



## **REGULAR VILLAGE BOARD MEETING**

### **MEETING NOTICE AND AGENDA**

### **WHITEFISH BAY VILLAGE HALL**

**5300 North Marlborough Drive**

**Monday, May 20, 2019, 6:00 PM**

- I. Call to Order and Roll Call
- II. Consent Agenda – Upon request of any Trustee, any item may be removed from the Consent Agenda for separate consideration under General Business. **All Approved**
  1. Minutes of the regular meeting held on May 6, 2019.
  2. Investment Report for April, 2019.
  3. Ordinance No. 1851 to amend the Traffic Code (regarding parking on Newhall Street).
  4. Resolution No. 3054 confirming obligation to contribute to North Shore Fire Department's Budget to pay Whitefish Bay's portion of the debt service on the bonds issued on behalf of the North Shore Fire Department.
- III. Report of Village Officers
  1. Village Attorney
  2. Village Manager
  3. Village President
  4. Miscellaneous Trustee
- IV. Petitions and Communications – This is an opportunity for anyone to address the Village Board on any issue NOT on the current agenda. While the Board encourages input from residents of the Village, it may not discuss or act on any issue that is not duly noticed on the agenda.
- V. General Business

**Approved** 1. Discussion/action on Resolution No. 3052 Proclaiming May 19<sup>th</sup> through May 25<sup>th</sup> as

“Public Works Week” in the Village of Whitefish Bay.

- No action** 2. Recognition of “Public Works Week” 2<sup>nd</sup> Grade Coloring Contest Winners.
- Approved** 3. Discussion/action on Resolution No. 3053 Recognizing Jay Miller’s Service to the Village of Whitefish Bay.
- Approved** 4. Discussion/action on contract for the Public Works Facility Solar Installation.
- Approved** 5. Discussion/action on contract award for the 2019 EAB Treatment Project.
- Approved** 6. Discussion/action on proposal for new parking meters on Silver Spring Drive and adjacent side streets.
7. The Board may convene into Closed Session pursuant to Wisconsin State Statute §19.85(1)(e) deliberating or negotiating the purchase of public property, investing of public funds, conducting other specified business whenever competitive and/or bargaining reasons require a closed session – specifically regarding a Declaration of Deed Restrictions.
8. The Board may reconvene to open session. The Board reserves the right to take action on any topic discussed in closed session.

## VI Adjourn

**Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. Contact Village Hall at (414) 962-6690. It is possible that members of and possibly a quorum of members of other Boards, Commissions, or Committees of the Village including in particular the Community Development Authority may be in attendance in the above stated meeting to gather information; no action will be taken by any other Boards, Commissions, or Committees of the Village except by the Board, Commission, or Committee noticed above. Agendas and minutes are available on the Village website ([www.wfbvillage.org](http://www.wfbvillage.org))**

## REGULAR VILLAGE BOARD MEETING

A regular meeting of the Board of Trustees of Whitefish Bay was held in the Board Room of Whitefish Bay Village Hall, 5300 North Marlborough Drive, May 6, 2019

Pursuant to law, written notice of this meeting was given to the press and posted on the public bulletin boards.

### **I. Call to Order and Roll Call**

President Siegel called the meeting to order at 6:00 pm.

Present: Trustees Saunders, Serebin, Demet , Davis, Buckley, Fuda and President Siegel

Also Present: Village Manager Paul Boening  
Village Attorney Chris Jackels  
Police Chief Michael Young  
Director of Public Works John Edlebeck  
Director of Building Services Joel Oestreich  
Assistant Manager Tim Blakeslee  
Finance Director Jen Amerell  
Deputy Clerk Caren Brustmann

### **II. Consent Agenda**

It was moved by Trustee Davis, seconded by Trustee Demet, and unanimously carried by the Village Board to approve the consent agenda as presented.

1. Minutes of the regular meeting held on April 15, 2019.
2. Claims for April, 2019.
3. Appointment of Tammy Herpel to the Architectural Review Commission for a term to expire in 2020.
4. Appointment of Aaron Hoffmans to the Architectural Review Commission for a term to expire in 2020.
5. Approval of easement to enable the City of Glendale to construct a connecting trail between Richard E. Maslowski Park and the Milwaukee County Oak Leaf Trail through a portion of a Whitefish Bay owned yard waste site.

### **III. Report of Village Officers**

1. **Village Attorney** – No report
2. **Village Manager**

Village Manager Paul Boening recognized the success of Recycle Day in the Bay as well as Bay Day, noting the perfect weather and great turn out.

#### **3. Village President**

Village President Julie Siegel welcomed newly elected Trustee Kevin Buckley to the Village Board.

4. **Miscellaneous Trustee** – No reports

### **IV. Petitions and Communications** - None

### **V. General Business**

1. **Discussion/action on Interconnection Agreement with We Energies for the Public Works Facility Passive Solar Array Project.**

Director of Public Works John Edlebeck introduced items 1 through 3 collectively. Details were provided

regarding the Interconnection Agreement with WE Energies. Also discussed was the FOE RECIP grant funding for approximately 30% of the total project cost. Mr. Edlebeck also shared the expected project payback period with estimated savings over the next 25 years. It should be noted there is no financial burden at this time if agreements are approved, as the grant can be declined at a later date without penalty.

It was moved by Trustee Serebin, seconded by Trustee Saunders, and unanimously carried by the Village Board to accept the WE Energies Interconnection Agreement approval.

**2. Discussion/action on Incentive RECIP Grant Award Agreement with Focus on Energy for the Public Works Facility Passive Solar Array Project.**

It was moved by Trustee Serebin, seconded by Trustee Saunders, and unanimously carried by the Village Board to approve the Focus on Energy RECIP Grant Incentive Agreement in the amount of \$82,809.21.

