to be analyzed, and major appurtenances including hydrants, valves, and any other detailed information available.

2.3 Recover/MasterPlan Leak Detection History (Work Orders): The Client shall provide ASTERRA with a detailed and accurate history of leak findings and repairs through the “Go-Live Date”.

2.4 Recover/MasterPlan Leak Detection Performance Metrics: The Client shall provide ASTERRA with relevant and available performance metric data related to previous Client-utilized leak detection methodologies, field investigation process, timing, methods, and data delivery timing information, customer cost of water and cost of energy per CSM interview. This information will be used to calculate performance metrics of the service.

C. WORK PROCESS TIMELINE

1. Upon receipt of Client’s Materials, ASTERRA shall initiate the satellite imagery acquisition and analysis. Once the analysis is completed, ASTERRA will inform Client of the “Go-Live-Date” and access to Product will be granted to Client. “Go-Live-Date” notice will be furnished by ASTERRA upon 7-14 business days after the scheduled image acquisition date. Image



acquisition dates may be changed by a third party (satellite operator) or due to technical constraints. "Go-Live-Date" may be affected due to poor image quality according to ASTERRA's quality assurance standards.

2. Unless otherwise agreed upon by both parties, ASTERRA will provide Services only in the AOI overlapping with the Client's provided GIS pipe system layer.
3. Recover leak field inspection work can begin after the leakage report has been delivered to the Client customer portal and ASTERRA has provided training, guidance, and interpretation of the leakage data.
4. Unless otherwise agreed upon by the parties, field work with an ASTERRA field engineer will be conducted only within the borders of the AOI and at sites where access is provided by the client.
5. Delays in the provision of Materials may result in delays and/or additional cost in performing the Services. Where required, Client shall furnish access to Client's premises, and appropriate worksite, as necessary for performance of those portions of the Services to be performed at Client's premises.
6. Solely to the extent that ASTERRA provides Client pursuant to the applicable SOW with field work (by its own personnel or by its subcontractors), ASTERRA agrees to defend and indemnify Client and its respective directors, officers, employees, consultants, successors and assigns (collectively "Client Indemnitee") from and against any claim by a third party brought against Client Indemnitee, relating to any negligence or willful misconduct of ASTERRA or its subcontractors in providing such field work, except if the claim results from the instructions of Client or a Client Indemnitee.

D. ACCESS TO PLATFORM AND PRODUCTS

1. Provision of the Platform: portal environment, applicable licenses, including U-Collect and U-View licenses, analytics, reports and data that can be used in Client's GIS systems.
2. Access to the Platform shall only be granted upon ASTERRA's "Go-Live" notice to the Client and shall expire on the Service termination date.
3. Upon expiration or termination of the Agreement for any reason, Client will not be able to access the Services and/or, the data stored within the Platform, the Platform, related software and mobile applications, ASTERRA's support and any other software or data related to the Service. Any and all data not exported by Client to Client's own storage, shall no longer be available to Client following Service's termination. An exception will be made for Clients who renew their subscription within 12 months of termination of their previous subscription.
4. The provision of ongoing technical and support services by ASTERRA are in accordance with the Service Level Agreement ("SLA").



E. FEES & PAYMENT TERMS

1. Annual subscription fee per Package and Service Tier requested by Client (exclusive of Taxes) ("Annual Fee") and Additional Services as required by Client ("Support Service Fee") as provided in the table below.
2. Package Name: Prevent, Subscription Duration: 24 Months
3. Potable Water lines surveyed: 254 miles of watermain pipes
4. Table of fees:

ASTERRA Package: Prevent	QTY	Price
Annual Subscription Package	1	\$82,500
Additional Services		
Subcontracted BOTG (5 Days minimum)	1	Included
TOTAL		\$82,500

5. Payments by Client shall be made as follows:
 - a. 50% of the Annual Subscription Fee and any additional services shall be invoiced by ASTERRA on the Go-Live-Date. The remaining 50% to be invoiced 12 months from the Go-Live-Date.
 - b. Subcontracted Acoustic Leak Detection (BOTG) will be invoiced 14 days prior to the commencement of the field investigation.
6. Payment is due 30 days from the invoice date.
7. Requests for analysis outside the agreed upon AOI provided by the Client in Annex A may result in additional fees.
8. CSM SERVICES LIST & Service Level Agreement (SLA) is attached hereto as Annex B



ACCEPTANCE OF TERMS

By executing this SOW, you confirm your approval of the SOW on behalf of Client listed below, to be contractually bound by:

1. This SOW; and
2. The Terms of Use and Service Level Agreement incorporated by reference into this SOW.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Utilis Inc., dba., ASTERRA

City of Wausau, WI

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



TERMS OF USE

These Terms of Use (the “**Terms**”) is made and entered into as this 13th day of December 2024 (“Effective Date”), by and between Utilis Inc., dba., ASTERRA (the “Company”, “ASTERRA”) a private company having its registered offices at 4180 La Jolla Village Dr., Suite 530, La Jolla, CA 92037, and the City of Wausau, WI (“**Client(s)**”, “**you**”) a corporation organized and existing under the laws of Wisconsin with a principle place of business and mailing address at 407 Grant St. Wausau, WI 54403-4783. Terms of use govern the provision of the services that provide information for leak detection analysis, pipeline monitoring and deficiency assessment, using remote sensing technology (the “**Service(s)**”) operated by Utilis Israel Ltd., Utilis, Inc., Utilis SAR Ltd or Utilis Japan., all trading and doing business as ASTERRA (“ASTERRA”). Each of Client and ASTERRA will be referred to as a "party" and together the "parties".

1. Definitions and Interpretation

1.1. Capitalized terms not defined herein have the meanings given in the Statement of Work (the “**SOW**”) or the Service Level Agreement (the “**SLA**”), which are hereby incorporated into, and form part of, these Terms (together the “**Agreement**”), unless specifically excluded.

1.2. If there is a conflict between any provision of these Terms, the SOW, the SLA or any other agreement related to the Services, these Terms and the Agreement shall prevail, unless specifically expressed otherwise.

2. License Grant

2.1 Subject to the Terms, Client requests and ASTERRA grants, a nonexclusive, non-transferable, non-sublicensable, limited access license, to use the portal environment, applicable licenses, analytics, reports and data that can be used in client’s GIS systems (the “**Platform**”) during the Term, solely in accordance with the Terms herein, for Client’s internal business purposes only.

2.2 Services, additional services, and/or licenses shall be issued in separate SOWs, in the form attached hereto as Statement of Work, signed by both parties, numbered sequentially (SOW1, SOW2, etc.), all attached to and governed by these Terms.

3. ASTERRA Limited Warranties

ASTERRA warrants and undertakes that:

3.1. it will provide the Services using the degree of skill, care, and diligence which would reasonably and ordinarily be expected from a skilled and experienced provider of the Services (or of services materially similar to the Services);

3.2. each member or individual involved in the provision of the Services shall be suitably qualified, adequately trained and competent to provide the relevant part of the Services in respect of which they are engaged.

3.3. the Services, when used in the manner envisaged by this Agreement, do not, to the best of ASTERRA’s knowledge, infringe the intellectual property rights of any third party.



3.5. ASTERRA shall not be liable for any material delay or failure to provide the Services to the extent that such material delay or failure is caused by Client's failure to comply with the Agreement, including but not limited to, the following obligations:

- a. provision of data as agreed between the Parties and set out in the SOW – to be made ready on or before any agreed date of provision.
- b. failure by Client to make available personnel, Information, or to provide site physical access, as reasonably required for the performance of the Services.
- c. a failure by Client to make available adequate infrastructure to install, activate and use of the Service (such as: Client's systems and devices) to support the provision of the Services.

3.6 The Services hereunder are provided on an "AS IS" basis. Except for the above express warranty, ASTERRA makes no other warranties, express or implied, relating to the Services. ASTERRA does not represent or warrant that the Services shall be uninterrupted or error-free. ASTERRA disclaims and excludes any implied warranties of non-infringement, merchantability and/or fitness for a particular purpose.

4. **Payment Terms**

4.1 In consideration of the Service, Client will pay all invoices issued under this Agreement in accordance with stated payment terms on the relevant SOW. Any invoice that has not been paid within such period of time shall bear interest at the rate of 1% per month or any part of a month. Client is responsible for any applicable tax, duty,

or tariff (except with respect to ASTERRA's income), and all reasonable costs of shipment.

4.2 All Customer's payment obligations to ASTERRA are non-cancelable and paid fees are non-refundable. Client is responsible for paying all fees applicable to its subscription to the Service, whether or not it actively used, accessed or otherwise benefited from the Service. Unless stated differently in the SOW, fees are exclusive of any sales tax, VAT, withholding tax or other governmental charges or transaction charges. Where applicable, ASTERRA will provide the Client its tax certificates and Client shall withhold taxes from payments due as per such certificates.

5. **Technical Support**

5.1. During the Term, ASTERRA, either directly or with the assistance of third parties, will provide Client technical support for technical issues regarding the Services, in accordance with the SLA terms. For the purpose of the provision of technical support for the Client's technical questions, problems and inquiries, Client will cooperate, and work closely with ASTERRA, to reproduce malfunctions, including conducting diagnostic or troubleshooting activities, as ASTERRA reasonably requests.

ASTERRA may suspend the Services for planned maintenance work ("**Planned Maintenance**") or for rectifying critical outages ("**Unplanned Maintenance**"). In relation to Planned Maintenance, ASTERRA shall provide Client at least 14 calendar days' prior notice stating the scope, time, and duration of the Planned Maintenance. In relation to Unplanned Maintenance, ASTERRA shall endeavor to



provide Client with such advance notice as is reasonably practicable in the circumstances.

6. Privacy

As part of the Services, you may be granted a certain number of U-Collect, U-View and ASTERRA's Dashboard Licenses. The applicable terms of use and privacy policy are detailed in <https://ASTERRA.io/privacy-policy-portal-application/>

7. Confidentiality

Each party ("**Recipient**") agrees to: (a) keep all Confidential Information (as defined below) confidential; (b) not without the other party's ("**Discloser**") prior written consent to disclose any Confidential Information to any other person save those of its personnel who have a need to know the same in connection with this Agreement and its performance of this Agreement; (c) to use the Confidential Information solely in connection with this Agreement and the performance of its obligations hereunder and not otherwise for its own benefit or for the benefit of any third party. "Confidential Information" means all data, material, and information of a confidential nature in any form whatsoever disclosed (whether directly or indirectly) by or on behalf of the Discloser to Recipient, including: (a) the contents of and negotiations in relation to this Agreement; (b) the identity and business, financial and/or technical affairs of that party's business contacts, including Clients, agents, distributors and licensees; (c) any information that Recipient obtains or receives as a result of discussions leading up to the signature of this Agreement or subsequent performance of this

Agreement; (d) any information obtained or observed as a result of any site visit; (e) all financial information of Discloser; (f) all data provided to Recipient by or on behalf of the Discloser in connection with the Services. Confidential Information does not include information: (a) disclosed as a requirement of law or any regulatory body to whose rule Recipient is subject provided that Recipient, if legally permissible, gives Discloser prompt written notice of such requirement prior to such disclosure and only discloses that portion of the Confidential Information that is legally required; (b) known to Recipient prior to the commencement of this Agreement otherwise than as a result of being obtained directly or indirectly from the Discloser; (c) obtained from a third party who lawfully possessed such Confidential Information and which has not been obtained in a breach of a duty of confidence owed to the Discloser; (d) developed independently by Recipient without the use of Discloser's Confidential Information or (e) in the public domain other than as a result of a breach of a duty of confidence owed to the Discloser. Upon request of Discloser or upon the expiry or termination of this Agreement, Recipient shall delete and destroy any Discloser's Confidential Information then in its possession or control. Recipient acknowledges that remedies at law may be inadequate to provide Discloser with full compensation in the event of a material breach of any confidentiality and nondisclosure obligations herein without bond or other security obligation, to seek injunctive relief in the event of any such breach.



8. Client Data; Client Feedback

8.1 Client acknowledges and agrees that ASTERRA will handle and use (by itself or by using trusted third-party service providers) the data that the Client feeds to the Platform (or that ASTERRA feeds to the Platform on Client's behalf) ("**Client Data**") and the data and output generated by the Platform when used by the Client, as follows:

- (a) To provide the Services to the Client, conduct administrative and technical activities necessary to maintain and provide the Services and to improve and customize the Services;
- (b) To conduct analysis or generate metrics related to the Services;
- (c) For commercial and marketing purposes, publication of case studies and white papers regarding the Services itself (only in a form not identifying the Client and not disclosing any Client-specific output generated by the Platform unless specifically approved by the client);
- (d) To bill and collect fees (if applicable), to enforce this Agreement, and to take any action in any case of dispute or legal proceeding of any kind involving the Client with respect to this Agreement;
- (e) To prevent fraud, misappropriation, infringements, and other illegal activities and misuse of the Services;
- (f) To develop new products, features, and services, and for research and testing, provided that no information identifying the Client is publicly shared without prior authorization from the Client.

The Client will not be entitled to any remuneration from ASTERRA for the foregoing uses.

8.2 ASTERRA may, but are under no duty to, review Client Data made available through the Service. We may, in our sole discretion, temporarily or permanently delete or block access Service, if we find that it violates these Terms or for any other reason

8.3 Client may provide ASTERRA with information or content concerning enhancements, changes, or additions to the Service or other Company offerings, that are requested, desired or suggested by the Client or users on its behalf, including information pertaining to bugs, errors and malfunctions of the Service, performance of the Service, content and accuracy of the Service, the Service's compatibility and interoperability, and information or content concerning enhancements, changes or additions to the Service that Client requests, desires or suggests ("**Feedback**"). Client hereby assigns, without charge, all right, title and interest in and to the Feedback to ASTERRA, including the right to make commercial use thereof, for any purpose ASTERRA deems appropriate.

9. Intellectual Property

9.1 All rights, title and interest in and to the Service, Platform and the Service's software, including, without limitation, patents, copyrights, trademarks, trade names, service marks, trade secrets and other intellectual property rights, and any goodwill associated therewith, including computer code, graphic design, layout and the user interfaces of the Service, whether or not based on or resulting from Feedback, are and will remain at all times owned by ASTERRA, or licensed to ASTERRA.



All rights in and to the Service or Platform that are not expressly granted to Client in this Agreement are hereby reserved by ASTERRA.

9.2 Except for Client's limited access to use the Service during the Term, this Agreement does not grant or assigns to Client, any other license, right, title, or interest in or to the Service or Platform, or the intellectual property rights associated with them.

9.3 Client acknowledges and agrees solely in connection with Client's provision of the Service, ASTERRA is hereby granted a limited, revocable, nonexclusive, internal, and royalty-free license, solely during the Term to access, host and maintain Client Data for the strict limited purposes of delivering the Service to Client and supporting Client's use of the Service as described herein.

10. Disclaimer; Limitation of Liability; Indemnification

10.1 The Services, as set forth in this Agreement, include the provision of information and investigative output based on the technology developed by ASTERRA, and subsequent analyses, recommendations, evaluations, ranking reports, and guidance on best practices based on the foregoing. By their nature, the Services provided are solely decision making and support tools acquired by Client. Any and all acts, omissions decisions and performance by Client based on the Services provided to Client under this Agreement, are the sole responsibility of Client and such activity does not form any part of the Services. By signing the Agreement Client signals its understanding of the scope of the Services. The contract is with Utilis Israel Ltd.,

Utilis, Inc., Utilis SAR Ltd and Utilis Japan, as applicable, also doing business as ASTERRA.

10.2 LIMITATION OF LIABILITY. IN THE EVENT THAT, NOTWITHSTANDING THE TERMS ABOVE, ASTERRA IS FOUND LIABLE FOR DAMAGES OF ANY KIND BASED ON ANY THEORY OF LIABILITY (INCLUDING LIABILITY FOR NEGLIGENCE) CONNECTED AND/OR RELATED TO THE SERVICES COVERED BY THIS AGREEMENT, ASTERRA'S TOTAL AND AGGREGATE LIABILITY FOR SUCH DAMAGES SHALL NOT EXCEED THE PAYMENTS MADE BY CLIENT TO ASTERRA IN THE TWELVE MONTHS PRECEDING THE EVENT PURPORTEDLY GIVING RISE TO THE CLAIM.

10.3 EXCLUSION OF CONSEQUENTIAL DAMAGES. ASTERRA SHALL NOT BE LIABLE TOWARD CLIENT, OR ANY OTHER THIRD PARTY FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE OR INJURY TO BUSINESS EARNINGS, LOSS OF DATA, LOST PROFITS OR GOODWILL AND/OR PERSONAL INJURY, SUFFERED BY ANY PERSON ARISING FROM AND/OR RELATED WITH AND/OR CONNECTED TO THE SERVICES COVERED BY THIS AGREEMENT, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, TORT, OR OTHERWISE, (INCLUDING NEGLIGENCE) EVEN IF ASTERRA IS ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES.