**3. Discussion/action on Focus on Energy Formal Statement Committing to RECIP Incentive Reduction for Failure to Meet Project Completion Date for the Public Works Facility Passive Solar Array Project.**

It was moved by Trustee Serebin, seconded by Trustee Buckley, and unanimously carried by the Village Board to approve the Focus on Energy Formal Statement Committing to RECIP Grant Incentive Reduction for Failure to Meet Project Completion Date of August 31, 2019.

**4. The Board may convene into Closed Session pursuant to Wisconsin State Statute §19.85(1)(e) deliberating or negotiating the purchase of public property, investing of public funds, conducting other specified business whenever competitive and/or bargaining reasons require a closed session – specifically regarding a Declaration of Deed Restrictions; and pursuant to Wisconsin State Statute §19.85(1)(g) to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved – specifically regarding a request for a Certificate of Appropriateness. The Village Board will reconvene into open session after the closed session.**

It was moved by Trustee Serebin, seconded by Trustee Fuda, and unanimously carried by the Village Board to convene into Closed Session pursuant to Wisconsin State Statute §19.85(1)(e) deliberating or negotiating the purchase of public property, investing of public funds, conducting other specified business whenever competitive and/or bargaining reasons require a closed session – specifically regarding a Declaration of Deed Restrictions; and pursuant to Wisconsin State Statute §19.85(1)(g) to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved – specifically regarding a request for a Certificate of Appropriateness.

**5. Discussion/action on appeal of ARC decision regarding the denial of a Certificate of Appropriateness for demolition of the house at 4640 N. Lake Dr.**

It was moved by Trustee Serebin, seconded by Trustee Saunders, and unanimously carried by the Village Board to reconvene into open session at 7:17pm. Motion carried 7-0.

**INTRODUCTION:**

President Siegel laid out the sequence of the Village Board appeal proceedings. The Village Attorney briefed the Board and the audience on the nature of the appeal, the standard of review, the Village Code and the applicable law.

**APPELLANT PRESENTATION:**

Attorney Michael Riopel of Husch Blackwell made a presentation representing the applicants, Rob Ruvin and John Brodersen and 4640 North Lake Drive LLC.

**PUBLIC COMMENT:**

Dennis Miller, 5418 N. Lake Dr.; Stated a lot of residents are aware and talking about this case because residents move here for the historic nature of the community. Mr. Miller noted he spoke with Mr. Richard Ruvin of Keller Williams pertaining to this case, and Mr. Ruvin made it clear to Mr. Miller he had minimal involvement, and in Mr. Miller's opinion, there is deception taking place. Stated the 4 houses on the historic registry should and need to be protected.

Jason Stuewe, 1000 E. Henry Clay St.; Has been a member of ARC serving his 4th term Mr. Stuewe made reference to Lauren Triebenbach's (Chairperson of ARC) emailed letter, in regards that the owner of 4640 N. Lake Drive could have pursued further efforts to market the structure for sale. Stated the available resources that the owner could have explored or pursued in an effort to sell the property could have exceeded far beyond the discussion of one or two individuals and that marketing efforts could have been made to satisfy the requirement of making a reasonable effort to find a buyer to remove or reuse it in any nature.

Heather Goetsch, 149 E Fairmount Ave.; Is a member of ARC and serving 2<sup>nd</sup> term. Ms. Goetsch supports Mr. Stuewe's comments that more efforts could have been made to further market the structure for sale, such as placing a sign in the front yard or placing an ad on craigslist. Also stated getting a bid from the applicant's own company was not sufficient for cost of renovation or moving for the home, should have received other input. Ms. Goetsch stated the owner should have known the property was historic upon purchase as it was noted in the deed, as well as the sign in front of the property.

Jefferson Aikin, Historic Preservation Commission; Clarified the definition of "historic site". In Mr. Aikin's opinion, the cost of renovation is exaggerated and illuminating because it reflects damage done to the house by the owners who purchased only 2 years ago who are now falsely claiming it as a "dump beyond repair".

Tom Fehring, Historic Preservation Commission; An original member of the commission and noted he researched the history of said property and put together the application before placing it on the Whitefish Bay register. Stated owner fully knew it was designated as historic. Also noted there is a clear problem within the ordinance in regards to receiving influenced input from residents during public comment periods.

Susie Van Cleave, 5353 N. Berkeley Blvd; Stated if good faith effort was trying to be made for a house looking to be rehabilitated, an architect or structural engineer would have been hired which never occurred. That should have been the first step, thus not making a good faith effort.

**BOARD DISCUSSION:**

The Village President closed the public comment period and opened the floor to the Board for discussion. Trustee Serebin clarified with Attorney Jaekels that a house and site are separated in the ordinance. Trustee Davis asked Attorney Riopel whether or not the applicant placed a for sale sign on Lake Drive in front of the property. Attorney Riopel was not certain. Trustee Serebin referred to ARC's minutes and inquired about specific good faith efforts and if any new material was being presented at today's meeting. Attorney Riopel stated the applicant's good faith efforts have been met. Attorney Riopel provided the listing prices for the property from 2012 to 2016.

The Village President advised the Board is in recess at 8:12pm. The Board reconvened from recess at 8:17pm.

The Village Attorney repeatedly reminded the Board throughout the proceedings to consider only the record and the Applicant's presentation in rendering its decision. After reviewing the record from the Architectural Review Commission and the evidence presented by the Applicant with regard to the Applicant's satisfaction of Section 16.25(5)(b)3 of the Municipal Code, Board members indicated that the Applicant had not shown good faith efforts for a period of at least sixty (60) days to secure a buyer who would agree to or otherwise secure a means to preserve, relocate, reuse or otherwise rehabilitate the structure using a reasonable level of resources available to the owner or buyer. On that basis, the motion was made to deny the Appeal. Each of the Board members who voted in favor of the denial had expressed their individual findings that the Applicants had failed to show that they had satisfied Section 16.25(5)(b)3.

It was moved by Trustee Demet, seconded by Trustee Davis, and carried by the Village Board by a roll call vote to deny the Certificate of Appropriateness for demolition of the house at 4640 N. Lake Dr. Motion carried 5-2.

**VI. Adjourn**

There being no further business, it was moved by Trustee Fuda, seconded by Trustee Buckley, and unanimously carried by the Village Board to adjourn the meeting at 8:22pm.

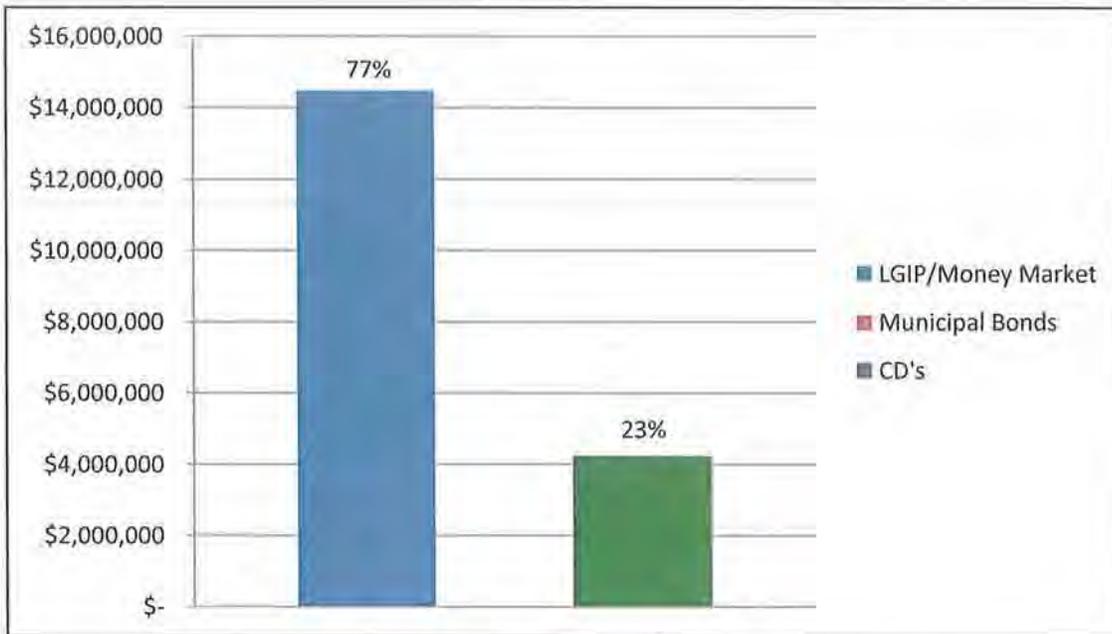
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Caren Brustmann  
Deputy Clerk

# Monthly Investment Summary

April 2019

	General Investments	Post Retirement Investments	Total
LGIP/Money Market	\$ 14,453,632	\$ -	\$ 14,453,632
Municipal Bonds	-	-	-
CD's:			
Less than 1 Year	110,737	347,483	458,220
1 to 3 Years	3,081,947	681,757	3,763,704
3 to 5 Years	-	-	-
Total CD's	3,192,684	1,029,240	4,221,924
Total Investments	<u>\$ 17,646,316</u>	<u>\$ 1,029,240</u>	<u>\$ 18,675,556</u>
Accrued Interest	<u>\$ 3,520</u>	<u>\$ 4,992</u>	<u>\$ 8,512</u>





## VILLAGE BOARD MEETING STAFF REPORT

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**REPORT TO:** President Julie Siegel & Village Board of Trustees

**REPORT FROM:** Paul Boening – Village Manager

**AGENDA ITEM:** Ordinance No. 1851 to amend the Traffic Code (regarding parking on Newhall Street).

**ACTION REQUESTED:**  Ordinance  Resolution  Motion (Consent Agenda)  Information Only

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### **BACKGROUND**

In response to a request from Dean and Patricia Paul (4963 N. Newhall Street), the Village Board adopted an Ordinance in November of 2017 to create a Winter Parking Zone adjacent to the Pauls' duplex. The Pauls had requested the zone to enable their tenants to utilize street parking during the winter months.

In December of 2018, Mr. and Mrs. Paul submitted a request for the Board to eliminate the aforementioned parking zone (copy of letter attached). In summary, the Pauls noted that it was their understanding that the zone would be available for occasional overnight parking by their tenants. However, permits for all zones are issued on a first-come, first served basis. Therefore, the zone did not create the intended effect of providing street parking for the duplex tenants.

Village staff does not object to the elimination of the parking zone. The two affected spaces have only been in existence for two winter seasons, and prior to the Pauls' request in 2017, the Village had not received other requests for a zone in that area. Adoption of the attached ordinance would eliminate the aforementioned parking zone.

### **RECOMMENDED ACTION BY VILLAGE BOARD**

To adopt Ordinance No. 1851 as part of the Consent Agenda.