10.4 INDEMNIFICATION

10.4.1 Indemnification by ASTERRA.

Subject to this Agreement and without derogating from the foregoing, ASTERRA shall defend and indemnify Client and its respective directors, officers, employees, consultants, successors and assigns (collectively “**Client Indemnatee**”) from and against any claim by a third party alleging that the use of the Service as contemplated under this Agreement, infringes a third party’s patent, copyright, trade secret or other intellectual property rights which are enforceable in the jurisdictions in which the Client’s support teams operate. Notwithstanding the foregoing, ASTERRA shall have no liability or obligation to Client Indemnitees with respect to any claim for infringement relating to: (1) Client’s use of the Service in combination with other products not provided or endorsed by ASTERRA; (2) modifications or alterations of the Service which are not performed by ASTERRA or with its permission; (3) a breach or alleged breach by Client of its representations, under the Agreement; in any case of (1) – (3) above, only to the extent that the Service would not be infringing in the absence of such circumstances.

10.4.2 Indemnification by Client. Client shall defend, indemnify and hold harmless ASTERRA and its directors, officers, employees, and subcontractors (collectively “**ASTERRA Indemnatee**”), upon ASTERRA’s request and at Client’s expense, from, and against, any damages, liabilities, loss, costs, expenses and payments, including, but not limited to, reasonable attorney’s fees and legal expenses, arising out of any claim, suit, action, arbitration or proceeding brought against ASTERRA Indemnatee, relating to: (a) a breach or alleged

breach by Client of any of its representations, warranties, covenants or obligations hereunder; (b) infringement or misappropriation of any intellectual property rights by Client; (c) any negligence or willful misconduct of Client or its users or other representatives; or (d) any claims in connection with the Client Data. To the extent that the Client is a governmental body, and notwithstanding Section 10.4.3 below, the above Indemnity obligation will be subject to such additional conditions that apply to Client under the applicable law.

10.4.3 The indemnified party shall promptly notify the indemnifying party in writing of any claim for which it seeks indemnification hereunder; provided that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure. The indemnifying party shall bear full responsibility for, and shall have the right to solely control, the defense (including any settlements) of any such claim; provided, however, that (a) the indemnifying party shall keep the indemnified party informed of, and consult with the indemnified party in connection with the progress of such litigation or settlement and (b) the indemnifying party shall not have any right, without the indemnified party’s written consent (which consent shall not be unreasonably withheld), to settle any such claim in a manner that does not unconditionally release the indemnified party. At the indemnifying party’s request, the indemnified party will provide reasonable cooperation with respect to any defense or settlement.



11. Term and Termination

11.1 Unless otherwise specified in the applicable SOW, this Agreement commences upon the Client's date of signature herein or acceptance date by Client, as applicable. The Service shall commence on the date on which the relevant Service is 'live', being the first date on which the Client or the first of the Client's users is granted access to the Platform's data, upon a notice by ASTERRA to Client ("**Go – Live- Date**") and will continue for a period of twelve (12) months thereafter ("**Initial Term**"), at which point the subscription will automatically renew for an additional twelve (12) months period ("**Renewal Term**") (Initial Term and Renewal Term, collectively, the "**Term**"), if not otherwise terminated earlier pursuant to this section 11 or if a Party has given a notice of non-renewal at least sixty (60) days prior to the end of the initial Term or Renewal Term.

11.2 Notwithstanding the foregoing, either party may terminate for a material breach by the other party unremedied for thirty (30) consecutive days after written notice thereof, at any time.

11.3 Either party may immediately terminate this Agreement if (A) any proceeding is commenced in good faith against the other party for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition, or extension of debts; (B) the other party commences proceedings for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition, or extension of debts; (C) there is issued a decree or order of a court having

jurisdiction for the appointment of a receiver, liquidator, or trustee or assignee in bankruptcy or insolvency of the other party or of a substantial part of the other party's property, or for the winding up or liquidation of the other party's affairs; or (D) there is a general assignment by the other party for the benefit of creditors or the admission by the other party in writing of its inability to pay its debts generally as they become due.

11.4 Upon expiration or termination of this Agreement for any reason: (i) Client will not be able to access the Services and/or the data stored within the Platform, the Platform, ASTERRA's support and any other software or data related to the Service. Any and all data not exported by Client to Client's own storage, shall no longer be available to Client afterward; and payment obligations of Client for Services provided through the date of termination will immediately become due. Client data will be accessible to a returning Client if they renew their subscription within 12 months of termination of their previous subscription

11.5 Upon expiration or termination of this Agreement and in any event, upon ASTERRA's written request, Client shall return any and all Confidential Information including, but not limited to ASTERRA training materials, and any and all materials incorporating ASTERRA's Confidential Information and all copies and derivatives thereof.

11.6 Sections 3-10, 11.4-11.6, 12 and 13 shall survive any termination or expiration of the Agreement for any reason.



12. Governing Law

The parties exclusively submit to the (i) governing law of Delaware or, (ii) solely if the laws that apply to the client prohibit the application of the law of Delaware – the law of Client’s principal place of business, and the exclusive jurisdiction and venue of the courts of (i) the City of Wilmington, Delaware, or (ii) if the laws apply to Client prohibit the jurisdiction of the Delaware Courts – the competent courts of the Client’s principal place of business. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties. Client shall comply with all applicable (including, all U.S. and applicable foreign) laws and administrative regulations relating to the control of exports of commodities and technical and/or personal data, and all laws directly or indirectly applicable to its activities hereunder or otherwise pursuant to or in connection with this Agreement, the Licenses or use of any software, and the provision of any Services and/or support.

13. Miscellaneous

This Agreement may be amended by an authorized representative of each party in a duly executed written document referencing this Agreement and expressing the intent of each party to amend this Agreement. If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect, and this Agreement shall be deemed amended to replace, to the extent legally permitted, the rights and obligations contained in such invalid or unenforceable provision. The invalidity or unenforceability of any provision shall not

constitute a failure of consideration hereunder. Any failure or delay in exercising, or any single or partial exercise of, any right or remedy by either party hereto shall not be deemed a waiver of any further, prior, or future right or remedy hereunder, including the right of such party at any time to seek such remedies as may be available for any breach or breaches of such term or condition. Nothing in this Agreement shall make either party the agent of the other for any purposes whatsoever. Except to the extent such rights cannot be restricted by applicable law, neither party may assign, sublicense, or transfer this Agreement without the prior written consent of the other party, and any such attempt by a party to sublicense, assign or transfer any rights, duties, or obligations hereunder is null and void and subject to the other party’s right to immediately terminate this Agreement. Notwithstanding the above, ASTERRA may assign, sublicense, or transfer this Agreement to an affiliate of ASTERRA or in connection with the merger, acquisition, or sale of all or substantially all of the assets of ASTERRA relating to this Agreement. This Agreement entered into between the parties on or around the date of this Agreement, together with the signed SOW constitute the entire agreement and understanding of the parties relating to the subject matter hereof, superseding all prior or contemporaneous agreements, representations, promises, and understandings, whether written, electronic, oral or otherwise and any additional or conflicting terms contained in any other document (including, without limitation, any pre-printed, additional or conflicting terms on any Client purchase order, or acknowledgment from either party) shall be null, void and of no effect on either party.

ANNEX A – AREA OF INTEREST





ANNEX B - CSM SERVICES DESCRIPTION LIST AND SLA

Tier: Prevent

Standard Features:

- **System-Wide Advanced Temporal and Spatial Leak Analysis** - ASTERRA will provide the customer with a system-wide analysis of those locations identified as having a high probability of subsurface leakage using advanced temporal (data collected across time) and spatial (data collected across space) analysis.
- **Leak Location List with Prioritization** - Each customer will receive a list of potential leaks (Points of Interest, POI's) for leak detection investigation based on SAR algorithm results and machine learning.
- **Customer Portal and Performance Dashboard (4 Licenses)** - Licenses for access to EO Discover, ASTERRA's Customer Portal and Performance Dashboard for tracking leak investigation results over the course of the subscription period.
- **U-Collect Software & U-View Software (4 Licenses)** - Access to field investigation input and viewing software.
- **On-Line Customer Support**
- **Customer Success Plan** - ASTERRA will provide each customer with a customized execution and success plan that will be reviewed and updated over the course of the subscription period.
- **Best Practice Tutorials (On-Line)** - ASTERRA will provide on-line tutorials which cover training and troubleshooting for the customer portal, U-Collect and U-View applications.

Additional Services available to the customer include:

Subcontracted Leak Detection Services - ASTERRA will provide the services of a preferred leak detection vendor subcontracted for 5-days/40-hour leak detection period. Following ASTERRA's best practices, identified leak locations will be investigated to pinpoint water loss. The schedule will be coordinated with the vendor and utility by ASTERRA Customer Success Manager.



Service Level Agreement (SLA)

This Service Level Agreement (“**SLA**”) is provided in connection with the Terms of Use governing the use of the ASTERRA’s Services and proprietary Platform (the “**Software**”). ASTERRA will endeavor to quickly respond to Software support requests and reported Software errors, bugs, or malfunctions (each, an “**Inquiry**”), and provide a solution to your Inquiry, as set forth in this SLA. Capitalized terms not defined herein shall have the respective meanings as set forth in the Terms of Use.

ASTERRA’s handling and resolution of Inquiries is subject to the following procedure and processes:

1. Inquiries shall be submitted to ASTERRA’s helpdesk by e-mail (csm@ASTERRA.io), or via the Client’s portal help feature, during ASTERRA’s standard business hours (9:00am to 5PM).
2. When ASTERRA receives notice of an Inquiry from you, along with all pertinent information at your disposal, regarding the Inquiry, ASTERRA will record the time in which the notification was received, during ASTERRA’s business hours indicated above (if the Inquiry is received by ASTERRA outside of its business hours, the Inquiry receipt time will be recorded as 9:00 am on ASTERRA’s next business day - the “**Opening Time**”).
3. Upon receiving an Inquiry, ASTERRA, using its reasonable judgment, will classify the Inquiry’s severity level as Critical, High, Medium, or Low, in accordance with the following guidelines:
 - a. Critical – Complete failure of the Software.
 - b. High – Significant fault in one or more of the primary functionalities of the Software.
 - c. Medium – Features of the Software are partially malfunctioning.
 - d. Low – Minor error or malfunction in the Software.
4. “Response” is ASTERRA’s provision of a preliminary, interim resolution or workaround for the Inquiry, partially alleviating the symptoms reported in the Inquiry. ASTERRA’s response will be in writing via email or via phone contact from the Client’s assigned Customer Success Manager.
5. “Final Resolution” is ASTERRA’s provision of a permanent and full resolution to the Inquiry.

ASTERRA will endeavor, using commercial efforts, to respond to Inquiries as set forth below and to provide a Final Resolution. Response Times are specified in relation to the Opening Time, as recorded in ASTERRA’s logs, as follows:

Priority	ASTERRA’s availability to commence handling the Inquiry	Response Time after Opening Time
Critical	ASTERRA’s business hours	8 hours
High	ASTERRA’s business hours	32 hours
Medium	ASTERRA’s business hours	3 business days
Low	ASTERRA’s business hours	2 business weeks

City of Wausau
CONTRACT FOR SERVICES
(Design Professionals)

1. PARTIES.

This is a Contract for Services ("Contract") between the City of Wausau, Wisconsin, a municipal corporation ("City") and Utilis Inc., dba., ASTERRA ("Contractor").

The Contractor is a: ☒ Corporation ☐ Limited Liability Company ☐ General Partnership
 ☐ Sole Proprietor ☐ Other: _____

2. PROJECT DESCRIPTION.

Attachment A: ASTERRA Scope of Work and License Terms of Use

3. SCOPE OF SERVICES AND SCHEDULE OF PAYMENTS.

Contractor will perform the following services and be paid according to the following schedule(s) or attachment(s) which are attached to and incorporated herein as part of this Contract:

Attachment A: ASTERRA Scope of Work and License Terms of Use

(Collectively referred to as "Attachments").

Order of Precedence. In the event of a conflict between the terms of this Contract and the terms of any document attached or incorporated herein, the terms of this Contract shall control and supersede any such conflicting term.

4. TERM AND EFFECTIVE DATE.

This Contract shall become effective upon execution by the Mayor on behalf of the City, unless another effective date is specified in the Attachments in Section 3. In no case shall work commence before execution by the City.

The term of this contract shall be: **[Insert date(s) or reference Attachments as needed].**

Attachment A: ASTERRA Scope of Work and License Terms of Use

5. ENTIRE AGREEMENT.

This Contract, including any and all Attachments referenced in Section 3, constitutes the entire agreement of the parties and supersedes any and all oral contracts and negotiations between the parties.

6. COMPENSATION.

In no event will the total compensation under this Contract exceed: \$88,500.

7. PAYMENT.

(a) The City will pay the Contractor for the completed and accepted services rendered under this Contract at the price set forth in Section 6 and according to the schedule as set forth in the Attachments. Payment shall be full compensation for services rendered and for all labor, material supplies, equipment and incidentals necessary to complete the services.

(b) The Contractor shall submit invoices to the City on a monthly basis. Invoices shall be due and payable within thirty (30) days from receipt of the invoice, except for any amounts disputed by City in good faith.

(c) Payment for services shall not be construed as City acceptance of unsatisfactory or defective services or improper materials. Contractor will not be compensated for unsatisfactory performance.

(d) Final payment of any balance due the Contractor will be made upon acceptance by the City of the services under this Contract and upon receipt by the City of documents required to be returned or to be furnished by the Contractor under this Contract.

(e) The City has the equitable right to set off against any sum due and payable to the Contractor under this Contract, any amount the City determines the Contractor owes the City, whether arising under this Contract or any other Contract.

- (f) Compensation in excess of the total Contract price, or for extra services will not be allowed unless authorized by an amendment under Section 16.

8. PROSECUTION AND PROGRESS.

- (a) Services under this Contract shall commence upon written order from the City to the Contractor. This order will constitute authorization to proceed.
- (b) Contractor shall complete the services under this Contract within the time for completion specified in the Scope of Services, including any amendments. The time for completion shall not be extended because of any delay attributable to the Contractor, but may be extended by the City in the event of a delay attributable to the City or in the event of an unavoidable delay as set forth in Section 17.
- (c) Services by the Contractor shall proceed continuously and expeditiously through completion of each phase of the work. Progress reports documenting the extent of completed services shall be prepared by the Contractor and submitted to the City with each invoice under Section 7 of this Contract.
- (d) Contractor shall notify the City in writing when the Contractor has determined that the services under this Contract have been completed. When the City determines that the services are complete and are acceptable, it will provide written notification to the Contractor, acknowledging formal acceptance of the completed services.

9. CHANGE ORDERS.

City may at any time, by written instructions and/or drawings issued to Contractor ("Change Order"), order changes to the services set forth in Section 3. Contractor shall within ten (10) days of receipt of a Change Order submit to City a firm cost proposal for the Change Order. If City accepts such cost proposal, Contractor shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Contract. Contractor acknowledges that a Change Order may or may not entitle Contractor to an adjustment in the Contractor's compensation or the performance deadlines under this Contract. Change Orders shall not increase the total compensation set forth in Section 6 unless the Contract is amended as provided in Section 16.

10. COMPLIANCE.

All work performed under this Contract shall comply with all applicable federal, state and local laws, rules, regulations and ordinances. Contractor shall secure, pay for, and shall maintain during the term of the Contract any and all federal state and local licenses and permits required in order to perform the required services or deliver the required supplies under this Contract. Contractor shall ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of Contractor, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the services under this Contract.

11. DEFAULT/TERMINATION.

- (a) This Contract may be terminated by either party as a result of a default or other failure in performance by the other party under the terms of this Contract which continues unremedied for a period of ten (10) days after written notice to such party in default. In the event of default by the Contractor, it shall not be entitled to compensation for work or services unsatisfactorily or improperly performed.
- (b) Notwithstanding subparagraph (a) above, the City may, in its sole discretion and without any reason, terminate this Contract at any time by furnishing the Contractor with ten (10) days written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by the Contractor and accepted by the City.
- (c) The rights and remedies under this section shall be in addition to those otherwise allowed by law or in equity and shall be cumulative and deemed not inconsistent with each other.