C: Department Heads  
Attorney Jaekels  
Police Chief

TO: Mr. Tim Blakeslee  
Board of Trustees Whitefish Bay

December 6, 2018

We are the owners of the duplex at 4961-63 N. Newhall Street. Several months ago we asked the Board to consider winter parking relief at 4961-63 N. Newhall. (With that request, we believed our request would pertain only to our tenants' *occasional* need for winter overnight parking.) At the time of our request in front of the Board, it was not explained to us that the change would allow for any Whitefish Bay residents to obtain winter parking permits for this location.

What we now have is not what we intended. We thought this would be unmarked and we would simply share this information with our tenants only as needed by them.

With this letter, we are requesting the withdrawal of our former request and reversal of the Board's decision to designate 4961-63 N. Newhall as a permitted winter overnight parking location. We want to revert back to the village's long-standing rules of no overnight winter parking regulations at 4961-63 N. Newhall Street. This would include the removal of the two signs indicating the restricted space. We are aware that these spots are currently under permit through March 2019. We would expect this change to be effective April 1, 2019.

With our mistaken thinking that this would be an *occasional* overnight parking situation for our tenants, we did not give thought to the hazardous situation created by vehicles parking every day and/or overnight for 4 months at that location. This was not our intention.

We live at 4958 N. Newhall Street with a side drive directly across from where the 2 parking spots are designated. For the 44 years we have lived at this location, whenever car(s) are parked across from the end of our driveway, backing out of our driveway becomes tight with a concern for backing into the parked cars. Now, for the first time with cars parked over night for the next four months, our snow removal contractor, who arrives at 5:00 AM, may not have safe street turn room with his truck as he enters and exits our driveway.

Reviewing the village's parking map, copy enclosed, the red designated areas are for commercial and larger apartment locations --- not residential settings. This N. Newhall winter parking location is additionally inconsistent with the rest of the village's winter designations.

Sincerely,

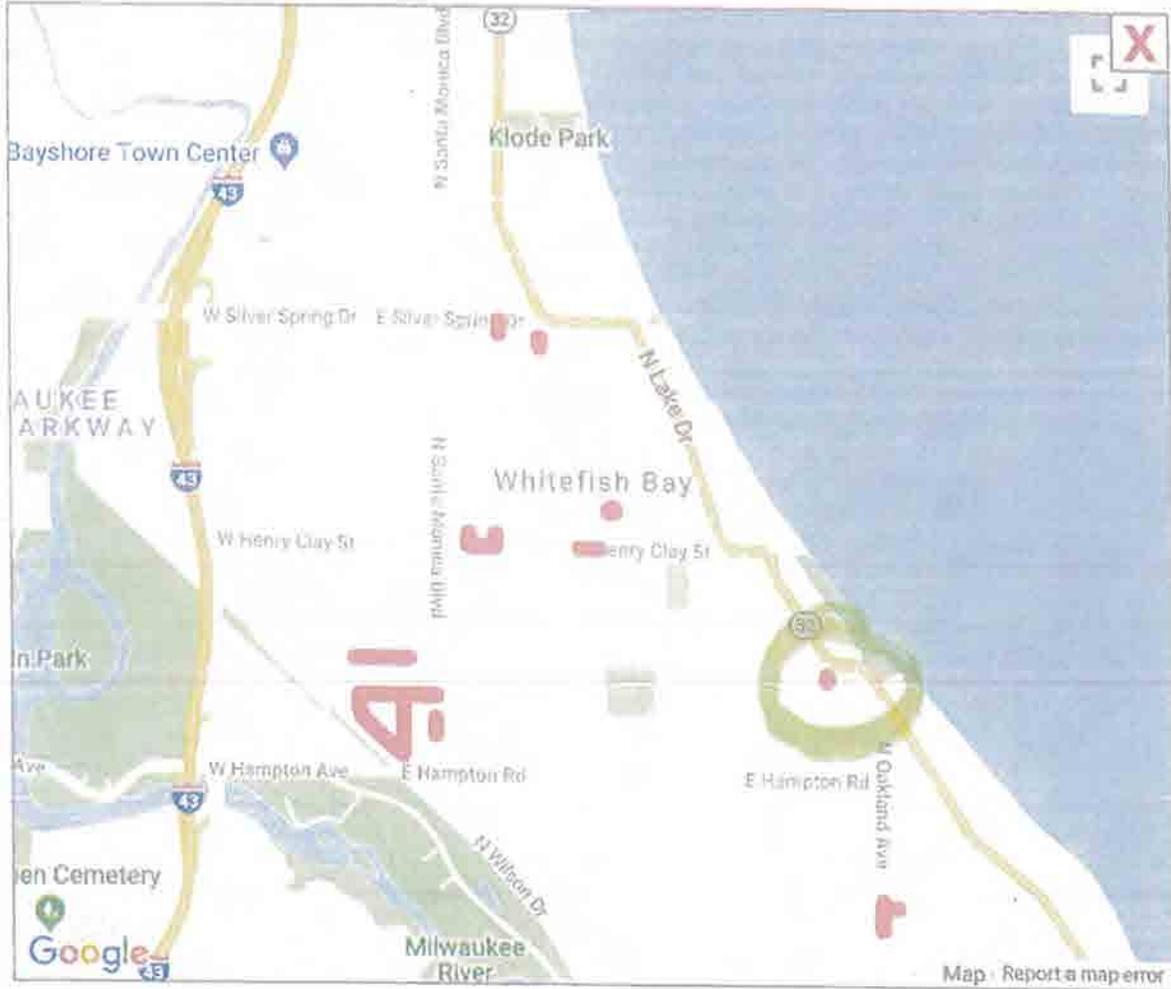


Dean and Patricia Paul  
4958 N. Newhall Street  
Whitefish Bay, WI 53217  
cell: 414-588-6464



# Village of Whitefish Bay Overnight Parking

Click on a marked (red) area of the map for a description of that parking area.