12. INDEMNIFICATION.

Contractor shall indemnify and hold harmless the City of Wausau, its employees, agents, officers, volunteers, elected and appointed officials, from and against any and all liabilities, losses, judgments, actions, legal or administrative proceedings, suits, obligations, debts, demands, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees, of any kind or of any nature whatsoever which may be imposed, incurred, sustained, or asserted against the City of Wausau, its employees, agents, officers, volunteers, and/or elected or appointed officials by reason of any bodily injury or death to any person, or on account of any loss, damage, or destruction of any property or loss of use thereof, arising from, in connection with, caused by or resulting from the Contractor's and/or any subcontractor's acts, errors, omissions or negligence in the performance of this Contract.

13. INSURANCE.

Contractor shall procure and maintain, during the term of this Contract, insurance coverage in the following amounts and types:

- (a) Professional Liability
 - (1) Limits
 - (i.) \$1,000,000 each claim
 - (ii.) \$1,000,000 annual aggregate
 - (2) Must continue coverage for 2 years after final acceptance of service/job/work.
- (b) Commercial General Liability Coverage at least as broad as Insurance Services Office Commercial General Liability Form, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage:
 - (i.) \$1,000,000 each Occurrence limit
 - (ii.) \$1,000,000 Personal and Advertising Injury limit
 - (iii.) \$2,000,000 general aggregate (other than Products-Completed Operations) per project
 - (iv.) \$2,000,000 Products-Completed Operations aggregate
 - (v.) \$50,000 Fire Damage limit – any one fire
 - (vi.) \$5,000 Medical Expense limit – any one person
 - (vii.) Products-Completed Operations coverage must be carried for two years after final acceptance of work.
- (c) Automobile Liability Coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1 – “Any Auto” basis.
- (d) Worker’s Compensation and Employer’s Liability if required by Wisconsin State Statute or any Worker’s Compensation Statutes of a different state. Must carry coverage for Statutory Worker’s Compensation and an Employer’s Liability with limits of:
 - (i.) \$100,000 Each Accident,
 - (ii.) \$500,000 Disease-Policy Limit
 - (iii.) \$100,000 Disease-Each Employee
 - (iv.) Employer’s Liability limits must be sufficient to meet umbrella liability insurance requirements.
- (e) Umbrella Liability Coverage at least as broad as the underlying Commercial General Liability, Automobile Liability, and Employer’s Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$10,000. The Umbrella Liability must be primary and non-contributory to any insurance or self-insurance carried by City.
- (f) Additional Provisions.
 - (i.) All insurance must be primary and non-contributory to any insurance or self-insurance carried by City.
 - (ii.) Insurance is to be placed with insurers who have an A.M. Best rating of no less than A- and a Financial Size Category rating of no less than Class VII, and who are authorized as an admitted insurance company in the State of Wisconsin.
 - (iii.) The following must be named as additional insureds on all liability policies: City of Wausau, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04 and also include Products – Completed Operations additional insured coverage per ISO form CG 20 37 07 04 or their equivalents for a minimum of 2 years after acceptance of work. This does not apply to Worker’s Compensation policies or Professional Liability policy.
 - (iv.) Waivers of subrogation in favor of the City must be endorsed onto the Worker’s Compensation, Commercial General Liability, Automobile Liability, and Umbrella Liability coverages.
 - (v.) Any deductible or self-insured retention must be declared to the City.
 - (vi.) Prior to execution of the Contract the Contractor shall file with the City a certificate of insurance (Acord Form or equivalent for all coverages) signed by the insurer’s representative evidencing the coverage required by this Contract. In addition, form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or its equivalent on the Commercial General Liability coverage.

14. OWNERSHIP OF CONTRACT PRODUCT.

All of the work product, including, but not limited to, documents, materials, files, reports, data, including magnetic tapes, disks of computer-aided designs or other electronically stored data or information (collectively referred to as "Documents") which the Contractor prepares pursuant to the terms and conditions of this Contract are the sole property of the City. The Contractor will not publish any such materials or use them for any research or publication, other than as expressly required or permitted by this Contract without the prior written permission of the City in its sole discretion.

The Contractor intends that the copyright to the Documents shall be owned by City, whether as author (as a Work Made for Hire), or by assignment from Contractor to City. The parties expressly agree that the Documents shall be considered a Work Made for Hire as defined by Title 17, United States Code, Section 101.

15. CONTRACTOR AUTHORITY.

Contractor is an independent contractor and not an employee of the City. The Contractor is engaged by virtue of the Contract to perform only those services contained herein. Contractor is not authorized to contract on behalf of, to incur any liability, or make any representation on the part of, or on behalf of, the City.

16. AMENDMENT.

This Contract shall be binding on the parties, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any change in any provision of this Contract may only be made by a written amendment, signed by the duly authorized agent who executed this Contract.

17. FORCE MAJEURE.

In the event either party is rendered unable, in whole or in part, to perform its duties or obligations hereunder as a result of acts of God, authority of laws, strikes, lockouts, labor disputes, riots or other causes beyond its control, it shall notify the other party of such event in writing and the obligations of such party may be suspended during the continuation of any inability to perform so caused by such event.

18. AUTHORITY.

The parties represent and warrant that they have obtained all authorizations and approvals necessary to enter into this Contract and that the undersigned individual(s) acting on behalf of each party have been duly authorized to execute this Contract on behalf of the respective party.

19. ASSIGNABILITY/SUBCONTRACTING.

Contractor shall not assign or subcontract any interest or obligation under this Contract without the City's prior written approval. All of the services required hereunder will be performed by Contractor and employees of Contractor.

20. NO WAIVER.

The failure of either party to enforce any of the provisions of this Contract in whole or in part shall not be construed as a waiver of such provision or the right of the party thereafter to enforce each and every such provision.

21. NONDISCRIMINATION.

During the term of this Contract, Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex (including pregnancy, sexual orientation, or gender identity), physical condition, disability, sexual orientation (defined in s. 111.32(13m), Wis. Stats.) or national origin, arrest record or conviction record. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of age, race, religion, color, disability, sex (including pregnancy, sexual orientation, or gender identity), or national origin.

22. COUNTERPARTS.

This Contract may be executed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as an original. Copies of this Contract, fully executed, shall be as valid as an original.

23. PUBLIC RECORDS LAW.

Contractor shall assist City in complying with any public record request in connection with this Contract submitted to City pursuant to the Wisconsin Public Records Law, Wis. Stat. §§19.31 – 19.39.

24. ASSIGNMENTS.

Neither party may assign this Contract, or any of the services provided hereunder, without the express written approval of the other party. The approval of the City may be manifested only by a resolution adopted by a majority of the Common Council. All of the services required hereunder will be performed by Contractor and employees of Contractor.

25. TIME IS OF THE ESSENCE.

Time of performance under this Contract is of the essence.

26. NOTICES.

All notices to be given under the terms of this Contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

CITY:

(Department Head)

City of Wausau

407 Grant Street

Wausau, WI 54403

CONTRACTOR:

Utilis Inc., dba., ASTERRA ("Contractor").

4180 La Jolla Village Drive, Suite 530

La Jolla, CA 92037

27. CHOICE OF LAW.

This Contract shall be governed by and construed under the laws of the State of Wisconsin and venue for any legal action between the parties shall be in the Marathon County Circuit Court.

28. SEVERABILITY.

It is mutually agreed that in case any provision of this Contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Contract remain in full force and effect.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Contract to be executed on the date first above written.

CONTRACTOR:

(Name of Contracting Entity)

By: _____
(Signature)

(Name and Title of Person Signing)

Date: _____

CITY OF WAUSAU

BY _____
Doug Diny, Mayor

Attest:

_____, Clerk

Date: _____

WATER UTILITY FUND
30-Nov-24

	City FY24		% Of	
	Amended Budget		Budget	PY Actuals YTD
	Detail	CY Actuals YTD		
Revenues				
Public Charges for Services	12,299,100	10,837,994	88.12%	8,441,647
Miscellaneous Revenue	15,000	77,325	515.50%	12,181
Interest on Investments		495,272		469,107
State Grants		6,582,337		
Proceeds from Long Term Debt	500,000	10,600,819	2120.16%	20,596,374
Capital Contributions		34,564		
Revenues	12,814,100	28,628,311	223.41%	29,519,309
Expenses				
Salaries and Wages	1,595,741	1,108,638	69.47%	1,004,991
Benefits	629,973	381,550	60.6%	417,030
210 Professional Services	251,800	622,589	247.3%	1,407,809
220 Utility Services	534,600	448,626	83.9%	457,343
230 Repair and Maintenance Services-Infrastructure	250,000	79,242	31.7%	148,827
240 Repair and Maintenance Services-Other	147,000	96,303	65.5%	105,503
250 Special Services	197,000	100,278	50.9%	85,852
290 Other Contractual Services	17,100	19,482	113.9%	13,221
310 Office Supplies	52,300	35,018	67.0%	40,369
320 Publications, Subscriptions and Dues	13,000	3,527	27.1%	18,232
330 Travel	21,500	19,424	90.3%	27,613
340 Operating Supplies	49,700	53,988	108.6%	53,538
350 Repair and Maintenance Supplies	-	32,892		61,882
360 Other Repairs and Maintenance Supplies	560,500	100,029	17.8%	130,480
390 Other Supplies and Expense	642,800	94,116	14.6%	199,322
410 Concrete and Clay Products	-	699		11,341
420 Metal Products	-	151		565
430 Wood Products	-	45		46
440 Plastic Products	-	1,530		581
450 Raw Materials - Chemicals	874,000	695,248	79.5%	781,294
480 Fabricated Materials	104,300	-	0.0%	-
510 Insurance	12,000	57,190	476.6%	47,022
520 Other Permits and Regulatory Fees	600	2,220	370.0%	2,235
530 Rents and Leases	400	24,523	6130.8%	20,878
610 Principal Redemption	2,647,120	20,214,241	763.6%	2,486,759
620 Interest	863,926	1,719,205	199.0%	887,976
690 Other Debt Service	10,000	2,800	28.0%	38,800
Payment In Lieu of Tax	1,590,000	-	0.0%	1,590,000
740 Losses	5,000	-	0.0%	4,216
60000:Capital Outlay	1,709,000	14,087,544	824.3%	5,252,765
Expenses	12,779,360	40,001,098	313.0%	15,296,490
Revenues Over/(Under) Expenses	34,740	(11,372,787)		14,222,819

SEWER UTILITY FUND
30-Nov-24

	City FY24 Amended			
	Budget Detail	CY Actuals	% Of Budget	PY Actuals YTD
Revenues				
Intergovernmental Revenue	-	2,500		2,000
Public Charges for Services	9,789,738	10,098,399	103.15%	10,223,506
Miscellaneous Revenue	4,007	37,151	927.15%	51,690
Interest on Investments	-	146,725		133,769
Capital Contributions		35,255		49,000
Proceeds From Long Term Debt	-	78,724		2,164,987
Revenues	9,793,745	10,398,754	106.18%	12,624,952
Expenses				
Salaries and Wages	1,018,841	1,138,812	111.78%	926,692
Benefits	488,828	460,748	94.26%	454,606
210 Professional Services	258,000	128,899	49.96%	353,293
220 Utility Services	1,251,500	546,698	43.68%	614,000
230 Repair and Maintenance Services-Infrastructure	2,000	-	0.00%	-
240 Repair and Maintenance Services-Other	254,000	133,524	52.57%	111,436
250 Special Services	83,500	99,527	119.19%	96,888
290 Other Contractual Services	14,000	22,724	162.31%	37,244
310 Office Supplies	14,700	26,572	180.76%	30,288
320 Publications, Subscriptions and Dues	25,800	15,837	61.38%	14,346
330 Travel	36,700	19,896	54.21%	22,446
340 Operating Supplies	21,600	28,959	134.07%	26,334
350 Repair and Maintenance Supplies	77,200	47,130	61.05%	55,002
360 Other Repairs and Maintenance Supplies	215,100	159,746	74.27%	127,764
390 Other Supplies and Expense	128,000	58,675	45.84%	52,278
410 Concrete and Clay Products	-	2,310		1,290
420 Metal Products	-	24,398		7,013
430 Plastic Materials				704
450 Raw Materials - Chemicals	659,000	392,925	59.62%	582,263
480 Fabricated Materials	5,000	-	0.00%	-
510 Insurance	34,000	83,608	245.91%	87,217
520 Other Permits and Regulatory Fees	42,000	32,088	76.40%	36,541
530 Rents and Leases		2,329		2,039
610 Principal Redemption	3,246,679	3,305,216	101.80%	3,162,206
620 Interest	1,755,240	1,791,831	102.08%	1,827,082
690 Other Debt Service	-	800		800
740 Losses	-	-		4,486
60000:Capital Outlay	-	1,905,252		1,839,847
50920:Transfers to Other Funds	-	-		
Expenses	9,631,688	10,428,504	108.27%	10,474,105
Revenues Over/(Under) Expenses	162,057	(29,750)		2,150,847



TO: Wausau Waterworks Commission

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

DATE: January 7, 2025

SUBJECT: RR Bridge Water Main Replace – Grand Ave/Thomas St

Along Grand Ave just south of Thomas St there is a 6-inch water main hung from the bridge. There was a break in the water main recently at one of the pipe hangar locations. The pipe is most likely a PVC pipe and has become brittle and can easily crack with movement or subject to being hit.

The utility is proposing to replace this water main that is hung under the bridge. The non-metal pipe connects to cast iron pipe at each of the bridge abutments, the cast iron pipe will remain in place until the reconstruction of Grand Ave proposed in 2030 by the DOT. Cost estimates are being prepared and will be presented at the meeting.

Pictures and map of the water main location attached.

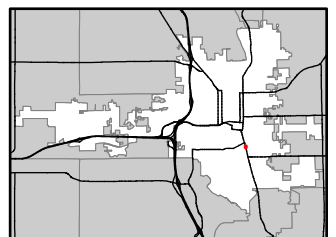
ArcGIS Web Map

City of Wausau / DPW

Date Printed: 1/3/2025

0 0 0.01
mi

- Right Of Way
- Parcel
- Base Zone
- Copper
- Lead
- Hydrant Lead
- Pipe Fitting
- Control, Hydrant Valve
- Control, Gate Valve
- Service, Curbstop Valve, Active
- Hydrant (Public)
- Break



NOTES:

1. Duplication of this map is prohibited without the written consent of the City of Wausau DPW / GIS Dept.

2. This map was compiled and developed by the City of Wausau and Marathon County GIS. The City and County assume no responsibility for the accuracy of the information contained herein.

3. City of Wausau
Public Works / GIS Division
407 Grant St.
Wausau, WI 54403
www.ci.wausau.wi.us











MASTER PARTNERSHIP AGREEMENT
FOR A COMMUNITY-BASED PUBLIC PRIVATE PARTNERSHIP FOR LEAD
SERVICE LINE REPLACEMENT AND RELATED INFRASTRUCTURE WORK
BETWEEN
CITY OF WAUSAU,
WAUSAU WATER WORKS
AND
COMMUNITY INFRASTRUCTURE PARTNERS LLC

February 16, 2024

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MASTER PARTNERSHIP AGREEMENT

THIS MASTER PARTNERSHIP AGREEMENT (“this Agreement”) is entered into as of February 16, 2024 (the “Effective Date”), by and between the CITY OF WAUSAU, a municipal entity created by the state of Wisconsin, and its municipal water authority, WAUSAU WATER WORKS (collectively, “the City”), and COMMUNITY INFRASTRUCTURE PARTNERS LLC, a Delaware limited liability company (the “Manager”). The City or the Manager or both may be referred to herein as a “Party” or the “Parties.”

WITNESSETH

WHEREAS, the City desires to augment and expand the capabilities of its Public Works Department to address lead service water lines that exist in its community;

WHEREAS, in 2023, the Manager responded to a Request for Professional Qualifications to deliver a comprehensive community-based delivery system model for lead service line replacement and associated infrastructure work;

WHEREAS, the City has accepted the Manager’s Statement of Qualifications as implemented by this Agreement;

WHEREAS, the City believes that the community-based public private partnership delivery model (the “Program”) provides significant advantages through (a) performance-based structure that shifts delivery risk from the City to the Manager; (b) resources to focus on accessing private property; (c) access to a large base of skilled subcontractors in the region that can maximize pricing efficiencies by combining economies of scale and increasing competition in the marketplace; and (d) greater construction capacity to manage program scale;

WHEREAS, the Manager and the City have agreed to enter into this Agreement with respect to the planning, design, construction, installation, management, maintenance, repair, replacement and inspection of Projects (hereinafter defined);

WHEREAS, the Parties acknowledge that there are significant opportunities for public benefit in the development, implementation and use of lead service line replacement and associated infrastructure management in and around the City; and

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties do covenant and agree as follows:

ARTICLE I. THIS AGREEMENT

Section 1.1 Purpose. The purpose of this Agreement is to establish the terms and conditions pursuant to which the Manager shall (a) work with the City to develop and agree upon an Annual Plan (as defined below) setting forth the scope of Work (as defined below) to be completed within each such plan, (b) develop community and stakeholder outreach programs to provide access to private property, and (c) create workforce and contractor development

programs to ensure sufficient capacity to replace all lead service lines throughout the City in an accelerated manner.