[close map](#)

west side from E. Chateau Pl. to N. Anita Ave.

**Location 5:** N. Diversey Blvd. at E. Silver Spring Dr.  
Not available within selected date range

west side of N. Diversey Blvd., from Silver Spring Dr. south to alley

**Location 6:** E. Henry Clay St. at N. Diversey Blvd.  
Not available within selected date range

north side of 400 block of E. Henry Clay St. and the west side of N. Diversey

Purchase Parking Permit | Village of Whitefish Bay, Wisconsin

Bld. from E. Henry Clay St. north to alley

**Location 7: N. Berkeley Blvd. at E. Henry Clay St.**

*Not available within selected date range*

west side of N. Berkeley Blvd. from E. Henry Clay St. north to alley

**Location 8: N. Oakland Ave. at E. Glendale Ave.**

east side of N. Oakland Ave. from south Village limits to a point 40 feet north of E. Glendale Ave. and the south side of E. Glendale Ave. from N. Oakland Ave. east to posted sign

**Location 9: Winkie's Municipal Parking Lot**

east parking row along N. Marlborough Dr., at south end of parking lot

**Location 10: North Shore Fire Department Parking Lot**

south end of parking lot only

**Location 11: E. Henry Clay St.**

*Not available within selected date range*

south side of E. Henry Clay St. from a point 15 feet east of the east curb line of N. Elkhart Ave. to a point 15 feet west of the west curb line of North Woodruff Ave

**Location 12: N. Newhall St.**

*Not available within selected date range*

west side of North Newhall St from a point 110 feet south of the south curb line of East Fairmount Ave extended to a point 150 feet south of said curb line

**Location 13: N. Santa Monica Blvd.**

west side of North Santa Monica Blvd. from a point 410 feet north of the north curb line of E. Hampton Rd. to a point 605 feet north of said north curb line

**\*Vehicle:**

**\* Does the vehicle have a license plate?:**

**\* Yes**

**No**

**\* License Plate:**

STATE OF WISCONSIN      MILWAUKEE COUNTY      VILLAGE OF WHITEFISH BAY

ORDINANCE NO: 1851

**An Ordinance Relating to the Traffic Code**

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The Village Board of the Village of Whitefish Bay, Milwaukee County, Wisconsin does ordain as follows:

Section One: Section 6.05(10)(d)(6)(q) is hereby repealed in its entirety.

Section Two: All ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby and to such extent repealed.

Section Three: This ordinance shall take effect and be in force from and after its passage and posting.

PASSED AND ADOPTED by the Village Board of Trustees of the Village of Whitefish Bay this 20<sup>th</sup> day of May, 2019.

VILLAGE OF WHITEFISH BAY

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Julie Siegel, Village President

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Jennifer Amerell, Village Clerk

# NORTH SHORE FIRE/RESCUE

## Office of the Fire Chief

Robert Whitaker

**To:** Village Managers/City Administrator  
**Date:** May 14, 2019  
**Subject:** Village of Whitefish Bay Borrowing for NSFD

The sale of general obligation bonds by the Village of Whitefish Bay on behalf of the North Shore Fire Department for the remodel of the Whitefish Bay Fire Station has been completed. Now that the sale is complete, Brian Lanser, the Department's Bond Counsel at Quarles and Brady, has recommended that the NSFD Board reaffirm payment of the exact amount of money since the previous resolution was an estimate before bond sale. The NSFD Board took that action at its meeting this morning.

Mr. Lanser has also recommended that each governing body of the seven member municipalities pass a resolution reaffirming its commitment to the repayment. This resolution provides sufficient documentation for the State of Wisconsin in order to exempt the debt service from the levy limits. As you will note, the updated resolution includes the amount of \$655,000, whereas the pre-sale resolution indicated the amount to be estimated at \$710,000. There are no other material changes.

The municipalities have already committed to repayment of the Village of Whitefish Bay, this action simply updates the amount of the borrowing and reaffirms that commitment.

**RESOLUTION NO. 3054**

**RESOLUTION CONFIRMING OBLIGATION TO CONTRIBUTE TO  
NORTH SHORE FIRE DEPARTMENT'S BUDGET TO PAY DEBT SERVICE  
ON BONDS ISSUED BY THE VILLAGE OF WHITEFISH BAY ON  
BEHALF OF THE NORTH SHORE FIRE DEPARTMENT**

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**WHEREAS**, the Village of Bayside, the Village of Brown Deer, the Village of Fox Point, the City of Glendale, the Village of River Hills, the Village of Shorewood, and the Village of Whitefish Bay (the communities listed hereinabove shall be referred to individually as a "Municipality" and collectively as the "Municipalities") are parties to an Amended and Restated North Shore Fire Services Agreement (the "Agreement"); and

**WHEREAS**, the Agreement provides for a jointly operated fire and emergency services department known as the North Shore Fire Department (the "Department") to serve the Municipalities; and

**WHEREAS**, the Board of Directors of the Department has recommended joint financing by the Municipalities for the remodeling of the Whitefish Bay Fire Station for the North Shore Fire Department (the "Project") for the benefit of the Department to more adequately serve the needs of the residents of the Municipalities; and

**WHEREAS**, the Village of Whitefish Bay has issued \$665,000 general obligation bonds (the "Bonds") to finance the Project on behalf of the Department; and