Section 1.2 Term. The term of this Agreement shall commence on the Effective Date and end on December 31, 2029, unless extended by mutual written agreement of the Parties or terminated earlier pursuant to the terms of this Agreement (the “Term”).

Section 1.3 Entire Agreement. This Agreement, including the schedules attached hereto, (a) constitutes the entire and complete agreement with respect to the Work and the Budgeted Projects (as defined below) and (b) supersedes all prior or contemporaneous understandings, arrangements and commitments, whether oral or written, relating to the subject matter hereof. The descriptions of any such agreements herein, in each and every case, are subject entirely to the actual terms of those agreements as executed.

ARTICLE II. DEFINITIONS AND GENERAL PROVISIONS

Section 2.1 Terms Generally. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation/” except as the context may otherwise require. The words “agree,” “agreement,” “approval” and “consent” shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed” except as the context may otherwise require. The word “or” is not exclusive. The phrase “sole cost and expense,” when used with respect to a cost or expense to be paid by the Manager, means that no portion of the amount payable shall be paid by the City apart from the Project Book Prices (as such term is defined below). Words in the singular number include words in the plural and vice versa unless the context of the usage of such term clearly indicates otherwise.

Section 2.2 Definitions. The following are definitions of certain terms used in this Agreement.

“Acceptance” or “Accepted” means the ultimate acceptance of all of the Work in each Completed Project by the City.

“Affiliate” means, when used with reference to a specified Person, any Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person.

“Agreement” shall have the meaning ascribed to it in the first paragraph of this Agreement, as the same may be amended from time to time in accordance with the terms herein.

“Applicable Laws” means (a) every applicable federal, state or City law, code, rule, constitution, mandate, statute, regulation, Permit, ordinance, municipal charter provision, and (b) any interpretation or administration of any of the foregoing by any Governmental Authority, in each case, which applies to the activities or Parties under this Agreement, whether now or hereafter in effect.

“Application for Payment” shall have the meaning specified in Section 6.5.

“Authorized Representative” means the City’s Authorized Representative and/or the Manager’s Authorized Representative as the context of the usage of such term may require.

“Billing Month” means each calendar month in each Billing Year.

“Billing Year” means a Fiscal Year comprised of twelve (12) calendar months ending on December 31 of a given year, except that (a) the first Billing Year shall commence upon the Effective Date and end on December 31 next thereafter and (b) the last Billing Year shall end concurrently with the end of the Term or, if applicable, on the date of termination of this Agreement.

“Budgeted Project” shall have the meaning set forth in Section 3.1.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday, which is not a legal holiday in the City.

“Certifier” means the person or firm engaged to verify to the City the Manager’s performance of Work in accordance with the requirements of this Agreement.

“Change in Law” means (a) the enactment, adoption, promulgation, modification or repeal, after the Effective Date, of any Applicable Law or any change in interpretation thereof by any Governmental Authority or (b) the imposition, after the Effective Date, of any conditions on the issuance, modification or renewal of any Permit which, in either event, (1) adversely affects the Manager’s performance of the Work or increases the Manager’s costs to perform the Work, (2) adversely affects the City’s ability to perform its obligations hereunder, or (3) imposes requirements on the applicable Party that are more burdensome than the most stringent requirements that (A) are in effect on the Effective Date or (B) have been accepted by the Manager in any applications for Permits.

The enactment into law after the Effective Date of any Applicable Law establishing a fee, charge, levy or assessment, or the increase of same, which was not in effect as of the Effective Date, shall be considered a Change in Law under this Agreement. The enactment into law after the Effective Date of any federal, City or state tax law imposing or changing the rate of income taxation upon the Manager or the owners of the Manager shall not be considered a Change in Law or any other Uncontrollable Circumstance under this Agreement. Changes in local tax law directly affecting the costs or timing of the Work may constitute a Change in Law.

“City Cause” means any material breach, failure, nonperformance or noncompliance by the City with the terms and provisions of this Agreement for any reason (other than Uncontrollable Circumstance or Manager Cause) or any act or omission of any officer, agent, employee, subcontractor or independent contractor of the City (other than the Manager or the Certifier) which, prevents or materially delays, either individually or cumulatively, (i) the City’s performance of its obligations under this Agreement, (ii) the Manager’s performance of its obligations under this Agreement, (iii) prevents or materially delays the Work on the relevant Budgeted Project, (iv) causes a material increase in the Manager’s actual project costs for such Project or (v) deprives the Manager of any of its material rights under this Agreement.

“City Indemnified Parties” shall have the meaning set forth in Section 7.1.

“Change Order” shall have the meaning set forth in Section 5.6.

“Change Order Proposal” shall have the meaning set forth in Section 5.6.

“Compensable Change Order(s)” means a change to the Work, the cost thereof or the schedule for a Budgeted Project that arises from (a) an Uncontrollable Circumstance, or (b) City Cause.

“Completed Project” shall mean a Project for which the Certifier has confirmed the project is Substantially Complete.

“Construction Commencement Date” means, with respect to each Budgeted Project, the earlier of (a) the date on which construction activities begin at the applicable Project Site and (b) the date on which the Manager commences acquiring equipment or materials for use at the Project Site.

“Construction Season” shall be defined as the period during each calendar year commencing on approximately May 1 and ending on approximately November 1.

“Construction Work” means Work contracted for by the Manager which is subject to competitive bidding requirements, and not Work contracted for professional services.

“Contractor” means any firm engaged by the Manager that provides Work but does not include vendors or suppliers for Manager’s overhead, administrative, general requirements or insurance. Notwithstanding the foregoing, this term shall refer to general contractors, prime contractors, subcontractors, and vendors contracted for implementation of the Program, and including software, job cost accounting, project controls, outreach, marketing/communications, contractor/workforce development vendors.

“Direct Costs” means the costs incurred and paid or payable by the Manager in connection with the performance of the Work proposed in each Project Book and the Program. These costs shall include all costs associated with Contractors and Subcontractors directly working on Work related to the Program.

“Effective Date” means the date of the execution of this Agreement by the Parties.

“Emergency” means an incident beyond the reasonable control of the Manager and Contractors requiring immediate action on the part of the Manager, which incident, if not immediately addressed, may reasonably be expected to result in imminent and substantial damage, injury or loss.

“Engineer” means a qualified engineer selected and engaged by Manager who has demonstrated experience in the area of civil engineering, planning, surveying, permitting, LSL replacements and water engineering.

“Environmental Litigation” means any lawsuit, filed in a court, arising out of soil or groundwater contamination, air contamination, or surface water contamination with recognized pollutants, whether initiated by federal or state governmental entity or by a private party.

“Final Project Book” shall have the meaning specified in Section 4.3.

“Fiscal Year” means each year of this Agreement commencing on January 1 and ending on the immediately succeeding December 31.

“Governmental Authority” means any federal, state, regional, municipal, city, or local government, any political subdivision thereof, or any other governmental, public or statutory instrumentality, authority, body, agency, commission, or court having jurisdiction over, as applicable, the Program, the Project(s), the Project Site(s), or the transactions with respect to the development, construction, installation, management, operation or maintenance of the City’s drinking water system.

“Interim Financing” means a debt of the City incurred to temporarily finance the Work of the Manager until permanent financing is obtained from annual grant funding or other sources.

“Interim Financing Costs” means the net interest, fees, and charges associated with the City issuing Interim Financing to the Manager, including attorney’s fees.

“Invitation to Bid” means a written invitation to prospective suppliers to submit a bid on materials or services.

“Key Performance Indicators” or “KPIs” shall mean a quantifiable measure of performance over time for a specific objective. Annual KPIs are measured in twelve-month segments during the Term of this Agreement and Semi-Annual KPIs are measured in six-month segments during the Term of this Agreement Term.

“Local Business” means a business entity located in the state of Wisconsin.

“Local Business Utilization KPI” shall mean the Semi-Annual KPI as set out by Schedule 3 which is earned if the Manager awards at least fifty percent (50%) of Construction Work to Local Businesses.

“LSL” shall mean Lead Service Lines.

“LSL Cost KPI” shall mean the Annual KPI as set out by Schedule 3 which is structured as a not-to-exceed value per LSL replaced. The not-to-exceed value shall be determined annually in each Annual Plan in negotiations with the City. If the Manager delivers the scope at or less than agreed upon not-to-exceed value per LSL replaced, then the Manager earns this KPI. Any savings below the agreed upon per LSL not-to-exceed value shall be utilized by the Manager to replace additional LSLs.

“LSL Implementation Schedule KPI” shall mean the Annual KPI as set out by Schedule 3 which is earned if the Manager replaces a minimum number of LSLs each year, as determined

annually in each Annual Plan in negotiations with the City, and adjusted in each Project Book if funding availability differs from what was initially projected.

“LSL Professional Services” means engineering, architectural, legal, and other professional services related to LSL replacement under this Agreement, which may include services outlined in Wis. Admin. Code NR § 166.07(1)(q).

“Losses” means any and all debts, claims, obligations and other liabilities, monetary damages, fines, fees, assessments, impositions, interest obligations, losses, costs, expenses (including amounts paid in settlement, interest, court costs, costs of investigators, fees and expenses of attorneys, accountants, financial advisors, engineers and other experts, and other expenses of litigation) and any and all out-of-pocket costs incurred by the City for the procurement of similar services to cover any default by the Manager.

“Manager” shall have the meaning ascribed to it in the first paragraph of this Agreement identifying the Parties hereto.

“Manager Cause” means (a) any material breach, failure, nonperformance or noncompliance by the Manager with the terms and provisions of this Agreement for any reason except to the extent such breach, failure, nonperformance or noncompliance is caused by the occurrence or continuing effect of an Uncontrollable Circumstance or City Cause, or (b) any material breach, failure, nonperformance, noncompliance, negligence or willful misconduct of any agent, officer, or employee of the Manager which prevents or, individually or cumulatively, materially interferes with or delays the City’s performance of its obligations.

“Master Project List” means a list prepared by the Manager and updated monthly documenting (a) all Proposed Projects, which are prioritized based on their relative value to the Program, as determined in Manager’s reasonable discretion; (b) a schedule for the replacement and Substantial Completion of the Proposed Projects; and (c) an estimate of the number of LSL replacements.

“Material Change Order” shall have the meaning set forth in Section 5.6.

“Monthly Status Report” shall have the meaning set forth in Section 5.5.

“Notice” means written notice from the Authorized Representative of the applicable Party to the other, all in accordance with Section 10.3 and the timeframes and other applicable requirements of this Agreement.

“Permits” means all actions, reviews, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights, licenses, filings, zoning changes, and entitlements which are required under Applicable Law to be obtained or maintained by any Person with respect to either or both of the subject Project or the Work.

“Person” means, without limitation, any individual, person, firm, corporation, company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority, and other entities.

“Posting Notice” shall mean an automatic and concurrent electronic notification (by email) to be generated and transmitted to all Parties each time information or data has been posted to a Project Dataroom.

“Program” shall have the meaning specified in the Recitals to this Agreement.

“Project” shall mean a Proposed Project, Budgeted Project, or Completed Project, as the context requires.

“Project Book” means a document setting forth, with respect to each Budgeted Project included therein:

- (a) its location and scope of Work (as defined below);
- (b) the LSLs and related improvements to be constructed or installed on the Project Site;
- (c) the proposed Construction Commencement Date and the Scheduled Substantial Completion Date (as defined below);
- (d) the estimated number of LSLs to be replaced;
- (e) the Manager’s estimated Project Book Price;
- (f) the Manager’s estimated annualized compensation for the Work for each such Project;
- (g) specifications for the scope of Work for each such Project;
- (h) a list of proposed Contractors and Subcontractors for each such Project; and
- (i) a list of the anticipated Permits required for each such Project.

“Project Book Amendment” shall have the meaning set forth in Section 4.4.

“Project Book Price” means the total price to fully replace the full LSL project bundle within a given Project Book.

“Project Dataroom” means the virtual data room maintained by the Manager (or a Contractor engaged by it) for each Project.

“Project Site” means, with respect to each Budgeted Project, the geographic area specified in the Project Book.

“Proposed Project” means a group of LSLs proposed to be replaced pursuant to the Program.

“Schedule” means a schedule to this Agreement which is incorporated into and shall be a part of this Agreement, unless the context or usage of such term clearly indicates a reference to another document.

“Scheduled Substantial Completion Date” shall, to the extent applicable, be the date anticipated for Substantial Completion of a Budgeted Project as stated in the applicable Project Book or as changed by Notice from the Manager in accordance with Section 5.1, as such Scheduled Substantial Completion Date may be extended pursuant to this Agreement.

“Section” means a section of this Agreement, unless the context or usage of such term clearly indicates a reference to another agreement or statute.

“Site Owner” shall mean the owner of real property where a Project is located.

“Subcontractor” means any firm engaged by a Contractor that provides Work but does not include vendors or suppliers for Manager’s overhead, administrative, general requirements or insurance.

“Substantially Complete” or “Substantial Completion” means that all of the Work with respect to a Project is sufficiently complete such that it is capable of functioning, as reasonably determined by the Certifier.

“Target Class Business” shall mean a business entity that is small business, a minority-owned business, a woman-owned business, a veteran owned-business, or a union business.

“Target Class Business Utilization KPI” shall mean the Semi-Annual KPI as set out by Schedule 3 which is earned if the Manager awards a negotiated percentage of Construction Work to Target Businesses.

“Term” shall have the meaning specified in Section 1.2.

“Training Individuals and Businesses KPI” shall mean the Annual KPI as set out by Schedule 3 which is earned if the Manager implements a Workforce or Contractor Development Program and achieves the quantifiable goals set out in Schedule 2 for each year or determined annually in each Annual Plan in negotiation with the City.

“Uncontrollable Circumstance” means any act, event or condition that:

- (a) prevents or, individually or in the aggregate, materially delays the Manager or the City from fulfilling its obligations hereunder, or
- (b) materially increases the cost of performing the applicable Party’s obligations under this Agreement, to the extent such act, event or condition is due to circumstances beyond the reasonable control of the Party asserting an Uncontrollable Circumstance; provided, however, such act, event or condition shall not be the result of such Party’s failure to perform its obligations hereunder in accordance with the terms and conditions of this Agreement.

(1) Subject to said terms and conditions, the following acts, events or conditions are examples, but not limitations, of what may qualify as an Uncontrollable Circumstance:

- (A) an act of God, hurricane, tornado, severe storm, tsunami, severe flood, epidemic, pandemic, severe earthquake, severe fire, explosion or landslide, act of a public enemy, terrorism, war, blockade, insurrection, riot, restraint of government and people, civil disturbance, sabotage or similar occurrence;
- (B) the order, injunction or judgment of any Governmental Authority, including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; excepting decisions interpreting federal, City, state or local tax laws; provided, so long as such order, injunction or judgment did not arise from the negligence or the willful misconduct of the Manager. For the avoidance of doubt, neither the contesting in good faith of any such order, injunction or judgment nor the reasonable failure to so contest shall constitute or be construed as negligence or the willful misconduct of the Manager;
- (C) the suspension, termination, interruption, denial, failure to issue, modification, or failure of renewal of any Permit; so long as such act, event or condition did not arise from the negligence or willful misconduct of the Party relying thereon and that neither the contesting in good faith of any such order nor the reasonable failure to so contest shall be construed as negligence or willful misconduct of such Party;
- (D) a Change in Law;
- (E) any subsurface or latent physical condition (including the presence or discovery of protected species, archaeological objects, unusual geological conditions or hazardous waste, but excluding such materials brought to a Project Site by the Manager), which shall prevent, or require redesign or change in, the construction of, or adversely affect the Work completion schedule for, the relevant Budgeted Project;
- (F) the failure of any Contractor to furnish services, materials, supplies, utilities or equipment on or before the dates agreed to, or the failure of any Subcontractor to procure labor or transportation in the open market; provided (i) such failure is the result of an act, event or condition outside of the Manager's reasonable control and not due to the negligence or willful misconduct of the Manager, (ii) such failure materially and adversely affects the Manager's ability

to perform its obligations and (iii) the Manager is not reasonably able to obtain substitute services, materials, supplies, utilities, equipment, labor or transportation at comparable cost on or before the agreed upon dates;

- (G) any labor strike, walkout, work stoppage or slowdown or similar industrial or labor action by the employees of the Manager or any of its Contractors performing Work on a Budgeted Project which directly results in a material delay in the performance of the Work, unless the final adjudication by a court of competent jurisdiction finds that such event was principally caused by the Manager's breach of any applicable collective bargaining agreement;
- (H) the failure of the Certifier to perform its obligations other than as a result of Manager Cause; and
- (I) Any interference by the Site Owner, or any officer, agent, employee, subcontractor or independent contractor of the Site Owner, with the development or maintenance of a Project, or damage to a Project caused by the Site Owner or any Person permitted on the Project Site by the Site Owner, or the failure of the Site Owner properly to maintain or protect the Project Site.

(2) None of the following acts, events or conditions shall constitute an Uncontrollable Circumstance under this Agreement:

- (A) any act, event or condition which is caused by the negligence or willful misconduct or interference of (i) the Manager, any of its Affiliates or (ii) the City, its subcontractors, agents or employees; provided, however, if the affected Party is the Manager, then a Change in Law resulting from an enactment of an Applicable Law by the City shall nevertheless constitute an Uncontrollable Circumstance;
- (B) reasonably anticipated weather conditions in the geographic area of the City, other than those listed in (1)(A) of this definition or other prolonged, severe weather conditions; and
- (C) changes in the financial condition of the City, the Manager, Affiliates or any contractor or subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement.

(3) The City may not assert the occurrence of an Uncontrollable Circumstance in order to excuse or delay the making of any payment due pursuant to this Agreement. In the event that the City is excused from the timely performance of any obligation hereunder because of the occurrence of an Uncontrollable Circumstance, the Manager shall be entitled to submit a Material Change

Order, the need for which is directly attributable to the City's excused or delayed performance as a consequence of such Uncontrollable Circumstance.

"Warranty Period" means, with respect to a given Project, the period beginning upon Substantial Completion of that Project and lasting one (1) year thereafter.

"Work" means all the duties, obligations and activities the Manager is responsible for performing or causing to be performed with respect to each Project.

Section 2.3 Data Sharing and Notifications.

Section 2.3.1 Project Dataroom. As a general rule, all documents with respect to the Program and the Projects shall be posted to the Project Dataroom maintained by the Manager when and as they are ready for delivery to the other Party. So long as the City has provided to the Manager the names and valid email addresses for its Authorized Representatives and the Certifier, the Manager shall provide, or cause the Project Dataroom operator to provide to the City, its Authorized Representatives and the Certifier, at all times, full and complete access to the Project Dataroom, including the right and ability to view, print and download the information therein.

Section 2.3.2. Posting Notification. Each Party shall, promptly upon posting any document or information to the Project Dataroom, deliver or cause to be delivered to the other Parties (including their respective Authorized Representatives) a Posting Notice.

Section 2.3.3. Confidentiality and Disclosure. The Parties acknowledge and agree that, given the novel and innovative nature of the Program, (i) information contained in the Project Dataroom is intended to be of a confidential and proprietary nature, and (ii) access by, and disclosure of information in the Project Dataroom to, third parties (other than the Certifier or the Engineer) could either impair the future ability of the City, the Manager or its Affiliates to obtain information in a similar or different project or manner or could cause substantial harm to the competitive position of the City and/or the Manager or its Affiliates in similar or different endeavors. The City and the Manager will provide prompt Notice to each other of any requests from third parties (other than the Certifier or the Engineer) for information from or access to the Project Dataroom. The Parties further agree that in the event that use of the Project Dataroom as contemplated herein causes an enhanced risk of the disclosure to third parties (other than the Certifier or the Engineer) of confidential or proprietary information posted in the Project Dataroom, the Parties will collaborate in an effort to either make appropriate modifications to the requirements of the Project Dataroom or consider alternative means of communicating information under this Agreement intended to maintain the confidentiality of such information. Nothing herein shall prevent, impede or limit the City from complying with its obligations under Applicable Law with respect to the disclosure of information.

Section 2.3.4 Public Records. Notwithstanding anything in this Section 2.3, or any other part of this Agreement, the Manager understands that the City is bound by the Wisconsin Public Records Law, Wis. Stat. §19.21, et. seq. pursuant to Wis. Stat. §19.36(3), and that the City may be obligated to produce, to a third (3rd) party, the records of Manager that are "produced or collected" by Manager under this Agreement ("Records"). Manager is therefore

obligated to retain such Records and produce them to the City to the extent it is required under the Wisconsin Public Records Law. Manager's failure to maintain and produce Records as required by this Section 2.3.4 shall constitute a material breach of this Agreement, and Manager agrees to hold the City, and its officers, elected officials and employees, harmless from liability due to such breach, and shall indemnify the City, its officers, elected officials and employees, from any damages or costs, including reasonable attorney's fees, due to Contractor's failure to comply with this Section 2.3.4. Manager's records and other documents produced in the ordinary course of its business are not subject to such disclosure.

Section 2.3.5 Public Meetings. With regard to any public information or public participation meetings held by Manager, including, but not limited to, Project Bid Contractor Information Sessions, the Manager will share relevant details with the City and the City will post notice as required by Wis. Stat. §19.84. Additionally, there shall be provided on the City's official website, the posting of such meetings on the City's calendar. The City shall provide a link to the Manager's website on the City's website, as well as posting regular updates on this project. The Manager shall post regular updates to the Manager's website on this project.

ARTICLE III. ANNUAL PLANNING

Section 3.1 Preparation and Contents of the Annual Plan.

- (a) Preparation of the Annual Plan. During the one (1) year period prior to each Construction Season (or, with respect to the first Construction Season, within one hundred twenty (120) days following the Contract Date), representatives of the City and the Manager shall, not less than on a monthly basis, meet to discuss (a) the Proposed Project(s) contemplated to be initiated during the upcoming Construction Season, and (b) the workforce and/or contractor development requirements contemplated for the upcoming Construction Season. Based on such discussions between the Parties, not less than one hundred twenty (120) days prior to the start of each Construction Season (or, in the case of the first Billing Year, within one hundred twenty (120) days after the Contract Date), the Manager shall prepare a draft of the Annual Plan.
- (b) Contents of the Annual Plan. The draft Annual Plan, which shall be substantially in the form attached hereto as Schedule 1, shall set forth:
 - (1) For each Proposed Project anticipated to be initiated during the upcoming Construction Season:
 - (A) the proposed Project Site;
 - (B) the total number of LSLs to be replaced within the City's utility service area once such Proposed Project is Substantially Complete and Accepted;

- (C) the anticipated Construction Commencement Date;
 - (D) the anticipated date of Acceptance;
 - (E) the budget for each such Annual Plan (“Annual Plan Budget”); and
 - (F) based on the Annual Plan Budget, the estimated Base Fee and Deferred Compensation Fee (as such terms are defined below).
- (2) An anticipated project schedule for the applicable Construction Season with respect to each Budgeted Project.
 - (3) Proposed community outreach and stakeholder engagement activities for the upcoming calendar year.
 - (4) Proposed workforce and/or contractor development activities for the upcoming Construction Season.

The Manager acknowledges and agrees that City will rely on such Annual Plan in determining the amount of the aggregate funding needed for development and construction of the Proposed Project(s) for each applicable Construction Season. The scope of each Annual Plan will be developed in alignment with the expected incoming funding from the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), commonly known as the “Bipartisan Infrastructure Law,” administered through Wisconsin Department of Natural Resources (“WDNR”) and any other funding sources available to the City. Accordingly, in preparing the Annual Plan, the Manager shall use good faith estimates based on its current understanding of the relevant facts and circumstances for each Proposed Project.

If the Parties cannot agree on the Annual Plan Budget for one or more Proposed Project(s), the City may elect, by delivering Notice to the Manager’s Authorized Representative, to (A) extend the date for approval of the Annual Plan, or (B) remove the Proposed Project(s) from the Annual Plan.

Each Proposed Project specified for implementation during a particular Construction Season, as set forth and approved in an Annual Plan, shall be deemed to be a “Budgeted Project” for purposes of this Agreement.

Section 3.2 Review and Approval of the Annual Plan. The City and the Manager shall collaborate in good faith to finalize each Annual Plan by no later than January 31 in each Fiscal Year, and in any event, prior to the start of each Construction Season. Each final Annual Plan, together with any changes, modifications or amendments thereto from time to time (the “Final Annual Plan”), shall be mutually acceptable to and executed by the Manager and the City. Upon execution thereof, a copy of each Final Annual Plan shall be attached as an exhibit to this Agreement.

Section 3.3 Amendment of Final Annual Plan. The Final Annual Plan for a Construction Season may only be amended, modified or supplemented with the prior written consent of the City and the Manager.

ARTICLE IV. PROJECT PLANNING AND PRE-CONSTRUCTION

Section 4.1 Development of Project Books. Not less than fifteen (15) months prior to the start of each Construction Season, the Manager and the City shall meet to review and discuss all Proposed Projects under the Program. By no later than twelve (12) months prior to the start of each Construction Season, the Manager and the City shall develop a list of Proposed Projects they agree to submit for implementation, pursuant to the process set forth in Section 4.3 below. Subject to the terms of Section 4.2 below, for each such Proposed Project, the Manager and the City shall cooperate in good faith to agree upon a list of Budgeted Projects and to finalize each Project Book therefor in accordance with the process set forth Section 4.4 below by no later than ten (10) months prior to the start of each Construction Season.

- (a) Competitive Pricing for Subcontracted Construction Work. Prior to submitting a Project Book to the City, the Manager shall conduct a public competitive pricing process for Subcontractors for all Construction Work expected to cost greater than \$25,000 relating to construction of the Budgeted Projects. The lowest bid responding to the Invitation to Bid by a responsible bidder shall be selected, unless all bids are rejected. The Manager shall make such bid submissions available to the City by no later than the time the Manager submits the proposed Project Book for the City's review.
- (b) Permits and Licenses. The Manager shall secure or set forth the process to secure all Permits necessary to construct the relevant Budgeted Projects. The City shall exercise all commercially reasonable efforts to assist the Manager in obtaining these Permits. Manager may submit and the City may review a particular Project Book prior to the obtaining of all required Permits; provided, however, the City's review of such Project Book shall not relieve or otherwise diminish the Manager's obligation to secure Permits prior to the performance of the Work for which such Permits are required.
- (c) Access to Project Site. The Manager shall obtain, or cause to be obtained, any and all access rights, servitudes, easements and rights-of-way necessary to construct the relevant Budgeted Projects from all Persons (other than the City), including all utility providers. The City shall exercise all reasonable efforts to assist the Manager in obtaining such necessary access rights, servitudes, easements and rights-of-way, including, but not limited to, from the City.
- (d) Agreements with Site Owners. Manager is responsible for obtaining all access and/or easement agreements from any Site Owner to conduct the Work for a particular Project, as deemed necessary in the Manager's reasonable discretion.

Section 4.2 Termination of Budgeted Projects Prior to Final Project Book. Either the City or Manager shall have the right to terminate or defer consideration of a Budgeted Project prior to the City's review of the Project Book in accordance with Section 4.4 for the relevant Budgeted Project (in which case, the proposed Project Book shall be modified accordingly).

Section 4.3 Submission of Project Books. The Manager will submit to the City for review one or more Project Books. Unless otherwise specified in a submittal, a reasonable time for review and comment by the City shall mean ten (10) Business Days after its receipt of a Project Book for review and comment. Failure by the City to deliver comments in writing to Manager within ten (10) Business Days after its receipt of a Project Book shall constitute a waiver of any comments or objections thereto; provided, however, that if, within such ten (10) Business Day period, the City notifies the Manager in writing that additional review time is required, a failure of the City to provide comments shall not constitute a waiver unless such failure continues for an additional five (5) Business Days.

Section 4.4 City Review of Project Books. Upon the later to occur of completion of review by the City of each Project Book, and confirmation of the availability of funds sufficient to pay the sum of the estimated Project Book Prices for Projects included in such Project Book, each Project described therein shall constitute a “Budgeted Project” and thereafter such Project Book shall be referred to as a “Final Project Book.” Manager shall thereafter proceed to implement the Budgeted Project(s) reflected therein in accordance with Article V. The Manager shall not be required to commence Work on a Budgeted Project unless the Manager shall determine, based upon such assurances or certifications from the City as Manager shall reasonably require, that adequate funds are available from the sources provided for herein for the Project Book Price for each Budgeted Project in the Final Project Book.

Section 4.5 Amendment of Final Project Book. A Final Project Book and a Budgeted Project may only be amended, modified or supplemented by written agreement of the City and the Manager or pursuant to a Change Order as authorized by this Agreement (each a “Project Book Amendment”).

ARTICLE V. CONSTRUCTION

Section 5.1 General Scope of Construction Period Work. Following the City’s acknowledgement of a Final Project Book, the Manager shall deliver Notice to the City regarding any changes to the Construction Commencement Date and/or the Scheduled Substantial Completion Date for the applicable Budgeted Projects as stated in the Project Book. The Manager shall be responsible for selection, management and implementation of all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt and orderly prosecution and completion of the Work and the Budgeted Projects.

Section 5.2 Engagement of Certifier. Promptly following execution of this Agreement, the City and the Manager shall agree upon and the Manager shall engage a firm or an individual (the “Certifier”) appropriately qualified to inspect the construction Work performed, to advise the City whether or not such Work is performed in accordance with the applicable standards and to issue applicable KPIs for Projects that have achieved Substantial Completion. Either Party may, upon thirty (30) days’ Notice to the other Party, request that the Certifier be replaced by another mutually acceptable Person qualified to act in such capacity; provided that, unless agreed to by the Manager and accompanied by any necessary adjustment to the Scheduled Substantial Completion Date and the applicable Project Book(s), the Certifier shall not be replaced with

respect to any Budgeted Project if such replacement would delay the completion or increase the cost of such Budgeted Project.

Section 5.3 Project Site; Access Roads and Utilities.

- (a) Site of Construction. Each Budgeted Project shall be constructed on the relevant Project Site described or depicted in the Final Project Book.
- (b) Access Roads and Utilities. If needed, the City will assist the Manager to obtain from the applicable municipality(ies) appropriate provision for roads, utilities and utility distribution systems within each Project Site. The Manager shall be responsible (i) for any damage, destruction, loss, or injury to roads, utilities and utility distribution systems within each Project Site caused by its negligence or willful misconduct in the performance of Work, (ii) for obtaining all necessary electricity service connections required for construction, installation and Substantial Completion of the relevant Budgeted Project, and (iii) with the cooperation of the City, for obtaining and maintaining all necessary taps into sewer and water lines. The cost of all such systems, design and construction shall be included in the Project Book Price.

The Manager shall be responsible for notifying all affected utility companies prior to performing any Work that could impact the relevant utility service or infrastructure and shall cooperate with the utility providers in connection with such Work. The Manager shall cooperate with the owners of any underground utilities or overhead utility lines in order to minimize the disruption of these utility operations to the extent reasonably practicable. In the event of interruption to utility services as a result of accidental breakage, or as a result of being exposed or unsupported, the Manager shall promptly notify the proper authority and shall cooperate in the restoration of the service.

Section 5.4 Construction.

- (a) Minimization of Interference.
 - (1) Public Convenience and Safety. The Manager shall at all times conduct the Work in a manner to create the least practicable interference and obstruction to all forms of traffic, the Site Owner and the general public, residents and tenants at or adjacent to the relevant Project Site, shall take commercially reasonable steps to minimize noise, any objectionable or unpleasant odors, dust, vibrations, inconvenience and disruption to such Persons, and shall comply with Applicable Laws governing construction activities.
 - (2) Preservation, Protection and Restoration of Property. The Manager shall exercise reasonable care to protect the property of others from injury or loss arising from the Work. The Manager shall, to the extent practicable, keep each Project Site clean of dirt, debris, rubbish and waste materials arising out of the Work. At the completion of the Work, the Manager shall promptly remove all dirt, debris, rubbish and waste materials arising out of

the Work from and about the Project Site, including any material laydown, staging, storage or work force area, which shall be returned in a clean, neat, and workmanlike condition.

- (b) Discovery of Contamination. If, during construction, any Contractor encounters unexpected contamination or potential contamination such as, but not limited to: underground storage tanks, soil that is discolored or has an odor, or free product, the Contractor shall immediately take steps to ensure that the contamination is contained and protected and shall notify Manager. Manager shall deliver Notice to the City and the applicable Site Owner. Manager, City and such Site Owner shall determine the most appropriate next steps which may include:
 - (1) Notification of the WDNR;
 - (2) A decision whether the contamination can be removed, so as to allow the project to continue;
 - (3) A decision to terminate, modify, or continue with construction; and/or
 - (4) A Compensable Change Order for appropriate adjustments in the Project Book Price and Scheduled Substantial Completion Date.