**WHEREAS**, the Agreement provides a financing formula (the "Formula") for determining each Municipality's annual financial contribution to the Department's operating, maintenance and capital budgets; and

**WHEREAS**, the Municipalities intend that each Municipality pay a share of the debt service on the Bonds in accordance with the Formula as illustrated in Exhibit A; and

**WHEREAS**, this Municipality currently funds its annual financial contribution to the Department out of its annual levy, subject to annual appropriation; and

**WHEREAS**, in consideration of the benefits to be received by the Municipality as a result of the Project and the issuance of the Bonds, the Village Board of the Municipality (the "Governing Body") hereby deems it necessary and in the best interest of the Municipality to confirm its commitment to pay its share of debt service on the Bonds (determined in accordance with the Formula) and may choose to provide for the issuance of a general obligation promissory note to the Village of Whitefish Bay.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body of the Municipality, that:

1. This Municipality shall pay, as part of its annual financial contribution to the Department, its share of the debt service on the Bonds.

The amount of the debt service contribution by the Municipality each year shall be determined as described in Section 17 of the Agreement, and such contribution shall be payable upon the terms provided for in Section 17 of the Agreement; provided that upon termination, expulsion or withdrawal of the Municipality under the Agreement, the Municipality's share of the cost of the Project, to the extent not charged to and paid by the Municipality, shall be considered in applying the provisions of Section 21 of the Agreement regarding distribution of assets and shall be an offset against the amount the Municipality is to receive pursuant to Section 21 of the Agreement.

2. The Municipality acknowledges that the Village of Whitefish Bay, in issuing the Bonds, is relying on the representations and covenants made by the Municipality in this resolution and may take action to enforce the representations and covenants of the Municipality made hereunder.

**PASSED AND ADOPTED** by the Village Board of the Village of Whitefish Bay this 20<sup>th</sup> day of May, 2019.

VILLAGE OF WHITEFISH BAY

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Julie Siegel  
Village President

Countersigned:

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Jennifer Amerell  
Village Clerk

# EXHIBIT A

North Shore Fire Department Borrowing Repayment Schedule Illustration of allocation methodology 2019 Whitefish Bay G.O. Bonds for NSFD Whitefish Bay G.O. Bond Payment Schedule													
Year	Principal	Rate	Interest	Less Bid Premium	Less NFSD Funds on Hand	Net Total Payment	Bayside Principal & Interest	Brown Deer Principal & Interest	Fox Point Principal & Interest	Glendale Principal & Interest	River Hills Principal & Interest	Shorewood Principal & Interest	Whitefish Bay Principal & Interest
							Est. Formula	Est. Formula	Est. Formula	Est. Formula	Est. Formula	Est. Formula	Est. Formula
2019	-	-	-	-	-	-	-	-	-	-	-	-	-
2020	-	-	29,925.00	(20,105.00)	(9,816.00)	-	6.29%	18.26%	9.35%	28.07%	3.15%	17.52%	17.36%
2021	-	-	19,950.00	-	-	-	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2022	-	-	19,950.00	-	(19,950.00)	-	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2023	-	-	19,950.00	-	(19,950.00)	-	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2024	40,000.00	3.00%	19,350.00	-	-	59,350.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2025	45,000.00	3.00%	18,075.00	-	-	63,075.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2026	45,000.00	3.00%	16,725.00	-	-	61,725.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2027	45,000.00	3.00%	15,375.00	-	-	60,375.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2028	45,000.00	3.00%	14,025.00	-	-	59,025.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2029	45,000.00	3.00%	12,675.00	-	-	57,675.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2030	40,000.00	3.00%	11,400.00	-	-	51,400.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2031	40,000.00	3.00%	10,200.00	-	-	50,200.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2032	40,000.00	3.00%	9,000.00	-	-	49,000.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2033	40,000.00	3.00%	7,800.00	-	-	47,800.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2034	40,000.00	3.00%	6,600.00	-	-	46,600.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2035	40,000.00	3.00%	5,400.00	-	-	45,400.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2036	40,000.00	3.00%	4,200.00	-	-	44,200.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2037	40,000.00	3.00%	3,000.00	-	-	43,000.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2038	40,000.00	3.00%	1,800.00	-	-	41,800.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
2039	40,000.00	3.00%	600.00	-	-	40,600.00	6.31%	18.40%	9.11%	28.05%	3.20%	17.54%	17.39%
<b>TOTAL</b>	<b>665,000.00</b>		<b>246,000.00</b>	<b>(20,105.00)</b>	<b>(69,666.00)</b>	<b>821,225.00</b>	<b>51,819.30</b>	<b>151,105.40</b>	<b>74,813.60</b>	<b>230,353.61</b>	<b>26,279.20</b>	<b>144,042.87</b>	<b>142,811.03</b>

STATE OF WISCONSIN : MILWAUKEE COUNTY : VILLAGE OF WHITEFISH BAY

RESOLUTION NO. 3052

PROCLAIMING MAY 19<sup>TH</sup> THROUGH MAY 25<sup>TH</sup> AS "PUBLIC WORKS WEEK" IN THE VILLAGE OF WHITEFISH BAY

WHEREAS, Public Works services provided in our community are an integral part of citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is a vital to the efficient operation of the Public Works system and programs such as water, storm water, sewers, streets, public buildings, parks, and solid waste and recycling collection; and

WHEREAS, the health, safety and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities and services, as well as their service delivery, planning, design, and construction are vitally dependent upon the efforts and skills of all of our Public Works employees; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff our Public Works Department is materially influenced by attitude and understanding of the importance of the work they perform.

NOW, THEREFORE, The Village Board of the Village of Whitefish Bay, Wisconsin does hereby proclaim the week of May 19 through May 25, 2019 as

"PUBLIC WORKS WEEK"

in the Village of Whitefish Bay, and calls upon all community members and civic organizations to acquaint themselves with the issues involved in providing our Public Works services and to recognize the contributions which Public Works officials make every day to our health, safety, comfort, and quality of life.

PASSED AND APPROVED this the 20<sup>th</sup> day of May, 2019, by the Village Board of the Village of Whitefish Bay, Wisconsin.

---

Julie Siegel, Village President

(Attest)

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Jennifer Amerell, Village Clerk



## Village of Whitefish Bay Public Works Department

155 W. Fairmount Ave • Whitefish Bay, Wisconsin 53217 • (414) 962-6690 • Fax (414) 967-1391

John Edlebeck, P.E., Director of Public Works

### Memorandum

To: Julie Siegel, Village President & Village Board Members  
From: John Edlebeck, Director of Public Works  
Date: May 20, 2019  
Re: Public Works Week 2<sup>nd</sup> Grade Coloring Contest

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The Village of Whitefish Bay Public Works Department is conducting its 5<sup>th</sup> Annual Public Works Week Coloring Contest for all **2<sup>nd</sup> Grade school children** in the Whitefish Bay schools. This contest coincides with the celebration of **National Public Works Week, May 19-25, 2019**. The village is proud of the quality public services it provides in the area of Streets, Water, Sewer, City Facility Management, Parks and Solid Waste, and wants to share that enthusiasm with some of our area school children.

Coloring Contest forms were delivered to all schools in the village with 2<sup>nd</sup> graders. The submitted colored sheets were judged by Village President Siegel with the top ones selected to be honored on Monday, May 20, 2019 at the 6:00pm Village Board Meeting held at Whitefish Bay Village Hall, located at 5300 N. Marlborough Drive, upstairs in the Village Board Room.

<u>Student</u>	<u>Teacher</u>	<u>School</u>
Becca Willems	Mr. Widder	Richards
Arabella Granstrom	Mrs. Sukawatey	Cumberland
Baruch Fox	Mrs. Neuman	Bader Hillel Academy
Ethan Anderson	Mrs. Kryszak	St. Monica
Audrey Yothsackda	Mrs. Vorlop	Holy Family

STATE OF WISCONSIN : MILWAUKEE COUNTY : VILLAGE OF WHITEFISH BAY

RESOLUTION NO. 3053

A RESOLUTION OF APPRECIATION

WHEREAS, Jay Miller was elected to the Village Board in 2009 and was reelected in 2010, 2013 and 2016; and

WHEREAS, Jay served the residents of the Village of Whitefish Bay for over ten years by diligently providing exemplary service; and

WHEREAS, Jay gave generously of his time, efforts and skills to lead the Village forward through his participation on the Public Safety Committee, Zoning, Parks and Buildings Committee, Plan Commission, Community Development Authority and Public Works Committee in addition to his general duties as a Village Trustee; and

WHEREAS, Jay made significant contributions to a number of Village initiatives including the 2009 Comprehensive Plan, the Silver Spring Master Plan Update and the Downtown Incentive Grant Program; and

WHEREAS, Jay was instrumental in reviewing and approving many public works and utility projects as Chairperson of the Public Works Committee including the PPII Lateral Lining Program and the Village-wide conversion to automated collection of refuse and recycling; and

WHEREAS, Jay's analytical approach and steadfast commitment to problem-solving enabled the Board address a variety of issues; and

WHEREAS, Jay worked to ensure that Whitefish Bay would remain a quality place to live, work and visit, and he will continue to do so as a citizen member and Chairperson of the Public Works Committee.

NOW, THEREFORE, BE IT RESOLVED, by the VILLAGE BOARD of the Village of Whitefish Bay, that the Village Board offers forth on behalf of the Village residents a resounding thank you to Jay Miller for his efforts on behalf of the Village of Whitefish Bay.

This resolution is hereby adopted this 20<sup>th</sup> day of May, 2019.

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Julie Siegel, President

Countersigned:

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Jennifer Amerell, Village Clerk

May 16, 2019

Memo to: President Siegel and Members of the Whitefish Bay Village Board

From: John Edlebeck, P.E., Director of Public Works

Re: **Proposed Solar Panel Array Installation Project – Public Works Facility**

In December, 2018 Village staff began investigating the option of the Village funding and installing a 200 kW solar panel array project on our Public Works Facility rooftop. I contacted Arch Electric, a southeast Wisconsin industry leader in solar panel installations, to assist in this analysis. Arch Electric prepared a preliminary design and a financial pro forma for this proposed 200kW rooftop solar panel array project. The pro forma also proposed to apply for applicable solar panel project grants / credits.

The Focus on Energy (FOE) Renewable Energy Competitive Incentive Grant Program (RECIP) began in the fall, 2018. The Village applied for a FOE RECIP grant during the February, 2019 application cycle. Over 60 applications were received by Focus on Energy during this round with the Village of Whitefish Bay being successful with an award offer of \$82,809.21. The FOE RECIP grant provides funding for approximately 30% of the total project cost.

A second possible outside funding source for the project has been pursued in the form of a tax credit to the equipment installer through an equipment leasing agency that would benefit the project and the Village an estimated 15% or \$42,000. At this time we do not have a financing agency secured that will proceed with the proposed 15% tax credit equipment leasing agreement. Staff will continue to work with Arch Electric over the next month to attempt to secure this possible additional funding source for the project.