The Manager shall not be compelled without its consent to continue with construction of the Project without a Compensable Change Order.

- (c) Environmental Litigation: Defense. In the event that the performance of all or any part of the Work on a Project or under the Program gives rise to Environmental Litigation where the City and/or Manager are named as defendants, each party shall be responsible for its own defense and liabilities.
- (d) Employees and Workmanship.
 - (1) Qualified Employees. Other than supervised apprentices or participants in workforce or contractor development/training programs, only personnel trained and skilled in the task assigned to them may be employed on any portion of the Work.
 - (2) Licensed Employees. When Applicable Laws require that certain personnel be licensed, then all such personnel employed on the Work shall be so licensed.
 - (3) Methods and Quality.
 - (A) All workmanship shall be of the standards set forth in the Project Book for such Budgeted Project. Recommendations of the manufacturers of specified materials shall be considered as a part of such specifications.

- (B) Materials shall be accurately assembled and set, and when so required in good construction, shall be true to line, even, square, plumb, level, and regularly spaced and coursed.
- (4) Supervision. The Manager shall ensure appropriate and adequate supervision at each Project Site at all times during the progress of the Work.
- (5) Safety. The Manager shall require all legally mandated precautions to prevent injury or damage to persons and property in or about the Budgeted Project and each Project Site through until the applicable Project becomes a Completed Project.
- (6) Emergencies. In the event of any Emergency affecting the safety of persons, the Work or property (including the Project Site and property immediately adjacent thereto), absent specific instructions or authorizations from the City if time or circumstances do not permit, the Manager shall take whatever reasonable measures are necessary under such circumstances to prevent or mitigate threatened damage, injury or loss. The Manager shall, as expeditiously as reasonably practicable after the occurrence of such Emergency, give Notice to the City of such Emergency providing reasonable details thereof. If the Manager reasonably believes the Emergency required additional Work which was actually performed, the Manager may submit to the City a written statement describing in reasonable detail (a) the Work performed, (b) the cost of such Work and (c) the effect of the Work, if any, on the Project Book Price as set forth in the Project Book, or on the guarantees, warranties or obligations of the Manager under this Agreement, and shall be entitled to a Compensable Change Order with respect to such Work.

Section 5.5 Construction Management, Monitoring and Review; Inspections; Acceptance.

- (a) Work Progress: Monthly Status Report. Beginning with the Construction Commencement Date of a Budgeted Project, the Manager shall, on a monthly basis, prepare and submit to the City a written report (the “Monthly Status Report”) containing the status of planning, procurement and construction activities for each Budgeted Project, including an updated project schedule therefor.
- (b) Monthly Meetings. The Manager shall meet with the City’s Authorized Representatives monthly or on such other periodic basis as the Parties shall determine in order to review the Monthly Status Report, discuss problems and corrective actions planned, and generally keep the City up to date on all material issues related to the Projects. The Manager may request that representatives of the City at particular monthly meetings include such senior officials of the City as the Manager believes may be helpful in addressing particular issues or problems.

- (c) Inspections. After receiving written permission from Site Owners setting forth reasonable hours of access, the City, its agents and Authorized Representative shall be granted access to each Project Site at reasonable times in order to monitor or inspect the Project Site of each Budgeted Project. Any such inspections or visits shall be conducted in a manner to minimize interference with the Work.
- (d) Acceptance. At such time the Certifier confirms in writing to the City that each Project is Substantially Complete, the Manager shall no longer have any obligations with respect to such Project, except to satisfy warranty claims under Section 5.5(e) below.
- (e) Warranty. The Manager warrants to the City that materials and equipment furnished under this Agreement will be as provided by the Project Book for each Project and new unless the applicable Project Book requires or permits otherwise. The Manager further warrants that the Work will conform to the requirements of this Agreement and will be free from defects, except for those inherent in the quality of the Work or permitted by this Agreement or the applicable Project Book. Work, materials, or equipment not conforming to these requirements may be considered defective. The Manager's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Certifier, the Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Notwithstanding any other provision of this Agreement, it is agreed that the Manager does not expressly or impliedly warrant the adequacy, sufficiency, or suitability of the plans, specifications, specified materials, or equipment, or other documents including in each applicable Project Book, including, without limitation, any specified sole source or brand-named products, equipment, or materials. Other than the express warranty contained in this Section 5.5(e) and in Section 10.1, the Manager makes no other warranty whether express or implied. The duration of all warranties of any kind from the Manager to the City shall be for the duration of the Warranty Period. The Manager agrees to assign to the City at the time of final completion of each applicable Project any and all manufacturer's warranties relating to materials and labor used therein and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

Section 5.6 Change Orders. Either Party may propose changes, improvements or additions to a Budgeted Project (each, a "Change Order") at any time prior to Substantial Completion of such Budgeted Project. Manager may make changes that do not constitute Material Change Orders without Notice to the Owner.

- (a) Material Change Orders. Any Party proposing a Material Change Order (as defined below) shall submit Notice of the proposed Material Change Order to the other Party in advance for review and approval. For purposes hereof, a "Material Change Order" means any Change Order which will, or can reasonably be expected to:

- (1) change the quality, integrity, durability or reliability of such Budgeted Project; or
- (2) substantially modifies the cost or schedule for a Budgeted Project from what is set forth in the Project Book therefor.

If the Manager proposes a Material Change Order, then it shall prepare and submit a proposed Project Book Amendment describing any resulting adjustment to the Project Book Price and/or Scheduled Substantial Completion Date.

If the City proposes a Material Change Order, then it shall submit to the Manager a Notice (a "Change Order Proposal"), which shall describe in reasonable detail the proposed Material Change Order, and within ten (10) Business Days after receipt thereof (or such longer time period as may reasonably be required), the Manager shall prepare and provide to the City a proposed Project Book Amendment as described above. The City shall have ten (10) Business Days to approve and execute or reject such Project Book Amendment, and failure of the City to act within such 10-day period shall be deemed to be an approval of the Project Book Amendment and the applicable Change Order proposal.

A Site Owner may propose Change Orders as long as the City, the Manager and the Site Owner agree to the modification of the Project and as to how the costs of such Change Order are to be borne.

Disputes arising out of this Section 5.6 shall be resolved in accordance with Section 10.15 provided, however, that the Manager shall not be required to proceed with any Material Change Order proposed by the City unless adequate provision, including adequate funding, is made for the direct impact, if any, of such Change Order on the Project Book Price, and/or Scheduled Substantial Completion Date. If the City and the Manager cannot agree as to the terms of "adequate provision" as described in the preceding sentence, and if the City insists upon proceeding with the particular Material Change Order, the Manager may terminate the applicable Budgeted Project as if for an Uncontrollable Circumstance in accordance with the provisions of Section 5.6(d).

(b) Compensable Change Orders.

If an Emergency, an Uncontrollable Circumstance or City Cause results or is reasonably expected to result in a material alteration of the Work, the Manager's costs thereof or the time to construct a Budgeted Project in such fashion as otherwise to require a Material Change Order, the Manager shall (i) be entitled to an adjustment to any or both of (A) the Project Book Price and (B) the Scheduled Substantial Completion Date, and (ii) propose a Compensable Change Order to the City. The proposed Compensable Change Order may propose (a) suspension of the Budgeted Project; (b) termination of the Budgeted Project; and/or (c) modification of the Budgeted Project, in each case with a non-binding estimate of the impacts to the financial, construction, or schedule and obligations of the Manager and a reasonable date by which the Manager requires a response from the City, and, in the case of a suspension, a description of the circumstances under which the Budgeted Project could resume. The City shall provide timely a written response to the proposed Compensable Change Order, indicating its order of preference

among or between the alternative courses of action outlined in the proposed Compensable Change Order.

(c) Resolution of Compensable Change Orders.

The Manager shall provide in writing the fixed price to (i) implement the City's preferred course of action or, (ii) if a fixed price cannot be provided on the basis of then-current information, to prepare a concept proposal with respect to the Compensable Change Order. If the City approves concept proposal for the Compensable Change Order, the Manager shall furnish a more detailed plan within fifteen (15) Business Days thereafter or such other period of time on which the Parties may mutually agree. The more detailed plan may include fixed prices where known, or may include a compensation structure based on agreed to labor rates and material mark-ups. As a guiding principle, the cost of the Compensable Change Order should reflect the original Project Book Price plus a reasonable incremental cost to address the Uncontrollable Circumstance or City Cause, plus a markup of twelve and one half percent (12.5%) for the Manager on the incremental costs.

The Compensable Change Order proposal shall describe in reasonable detail the appropriate revisions (i) to the Work and the standards, requirements and specifications, for the relevant Budgeted Project, (ii) of any obligation of either Party under this Agreement, and (iii) to the relevant Scheduled Substantial Completion Date, resulting from the Compensable Change Order (including the time periods for preparation, review and approval of said proposal). If, within ten (10) Business Days following receipt of the Manager's proposed price, or such other period of time on which the Parties may mutually agree, the City notifies the Manager that the City wishes to proceed with such Compensable Change Order, the items and obligations referred to above shall be revised, as applicable, in accordance with the Manager's proposal, and the Parties shall either execute the Compensable Change Order or prepare documentation for the City's next committee/commission agenda, if required. The Manager shall proceed with any Compensable Change Order pursuant to this Section 5.6(c) only upon receiving the City's written authorization; provided, however, the Manager is authorized, notwithstanding the provision of this paragraph, to proceed with any work necessary to address an Emergency.

(d) Failure of Parties to Agree to Compensable Change Order Terms. If the City and the Manager cannot agree to the terms of the Manager's proposal for a Compensable Change Order, or if the City elects not to proceed with a Change Order resulting from the occurrence of an Uncontrollable Circumstance or fails to provide sufficient funds therefor, the Manager may suspend Work on the Budgeted Project in part or in whole, and/or terminate such Budgeted Project, and such dispute shall be resolved in accordance with Section 10.15.

ARTICLE VI. COMPENSATION

Section 6.1 Actual Program Costs. The City shall pay and reimburse the Manager, on a monthly basis, the Direct Costs.

Section 6.2 Base Fee. The Manager's base fee for each Project ("Base Fee") shall be structured as a cost-plus fee and paid by the City to the Manager as a markup of the sum of the

actual Direct Costs payable by the City in accordance with this section, as such costs are incurred and invoiced by the Manager to the City. The Base Fee is to address a set of actions taken to make capital improvement to address LSL and to the extent possible, shall be illustrated in each Annual Plan and Project Book to maximize eligibility for financial assistance under Wis. Admin. Code ch. NR 166 and applicable Wisconsin and federal law. The Base Fee will be invoiced and paid monthly and will be a seven and one half percent (7.5%) markup of the sum of the Direct Costs. For the avoidance of doubt, the Base Fee does not include (i) the actual Project costs of Subcontractors directly relating to the planning, construction, installation and Acceptance of a Project, or (ii) the actual Program costs of Subcontractors directly relating to the implementation of the Socio Economic Development Plan set forth on Schedule 2 attached hereto.

Section 6.3 Performance-Based Fee. The Key Performance Indicators (KPIs) set forth on Schedule 3 are performance-based cost-plus fees. These fees will be derived and applied to all Direct Costs. The Manager's achievement of each of the KPIs set forth on Schedule 3 shall earn a corresponding fee in the amount of one percent (1%) Direct Costs, for a maximum of a five percent (5%) cumulative Performance-Based Fee. The details for goals and implementation of each KPI are set forth in Schedule 3. Within thirty (30) days following the end of each KPI reporting period, discussed below, the Manager shall prepare and deliver to the City a detailed report summarizing its performance and achievement with respect to the goals set forth in Schedule 3. If and to the extent the KPIs are earned by the Manager with respect to any KPI reporting period, then the amount due shall be invoiced by the Manager in its next monthly Application for Payment.

- (a) Reporting Period for Annual KPIs. The LSL Cost KPI, LSL Implementation Schedule KPI, Training Individuals and Businesses KPI shall be calculated and submitted by the Manager to the City within thirty (30) days after the end of each Construction Season.
- (b) Reporting Period for Semi-Annual KPIs. The Local Business Utilization KPI and the Target Class Business Utilization KPI shall be calculated and submitted by the Manager to the City within one hundred thirty (30) days following each June 30 and December 31 during the Term.

Section 6.4 General Requirements & Conditions. The manager shall be entitled to General Requirements and Conditions reimbursement equal to two and one half percent (2.5%) of Direct Costs which shall include the Manager's expenses associated with the program such as personnel (whether as an employee, consultant or otherwise), overhead, administrative and other internal costs of the Manager.

Section 6.5 Method of Payment by the City. With respect to items to be paid with City funds or funds administered by the City, the following procedures shall govern:

- (a) Application for Payment. On or before the eighth (8th) day of each Billing Month, the Manager shall submit to the City's Authorized Representative an application signed by the Manager ("Application for Payment") for the Direct Costs of each Project that has proceeded to construction pursuant to Article V, in each instance

for the immediately preceding Billing Month. Each Application for Payment shall include:

- (1) the Certifier's certification that the materials, supplies and labor incorporated in the applicable Project are in a percentage consistent with the Manager's Application for Payment for the applicable Billing Month;
 - (2) the Certifier's certification of KPIs delivered on a Project that has achieved Substantial Completion;
 - (3) for the applicable Billing Month, lien waivers from each Contractor for each Project, and which lien waivers shall set forth the amounts to be received from said disbursements, the official capacity of the signatory to the waivers, the name and address of the Project, and be properly acknowledged. Each such lien waiver, whether partial or final, must stipulate that all lien rights are waived with respect to the total amount disbursed up to and including the last date upon which labor or material was supplied and for which payment was made; and
 - (4) a sworn Contractor's statement, setting forth the names and addresses of all current and/or future Subcontractors and materialmen for the applicable Project including the labor to be furnished by such Subcontractors and the amounts of all subcontracts, the previous payments made on all subcontracts, the amounts due on all subcontracts for the current Application for Payment and the balance due on all subcontracts thereafter. The foregoing shall be delivered to the City on form AIA G702 or as an attachment to the Application for Payment.
- (b) General Payment Requirements. The City shall make payment for all amounts submitted for the immediately preceding Billing Month and documented in accordance with the preceding Section 6.5(a). These amounts shall include actual direct costs, the Base Fees earned and payable to the Manager, and if applicable, the Performance-Based Fee earned and payable to the Manager.

The City shall review each Application for Payment and, within ten (10) Business Days following the receipt thereof, either (a) approve such Application for Payment in the amount requested, in which case payment shall be made in thirty (30) days or (b) notify the Manager in writing of any reasons then known for withholding its approval of all or any portion of such application. In the latter case, the City shall pay the portion of the Application for Payment approved and the Manager shall resubmit the portions not approved (corrected to remove any deficiencies stated in writing by the City).

If the City shall determine that, for specified reasons, the Manager is not entitled to all or any portion of the payment sought, (a) the City shall approve that portion of the Application for Payment that is not in dispute and (b) when the grounds for withholding approval for payment have been cured to the City's reasonable satisfaction, any amount withheld shall be paid promptly by the City.

The Manager shall comply with Wis. Stat. § 66.0135 and pay Contractors no later than seven (7) days of receipt of payment by the Manager from the City.

The Manager shall include in its agreements with Contractors, including suppliers and manufacturers of equipment, the provisions and requirements of this Agreement as applicable to their part of the Work included under this Agreement, together with such provisions as may be required pursuant to Applicable Law. Nothing contained in this Agreement creates any contractual relationship between the Manager and any Subcontractor.

Section 6.6 Interim Financing. Time is of the essence in creating the Program and performing the Work. To avoid foreseeable delay, the Manager shall begin Work and administering the Program prior to the City's receipt of annual grant funding or other funding sources, subject to reimbursement from the City for costs expended by the Manager, as more particularly set forth in this Section 6.6 below.

If the Manager is required to begin Work and administering the Program prior to the City's receipt of annual grant funding or other funding sources, the Manager shall advance the costs for such Work and Program administration, which costs shall be deemed Interim Financing subject to a flat annual interest rate of eight percent (8%) for Interim Financing Costs incurred by the Manager. The City shall repay the Manager for the Interim Financing and accrued Interim Financing Costs on a monthly basis within thirty (30) days of the date of each Manager's invoice therefor. In the alternative, the City may prepay the Manager's specified costs of performing the Work and administering the Program prior to the City's receipt of annual grant funding or other funding sources.

The Parties shall endeavor for any Interim Financing to be reimbursed to the City through annual grant funding to the City in accordance with applicable Wisconsin law, specifically Wis. Admin. Code ch. NR 166.

Section 6.7 Reconciliation. Following the end of each Billing Year, the Manager shall deliver to the City an annual reconciliation and settlement statement, together with an invoice setting forth any amounts due the Manager in accordance with this Section.

ARTICLE VII. INDEMNIFICATION AND INSURANCE

Section 7.1 Manager Indemnification. The Manager shall indemnify, hold harmless and defend the City and the City's agents, officers, and employees (collectively, the "City Indemnified Parties"), from and against any and all Losses on account of any negligence, recklessness, or willful misconduct (including any act of fraud) of the Manager. The Manager shall not be required to reimburse, defend, or indemnify the City Indemnified Parties for loss or claim due to the negligence or willful misconduct of such City Indemnified Parties. The Manager shall promptly notify the City of the assertion of any claim against which the City Indemnified Parties are indemnified hereunder, shall defend the City Indemnified Parties against any such claim, and shall have the right to settle such claim without the approval of the City Indemnified Parties. The City agrees that it shall promptly notify the Manager of the assertion of any claims against which the City Indemnified Parties seek to be indemnified hereunder; provided, however,

that the failure to give such notice shall not affect the Manager's indemnification obligation hereunder, except insofar as the failure to provide such notice increases the amount of the particular Losses. The extent of the Manager's indemnification shall not be limited in any way as to the amount of any insurance limits contained in any insurance policy procured or provided in connection with this Agreement.

The indemnification provided by the Manager to the City pursuant to this Section 7.1 shall not run to any Site Owner and shall not extend to any loss based upon a claim of any Site Owner other than a claim caused by the negligence, recklessness, or willful misconduct (including any act or fraud) of the Manager.

Section 7.2 Insurance. The Manager shall maintain insurance of the types and in the amounts described in this Agreement and meeting the requirements specified in Schedule 1 attached hereto. The Manager shall cause the Contractor to secure and maintain insurance as part of their contracts with the Manager in accordance with Schedule 1. Such Contractor insurance, except for professional errors and omissions policies and workers compensation policies, shall name the City as an additional insured. The City may permit the Manager to arrange for a "contractor controlled insurance program" in order to satisfy some its insurance obligations hereunder, which coverage shall be as specified in the applicable Project Book for a Budgeted Project.

ARTICLE VIII. CONTRACT EXTENSION

Section 8.1 Extension Period. If any LSLs remain within the City at the expiration of the Term, the City may, upon mutual agreement of the Parties, extend the Term for additional periods (each such period, an "Extension Period"). If the City exercises its option under this Section 8.1 the City shall deliver Notice to the Manager's Authorized Representative as soon as reasonably practicable, but at least thirty (30) days prior to expiration of the Term, whereupon this Agreement shall be extended on the same terms and conditions to facilitate completion of the Project(s) underway as of the date of such Notice of the applicable Extension Period.

ARTICLE IX. REGIONALIZATION

Section 9.1 Regional LSL Professional Services. The Parties agree to allow the Manager to make available to other Wisconsin municipal and local governmental entities the extension of LSL Professional Services at a per LSL line cost. The Parties recognize the difficulty of administering a Program and seek to develop a regional hub of LSL Professional Services. Upon request to either the City or the Manager for LSL Professional Services by another municipal or local governmental entity in Wisconsin, the City agrees to enter into agreements under Wis. Stat. §§ 66.0131 and 66.0301, if necessary and subject to Wausau Common Council approval, with the other municipal and local governmental entities to facilitate the receipt and/or furnishing of LSL Professional Services under the terms of this Agreement. In no circumstance may the City enter into an intergovernmental agreement with another municipality or local governmental entity to facilitate the receipt and/or furnishing of LSL

Professional Services under the terms of this Agreement without written consent of the Manager, which consent may not be unreasonably withheld or delayed.

ARTICLE X. MISCELLANEOUS

Section 10.1 Representations, Warranties and Covenants of the Manager. Manager represents and warrants to the City and agrees and covenants with the City as of the Effective Date as follows:

- (a) All copies of documents, contracts and agreements that Manager has furnished to the City are true and correct in all material respects.
- (b) Manager has paid, and will pay when due, all federal, state and local taxes, provided, however, that the City and the Manager will work collaboratively to minimize sales tax on purchases of materials where possible, and will promptly prepare and file returns for accrued taxes prior to any taxes becoming delinquent..
- (c) Manager will timely pay, or cause to be paid, for all work performed and materials furnished for the Project.
- (d) No statement of fact by Manager contained in this Agreement and no statement of fact furnished, or to be furnished, by Manager to the City pursuant to this Agreement contains, or will contain, any untrue statement of a material fact or omits, or will omit, to state a material fact necessary in order to make the statements herein or therein contained for misleading at the time when made.
- (e) Manager is a Delaware limited liability company duly formed and validly existing, in good standing, and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Manager is duly licensed or qualified to do business and in good standing in Wisconsin.
- (f) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action of Manager and constitute the valid and binding obligations of Manager enforceable in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.
- (g) The execution, delivery, and performance of Manager's obligations pursuant to this Agreement will not violate or conflict with any of Manager's organizational documents or any indenture, instrument or agreement by which Manager is bound, nor will the execution, delivery, or performance of Manager's obligations pursuant to this Agreement violate or conflict with any law applicable to Manager or the Program.

- (h) No default, or event which with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Manager is not in default (beyond any applicable cure or grace period) of any of its obligations under any other agreement or instrument entered into in connection with the Program.

Section 10.2 Representations and Warranties of the City. The City represents and warrants to Manager that:

- (a) The City is a municipal corporation and political subdivision organized under the laws of the State of Wisconsin. Wausau Water Works is a water and sewer utility serving the City and overseen by the Wausau Waterworks Commission.
- (b) The City has the authority to enter into this Agreement and carry out its obligations hereunder pursuant to the authority granted to it by the Wisconsin Constitution and State law.
- (c) The City will cooperate with Manager throughout the term of this Agreement and shall use its best efforts to promptly review and/or process all submissions and applications in accordance with applicable City ordinances and policies.
- (d) The parties below on behalf of the City have been fully authorized to execute this Agreement on behalf of the City. When executed and delivered to Manager, this Agreement shall constitute a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

Section 10.3 Notices. All notices hereunder must be in writing and must be sent by United States registered or certified mail (postage prepaid) or by an independent overnight courier service, addressed to the addresses specified below:

Notices to Manager:

Community Infrastructure Partners, LLC

Attn: Sean Agid

with a copy to:

Godfrey & Kahn, S.C.

1 East Main St, Suite 500

Madison, WI 53703

Attn: Mike Wittenwyler

Notices to the City:

City of Wausau

407 Grant Street

Wausau, WI 54403

Attn: City Clerk

with a copy to:

City of Wausau

407 Grant Street

Wausau, WI 54403

Attn: City Attorney

Wausau Water Works

407 Grant Street

Wausau, WI 54403

Attn: Eric Lindman

Notices given by mail are deemed delivered within (3) three business days after the party sending the notice deposits the notice in the United States Post Office. Notices delivered by courier are deemed delivered on the next business day after the party delivering the notice timely deposits the Notice with the courier for overnight (next day) delivery.

Section 10.4 No Personal Liability. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City or the Manager have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

Section 10.5 Waiver; Amendment. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Manager, and then only to the extent specifically set forth in writing. Nothing contained in this Agreement is intended to or has the effect of releasing Manager from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

Section 10.6 Entire Agreement. This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.

Section 10.7 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of Manager and the City, and no third party (other than successors and assigns) shall have any rights or interest in any provision of this Agreement, or as a result of any action or inaction of the City in connection therewith.

Section 10.8 Severability. If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms, and agreements of this Agreement will not be affected by such holding, and will remain valid and in force to the fullest extent by law.

Section 10.9 Governing Law. This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Marathon County, Wisconsin.

Section 10.10 Time is of the Essence; Deadlines. Time is of the essence with respect to this performance of every provision of this Agreement in which time of performance is a factor. In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.

Section 10.11 Relationship of Parties. This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between the City and Manager.

Section 10.12 Captions and Interpretation. The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.

Section 10.13 Counterparts/Electronic Signature. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties. Facsimile signatures and PDF email signatures shall constitute originals for all purposes.

Section 10.14 Termination.

(a) Termination by the Manager. If the Work is stopped during the Construction Season for a cumulative period of 14 days through no fault of the Manager, the Manager may, upon seven additional days' written notice to the City, terminate the Agreement and recover from the City payment for Work executed including a twelve and one half percent (12.5%) termination fee and reimbursement of the Manager's costs incurred by reason of such termination.

(b) Termination by the City for Cause.

(1) The City may terminate the Agreement if the Manager:

- (A) refuses or fails to supply enough properly skilled workers or proper materials;
- (B) fails to make payment to Contractors for materials or labor in accordance with the respective agreements between the Manager and the Contractors;
- (C) disregards Applicable Law of a Governmental Authority;
or
- (D) is otherwise guilty of substantial breach of a material provision of this Agreement.

(2) When any of the above reasons exist, the City may without prejudice to any other rights or remedies of the City and after giving the Manager seven days' written notice, terminate this Agreement, and:

- (A) take possession of the Project Site(s) and of all materials thereon owned by the Manager, with the cost of such materials being reimbursed by the City to the Manager within thirty (30) days, and;

- (B) finish the Work by whatever reasonable method the City may deem expedient.

(3) When the City terminates the Agreement for one of the reasons stated in Section 10.14(b), the Manager shall not be entitled to receive further payment until the Work is finished.

(4) If the unpaid balance of the Base Fees and Performance-Based Fees exceeds costs of finishing the Work, such excess shall be paid to the Manager. This obligation for payment shall survive termination of the Agreement.

(c) Termination by the City for Convenience. The City may, at any time, terminate the Agreement for the City's convenience and without cause. In the event of a termination under this Section 10.14(c), the Manager shall be paid the value of the Direct Costs incurred as of the date of termination as determined pursuant to the terms of the Agreement (including materials stored off-site if approved by the City, fabricated items, specialty orders not able to be cancelled and re-stocking fees), less sums received by the Manager, plus a payment that shall include a termination fee of twelve and one half percent (12.5%) of the value of the Direct Costs as of the date the City terminates and reimbursement of the Manager's costs incurred by reason of such termination. For example, if the Manager has incurred Direct Costs of \$100,000 as of the date the City terminates under this Section 10.14(c), and the City has submitted \$10,000 for such Direct Costs, the Manager would be entitled to \$102,500.

Section 10.15 Dispute Resolution.

(a) Definition of Claims. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the City and the Manager arising out of or relating to the Agreement. The responsibility to substantiate Claims shall rest with the party making the Claim.

(b) Notice of Claims. Claims by either the City or the Manager must be initiated by written notice to the other party. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The notice initiating such Claim shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the notice. If the impact or damages cannot be assessed as of the date of the notice, the notice shall be amended at the earliest date this is reasonably possible.

(c) Continuing Contract Performance. Pending final resolution of a Claim, the Manager shall proceed diligently with performance of the Agreement and the City shall continue to make payments in accordance with the Agreement.

(d) Mediation.

(1) Claims, disputes, or other matters in controversy arising out of or related to the Agreement, shall be subject to mediation as a condition precedent to binding dispute resolution.

(2) The Parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

(3) The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(e) Binding Dispute Resolution. For any Claim that is not resolved by mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in the county in which the Project is located.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date first printed above.

MANAGER:

Community Infrastructure Partners, LLC

By: Shawn Kerachsky
Name: Shawn Kerachsky
Title: President/CEO

CITY:

City of Wausau

By: Katie Rosenberg
Katie Rosenberg, Mayor

Attested to By: Kathryn A. Bernarde
Name: Kathryn A. Bernarde
Title: City Clerk

Wausau Water Works

By: Katie Rosenberg
Name: Katie Rosenberg
Title: Mayor & President of Wausau Water Works

Attachments:

- Schedule 1 - Insurance
- Schedule 2 - Socio Economic Development Implementation Plan
- Schedule 3 - KPIs
- Application for Payment

Schedule 1 - Insurance

Manager's Insurance Coverage

Insurance Requirements: The Manager shall provide the City with evidence of the Manager's commercial insurance coverage for the following exposures:

- (a) Commercial General Liability Coverage at least as broad as Insurance Services Office Commercial General Liability Form, including coverage for Products Liability, Completed Operations, Contractual Liability and Explosion, Collapse, Underground coverage:
 - (i.) \$1,000,000 each Occurrence limit
 - (ii.) \$1,000,000 Personal and Advertising Injury limit
 - (iii.) \$2,000,000 general aggregate (other than Products-Completed Operations) per project
 - (iv.) \$2,000,000 Products-Completed Operations aggregate
 - (v.) \$50,000 Fire Damage limit – any one fire
 - (vi.) \$5,000 Medical Expense limit – any one person
 - (vii.) Products-Completed Operations coverage must be carried for two years after Acceptance.
- (b) Professional Liability
 - (1) Limits
 - (i.) \$1,000,000 each claim
 - (ii.) \$2,000,000 annual aggregate
 - (2) Must continue coverage for 2 years after Acceptance.
- (c) Auto Liability Coverage as least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1 0 “Any auto” basis.
- (d) Worker's Compensation and Employer's Liability if required by Wisconsin State Statute. Must carry coverage for Statutory Worker's Compensation and an Employer's Liability with limits of:
 - (i.) \$100,000 Each Accident
 - (ii.) \$500,000 Disease-Policy Limit
 - (iii.) \$100,000 Disease-Each Employee
 - (iv.) Employer's Liability limits must be sufficient to meet umbrella liability insurance requirements.
- (e) Umbrella Liability Coverage at least as broad as the underlying Commercial General Liability, Automobile Liability, and Employer's Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured

retention of \$10,000. The Umbrella Liability must be primary and non-contributory to any insurance or self-insurance carried by the City.

(f) Additional Provisions

- (i.) All insurance must be primary and non-contributory to any insurance or self-insurance carried by City.
- (ii.) All sub-professionals shall be required to obtain the above coverages as applicable. The insurance shall be as broad and with the same limits and coverages (including waivers of subrogation) as those required per Manager requirements.
- (iii.) Insurance is to be placed with insurers who have an A.M. Best rating of no less than A- and a Financial Size Category rating of no less than Class VII, and who are authorized as an admitted insurance company in the State of Wisconsin.
- (iv.) The following must be named as additional insureds on all liability policies: City of Wausau, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04 and also include Products-Completed Operations additional insured coverage per ISO form CG 20 37 07 04 or their equivalents for a minimum of 2 years after acceptance of work. This does not apply to Worker's Compensation policies or Professional Liability policy.
- (v.) Waivers of subrogation in favor of the City must be endorsed onto the Worker's Compensation, Commercial General Liability, Automobile Liability, and Umbrella Liability coverages.
- (vi.) Any deductible or self-insured retention must be declared to the City.
- (vii.) Prior to execution of the Contract, the Manager shall file with the City a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement. In addition, form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or its equivalent on the Commercial General Liability coverage.

Special Provisions for Insurance:

1. The Manager shall forward to the City, a certificate(s) of insurance indicating the Manager's insurance and any special provisions required under the foregoing provisions. Such certificate(s) shall be in a form satisfactory to the City and shall list the various coverages and limits. Insurance companies providing the coverage must be acceptable to the City, rated A.M. Best and carry at least an "A-" Rating VIII. In addition to the aforementioned provisions; such insurance policies shall include an endorsement (provided such endorsement is reasonably commercially available) stating that such policies shall not be changed or canceled and that they will be automatically renewed upon expiration and continued in full force and effect until Substantial Completion and Acceptance of all Work covered by the Agreement, unless the City is given thirty (30) days written notice before any change or cancellation is made effective.

2. The Manager's initial and subsequent certificates of insurance shall include a description of the Project and the assigned Project number. Prior to beginning any project work, the Manager's insurance requirements as outlined must be submitted and approved in writing.
3. Manager's insurance shall be procured from insurance or indemnity companies acceptable to the City and licensed and authorized to conduct business in the State of Wisconsin. The City's approval or failure to disapprove insurance furnished by the Manager or any Contractor shall not release such parties of full responsibility for liability for damage and accidents.
4. If at any time the above required materially significant insurance policies should be canceled, terminated or modified so that the insurance is not in full-force and effect as required herein, Manager shall be considered in default of its obligations under the Agreement, and shall have ten (10) business days to cure such default to the City's reasonable satisfaction.
5. The Manager shall require each Contractor and Subcontractor, at all tiers, to provide evidence of insurance coverage required. Such coverage shall remain in full force and effect during the performance of activities under this Agreement.

Schedule 2 - Socio Economic Development Implementation Plan

The Manager shall develop a Socio Economic Development Plan (the “S/E Plan”) during the Term, and will submit it to the City by May 31, 2024. The S/E Plan will be aligned with the goals and objectives of the Program and will have the following components:

1. Contractor Capacity Development Program. The Manager will define a plan to forge innovative partnerships, to facilitate the building of a labor force within the City for low barrier-to-entry construction and skilled trades.
2. Outreach and Inclusion Program. Increase the participation of Target Class Businesses (defined to mean a business entity that is small business, a minority-owned business, a woman-owned business, a veteran owned-business, or a union business) across all service areas and phases of the Program and meet a minimum of twenty-five percent (25%) participation goals. The plan will define several efforts to be conducted in order to meet the goals, which may include:
 - (a) Hosting outreach event(s) to increase awareness of opportunities for Target Class Businesses under the Program;
 - (b) Participating in conferences, fairs and outreach events related to Target Class Businesses;
 - (c) Advertising requirements, opportunities and support services available to Subcontractors from Target Class Businesses.
 - (d) Establishing a transfer of technology plan that educates and trains Target Class Businesses in specialized technical areas, such as sustainability, green infrastructure, stormwater management technologies and practices;
 - (e) Developing a pre-qualified pool of Subcontractors;
 - (f) Tailoring project contracts and structures so as to recognize the qualifications of Target Class Business Subcontractors and maximize their ability to participate;
 - (g) Incorporating local preference clauses in contracts and the bundling and earmarking of contracts for Target Class Business inclusion; and
 - (h) Participate in small business job fair(s) within the City.
3. Mentor Development Program (Mentor Protege). Enhance the local City workforce by developing a mentor-protege network to enhance the protege firms’ skill levels so they can compete for significant work and increase their participation by leading and filling significant roles for the Work being performed hereunder. The Manager shall develop a network of protégé firms and integrate them into the activities carried out and the opportunities provided.
4. Stakeholder & Community Engagement Program. Provide up-to-date information to City residents and provide a forum to facilitate information exchange and to coordinate

activities pertaining to the development of the Program. The Manager shall define the plan to meet with community organizations based in the City's area each Fiscal Year during the Term to provide an update on the Program.

Schedule 3 – Key Performance Indicators

1. **LSL Cost KPI** – This KPI will be structured as a not-to-exceed price per LSL replaced. The exact cost will be set each year in the Annual Plan. During the annual planning process a detailed budget will be agreed upon by the City and the Manager. If the Manager delivers the scope at or less than the agreed upon budget, then the Manager has earned the performance-based fee for this KPI. Any savings below the agreed upon budget will be used to replace more LSLs.
2. **LSL Implementation Schedule KPI** – This KPI will be tied to replacing a minimum number of lines in a given year, as determined by the agreed upon Annual Plan and adjusted in the Project Book(s) if expected funding availability changes. It will be the Manager's responsibility to develop an outreach program that generates property owner participation to ensure homeowners and tenants allow access to homes to enable replacement of their lead pipes.
3. **Local Business Utilization KPI** – This KPI will be tied to at least fifty percent (50%) of dollars spent on Construction Work must be awarded to Local Businesses.
4. **Target Class Business Utilization KPI** – This KPI will be tied to a percentage of dollars spent on Construction Work awarded to Target Class Businesses. The following percentages will be the KPI thresholds:
 - Year 1 (contract execution to December 31, 2024) = 20%
 - Year 2 (January 1, 2025 – December 31, 2025) = 30%
 - Years 3 & beyond (beginning January 1, 2026) = 40%
5. **Training Individuals and Businesses KPI** – The purpose of this KPI is to develop contractor capacity that enables the City to remove all ~8,000 LSLs within a five-year period. To accomplish this the Manager may work in partnership with LiUNA, Wisconsin Laborers' Council District and other organizations to create a workforce development program that trains individuals capable of replacing lead service lines so existing businesses can hire capable employees. Another service the Manager will explore is establishing a contractor development program and recruit existing businesses, such as residential plumbers, that trains them for LSL replacement. For Year 1, the Manager will be awarded this KPI by either recruiting one (1) residential plumber (individual or firm) into the program and/or launching an LSL replacements program within Wisconsin with LiUNA and/or Wisconsin Laborer's Council District. The KPI metrics for subsequent years will be determined in alignment with each annual plan depending on the volume of lines expected to be replaced each year.

FIRST AMENDMENT TO THE MASTER PARTNERSHIP AGREEMENT

THIS FIRST AMENDMENT (this “Amendment”) to the MASTER PARTNERSHIP AGREEMENT is made and entered into as of December [•], 2024 (the “Effective Date”) by and among COMMUNITY INFRASTRUCTURE PARTNERS, LLC, a Delaware limited liability company (the “Manager”) and the CITY OF WAUSAU, a municipal entity created by the State of Wisconsin, and its municipal water authority, WAUSAU WATER WORKS (collectively, the “City”). The City or the Manager or both may be referred to herein as a “Party” or the “Parties.”

WHEREAS, the Parties previously entered into that certain Master Partnership Agreement, dated as of February 16, 2024 (the “Prior Agreement”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms as set forth in the Prior Agreement; and

WHEREAS, the Parties desire to amend the terms of the Prior Agreement as provided herein to better align with Safe Drinking Water Loan Program funding requirements as relayed by the Wisconsin Department of Natural Resources.

NOW THEREFORE, in consideration of the mutual promises contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. Section 2.2 of the Prior Agreement is hereby amended by deleting all of the following definitions in their entirety: “Local Business Utilization KPI”, “LSL Cost KPI”, “LSL Implementation Schedule KPI”, “Target Class Business Utilization KPI”, and “Training Individuals and Businesses KPI”.

2. LSL Professional Services. Section 2.2 of the Prior Agreement is hereby amended by deleting the definition of “LSL Professional Services” and substituting the following therefor:

“LSL Professional Services” means service fees and costs of engineering, architectural, legal, accounting, and other professional services provided by the Manager for a Project including, but not limited to, those services described in Wis. Admin. Code NR § 166.07(1)(s) (2024).”

3. General Scope of Construction Period Work. Section 5.1 of the Prior Agreement is hereby deleted in its entirety and the following shall be substituted therefor:

“Section 5.1 General Scope of Construction Period Work. Following the City’s acknowledgement of a Final Project Book each year, the Manager shall deliver Notice to the City regarding any changes to the Construction Commencement Date and/or the Scheduled Substantial Completion Date for the applicable Budgeted Projects as stated in the Project Book. The Manager shall ensure qualified subcontractors perform and implement the construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt and orderly prosecution and completion of the Work and the Budgeted Projects. For the avoidance of doubt, Manager will not be directly providing any construction work, but instead will provide LSL Professional Services.”

4. Engagement of Certifier. Section 5.2 of the Prior Agreement is hereby deleted in its entirety and the following shall be substituted therefor:

“Section 5.2 Engagement of Certifier. Promptly following the execution of this Agreement, the City and the Manager shall agree upon and the Manager shall engage a firm or an individual (the “Certifier”) appropriately qualified to inspect the construction Work performed and to advise the City whether or not such Work is performed in accordance with the applicable standards. Either Party may, upon thirty (30) days’ Notice to the other Party, request that the Certifier be replaced by another mutually acceptable Person qualified to act in such capacity; provided that, unless agreed to by the Manager and accompanied by any necessary adjustment to the Scheduled Substantial Completion Date and the applicable Project Book(s), the Certifier shall not be replaced with respect to any Budgeted Project if such replacement would delay the completion or increase the cost of such Budgeted Project.”

5. Base Fee. Section 6.2 of the Prior Agreement is hereby deleted in its entirety and the following shall be substituted therefor:

“Section 6.2 Base Fee. In addition to the reimbursement of Direct Costs under Section 6.1, the Manager’s base fee for each Project (“Base Fee”) shall be structured as a time and materials based fee and paid by the City to the Manager. The scope of LSL Professional Services is detailed in Schedule 4. The Base Fee is to address a set of non-construction oversight and management activities taken related to capital improvements to address LSL and, to the extent possible, shall be illustrated in each Annual Plan and Project Book to maximize eligibility for financial assistance under Wis. Admin. Code ch. NR 166 and applicable Wisconsin and federal law. The Base Fee will be invoiced and paid monthly. Monthly invoices from the Manager are to demonstrate performance of tasks eligible for the Base Fee and will be based on actual time and materials costs incurred by the Manager pursuant to the scope of LSL Professional Services work detailed in Schedule 4. For the avoidance of doubt, the Base Fee does not include (i) the actual Project costs of Subcontractors directly relating to the planning, construction, installation and Acceptance of a Project, or (ii) the actual Program costs of Subcontractors directly relating to the implementation of the SocioEconomic Development Plan set forth on Schedule 2 attached hereto.”

6. Performance-Based Fee. Section 6.3 of the Prior Agreement is hereby deleted in its entirety and is hereby substituted with the words “Intentionally Omitted.”

7. General Requirements and Conditions. Section 6.4 of the Prior Agreement is hereby deleted in its entirety and is hereby substituted with the words “Intentionally Omitted.”

8. KPI Certification. Section 6.5(a)(2) of the Prior Agreement is hereby deleted in its entirety and is hereby substituted with the words “Intentionally Omitted.”

9. Not to Exceed Value. The following shall be inserted as Section 6.8 to the Prior Agreement:

“Section 6.8 Not to Exceed Value. The Parties agree that in no event shall the aggregate amount (excluding Interim Financing Costs) payable to the Manager for LSL Professional Services pursuant to this Agreement exceed the annual sums outlined in Schedule 4 for each year. The amounts in Schedule 4 shall be determined as part of each Final Annual Plan (as described in

Section 3.1 of this Agreement). The updated Schedule 4 shall made a part of this Agreement by contract amendment following completion of each Final Annual Plan.”

10. Key Performance Indicators. The Prior Agreement shall be amended by deleting Schedule 3 thereto in its entirety and is hereby substituted with the words “Schedule 3 Intentionally Omitted.”

11. Not to Exceed Value Schedule. The Prior Agreement shall be amended by attaching the following as Schedule 4 thereto:

“Schedule 4 – Not To Exceed Values for LSL Professional Services

2024	\$751,154
2025	\$1,951,194
2026	*
2027	*
2028	*

* Years 2026, 2027, and 2028 shall be updated as part of the Final Annual Plan for the corresponding year and made a part of this Schedule pursuant to Section 6.8.”

12. Scope of Work. The Prior Agreement shall be amended by attaching the following as Schedule 5 thereto:

“Schedule 5 – Scope of Work

The Manager, in coordination with any subcontractors, will provide professional services for the Program directly related to the program management of replacing lead service lines in the City of Wausau including inventory verification, engineering, contractor procurement, community outreach and stakeholder engagement, construction management, procuring of water filters and test kits, inspection, data management and financing.

The Manager will provide the LSL Professional Services through the following roles and associated tasks, which may be amended from time to time:

Program Manager – will provide program management and data management service while overseeing day to day operations within the program office and providing supervision in the field to ensure all construction and third party certification activities are being performed within the parameters of their respective contracts. Estimated hours: Oct 2023 – Dec 2024 = 2,531; 2025 = 2,080; 2026 [•]. 2024 Hourly rate: \$200.

Deputy Program Manager – will provide program management and data management service and providing supervision in the field to ensure all construction and third party certification activities are being performed within the parameters of their respective contracts. Estimated hours: Oct 2023 – Dec 2024 = 0; 2025 = 1,907; 2026 [•]. 2024 Hourly rate: \$150.

Operations Executive – will provide management of entire team including engineering, construction management, inspection and contractor firms, inclusive of the overall operations plan

for the Program. Estimated hours: Oct 2023 – Dec 2024 = 1,323; 2025 = 1,664; 2026 [•]. 2024 Hourly rate: \$250.

Finance Executive – will provide managing services related to all financial components of the Program including leading intent to apply submissions and applications to WDNR and the closing process while ensuring the City is in compliance with all state and federal regulations related to Lead and Copper Rule Improvements (LCRI) and the Bipartisan Infrastructure Law. Estimated hours: Oct 2023 – Dec 2024 = 815; 2025 = 832; 2026 [•]. 2024 Hourly rate: \$300.

Program Executive – will provide oversight of the delivery of the entire program ensuring all aspects of the Program are on track with the goals of the City, contract and compliance with LCRI and developing and implementing strategies in concert with City leadership to ensure the Program delivers on its goals within established timeframes and budgets. Estimated hours: Oct 2023 – Dec 2024 = 425; 2025 = 832; 2026 [•]. 2024 Hourly rate: \$400.

Outreach and Engagement Coordinator – will provide oversight of outreach and engagement firms providing door-to-door canvassing, communication materials and stakeholder engagement. Estimated hours: Oct 2023 – Dec 2024 = 300; 2025 = 1,664; 2026 [•]. 2024 Hourly rate: \$150.”

13. No Other Amendments. Except as amended by the terms above, the Prior Agreement shall survive this Amendment and continue in full force and effect without amendment, modification or waiver.

14. Counterparts. This Amendment may be executed in one or more counterparts and by exchange of electronic (PDF) copies of original or facsimile signatures, all of which shall be taken together and shall constitute one and the same agreement.

[Remainder of page intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date first printed above.

MANAGER:

Community Infrastructure Partners, LLC

By: _____
Name: _____
Title: _____

CITY:

City of Wausau

By: _____
Doug Diny, Mayor

Attested to

By: _____
Name: _____
Title: _____

Wausau Water Works

By: _____
Name: _____
Title: _____



To: Wausau Waterworks Commission

From: Ben Brooks, Wausau Waterworks-Wastewater Superintendent

Date: January 7, 2025

Subject: Update on the Acceptance of Leachate from Marathon County Solid Waste Landfill, Pilot Project

Dear Commissioners,

I am writing to provide an update on the ongoing discussions and evaluations regarding the acceptance of leachate from the Marathon County Solid Waste Landfill. As you are aware, this matter has implications for our operations, environmental compliance, and regional waste management partnerships.

Background:

The Marathon County Solid Waste Landfill has proposed that Wausau Waterworks accept and treat leachate generated from their facility. Leachate, the liquid that drains from a landfill, contains a mixture of organic and inorganic pollutants that require specialized treatment at a wastewater treatment facility to meet regulatory standards prior to discharge to a receiving body of water. Leachate also contains the organic PFAS, which is synthetically produced and is unable to be treated by conventional means at a wastewater treatment facility. Through collaboration efforts between the Landfill, their engineering firm Tetra Tech, and the City, it was determined that WDNR involvement was necessary for absolute transparency and to seek WDNR comment to determine if there would be any negative implications from the WDNR related to the current or future WPDES Permit.

12/11/24 WDNR Meeting:

A virtual meeting between the City, WDNR, Landfill and Tetra Tech regarding the acceptance of leachate took place on 12/11/24. In conclusion, the WDNR will not offer any strategies of safeguard to the City for accepting leachate from the Marathon County Landfill. WDNR stated that the City will be held liable for any waste accepted that may compromise compliance with the WPDES permit, present and future. The WDNR also stated that all PFAS testing performed during this pilot study can and will be used to calculate a P99 study for PFAS. Data from the

P99 study identifies if there's a reasonable potential to exceed the limits calculated for the one and thirty day limits set forth.

12/17/24 Follow up Meeting:

The City, Landfill and Tetra discussed a path moving forward. It was agreed that the City will continue to work on a schedule for leachate acceptance and PFAS testing.

12/23/24 Phone discussion with WDNR Basin Engineer, Nicholas Lindstrom:

Ben Brooks and Brad Wendtland had a phone discussion with WDNR Basin Engineer, Nicholas Lindstrom regarding PFAS testing data and the reasonable potential to exceed limits.

Nicholas Lindstrom stated that within the issuance of the new WPDES Permit there will be a two-year effluent PFAS testing requirement, but it was unknown at this time if the testing frequency would be monthly or every other month. Nick stated that a P99 study requires a minimum of twelve data points and recommended to perform the required PFAS testing within the first year without leachate introduction and the second year of PFAS testing with leachate introduction. By taking this approach it would satisfy a Pollutant Minimization Plan if there was reasonable potential to exceed limits set forth.

Next Steps:

Engage in further discussions with Marathon County representatives to outline mutually agreeable terms for leachate acceptance within the second year of the new WPDES permit term.

It would be my recommendation to the Commission that the City accept the recommendation of Nicholas Lindstrom and also approve the continuation of negotiations with Marathon County Solid_Waste Landfill representatives.

Thank you for your attention to this matter. I am confident that with careful planning and collaboration, we can manage this project in a way that benefits both Wausau Waterworks and the regional community. Please feel free to reach out to me with any questions or requests for additional information.

Best regards,

Ben Brooks

Wausau Waterworks – Wastewater, Superintendent