**Current Estimated Project Pay Back Period and Estimated \$ Savings**

*With 30% RECIP grant only = 7 years with \$620,000 in savings over 25 years*

**Current Estimated Summary of Project Expenses / Funding Sources with 30% RECIP Grant only**

<u>Item</u>	<u>Estimated Expenses</u>	<u>Estimated Revenues</u>
Solar Panel Project Construction Cost	\$ 279,340	
FOE RECIP Grant (30%)		\$ 82,809
Village funding (70%)		\$ 196,531
Structural, Legal, Interconnection, etc.....	\$ 7,100	
<u>Village funding (100%)</u>		<u>\$ 7,100</u>
TOTAL	\$ 286,440	\$ 286,440

Total Estimated Village Funding = \$196,531 + \$7,100 = \$203,631 (Fund 43 – Borrowed Money Fund)

The Village has received an approved WE Energies Interconnection Agreement that formalizes the metering and connection of the proposed solar panel array system with our WE Energies power service. This agreement includes the installation of a two way recording electric meter allowing the Village to purchase electricity from WE Energies as needed and to then also be able to sell excess electricity generated back to WE Energies.

On May 6, 2019 the Village Board voted to:

- a. Accept the WE Energies Interconnection Agreement approval
- b. Approve the Focus on Energy RECIP Grant Incentive Agreement in the amount of \$82,809.21
- c. Approve the Focus on Energy Formal Statement Committing to RECIP Grant Incentive Reduction for Failure to Meet Project Completion Date of August 31, 2019.

**The only remaining items left for this project are the following:**

1. Project financing through an equipment lease arrangement
2. Passive Solar Array System installation

**Staff Recommendation**

To address these two above items, Village Staff recommends that the Village Board vote to approve the attached Arch Electric 200kW Roof Mount Array agreement dated May 16, 2019. Note that there are minor wording changes pending in this agreement that are being discussed by the attorneys that may slightly modify the agreement language regarding limitations and liability found on page 15. Any agreed upon updates or revisions to this attached May 16, 2019 agreement will be handed out and discussed at the May 20, 2019 Village Board meeting before a vote is taken on this agreement.

	<b><u>Agreement Amount</u></b>
Solar Panel Project Construction Cost	\$ 279,340
<u>Interconnection Agreement application services</u>	<u>\$ 2,100</u>
<b>Total</b>	<b>\$281,440</b>

The items in the agreement are to be completed on or before August 31, 2019 to comply with the approved Focus on Energy RECIP grant agreement requirements.

**Action Item**

**Approve the most current version of the 200kW Roof Mount Array Arch Electric agreement that provides equipment lease financing and equipment installation services for the Whitefish Bay Public Works Facility Solar Panel Array Installation Project in the amount of \$281,440 with a completion date of August 31, 2019.**



## *The Solar Energy Experts*

Date: 5/16/2019  
Contract Number: 8372  
Project Name: 200 kW Roof Mount Array  
Project Address: 155 W Fairmount Ave, Whitefish Bay, WI 53217

These terms and conditions (the "Terms") shall apply to all sales of goods and services ("Goods") by Arch Electric, Inc., and its Affiliates ("Arch Electric") to Owner, and its Affiliates ("Owner"). For purposes of these Terms, "Affiliates" shall include any entity controlled by or that control either Arch Electric or Owner respectively or are under common ownership of either Arch Electric or Owner, respectively.

### Project Summary

The owner hereby employs the Contractor to do the work and provide the materials, tools, machinery and supervision necessary for the construction of a 199.8 kW-DC photovoltaic system all in accordance with the scope of work and exclusions listed herein. The Contractor shall commence the work to be performed within 60 days from the date of contract signing, and shall complete the work 90 days thereafter, or by 8/31/2019, whichever comes later.

### Scope of Work

The scope of work for this project includes but is not limited to:

1. Install (540) Vikram Solar VSMH.72.370.03.04
2. Install (2) SolarEdge SE100KUS
3. Install all solar module racking, combiner boxes, disconnect switches, overcurrent protection devices, meters, enclosures, conduit, wire, warning placards and any other equipment required for a code compliant photovoltaic system.
4. Install all performance monitoring equipment.
5. Obtain all required permits and approvals from any authorities having jurisdiction.
6. Complete any paperwork required for local incentives, if applicable.
7. Administer interconnection agreement with local electric utility.



*The Solar Energy Experts*

### **ASSENT TO TERMS**

The sale of Goods by Arch Electric is expressly conditioned upon the assent by Owner to these Terms and the rights of the parties shall be governed exclusively by these Terms and any corresponding written proposal and/or agreement between the parties ("Proposal"). Any attempt by Owner to vary these Terms or any term, condition, or provision in any related Proposal in any acceptance, acknowledgment, confirmation, purchase order, or otherwise containing additional, different, or inconsistent terms and conditions (collectively "Different Terms") is hereby expressly objected to and rejected by Arch Electric. Arch Electric's dealings with Owner or silence in response to Different Terms proposed by Owner shall not be deemed acceptance of the Different Terms. No person may modify these Terms without written consent of Arch Electric. No course of dealing or trade usage modifies these Terms. Arch Electric reserves the right to refuse - in writing - any order from Owner at its sole discretion. To the extent of any inconsistency between these Terms and any term, condition, or provision of any applicable Proposal between the parties, the terms, conditions, or provisions of the Proposal shall control.

### **DRAWINGS AND SPECIFICATIONS**

The Work (as defined herein) will be performed by Arch Electric in substantial conformity with the "Drawings" and "Specifications" and the Proposal that has been provided by Arch Electric and approved by the Owner.



The Solar Energy Experts

**EQUIPMENT LEASE AGREEMENT**

You agree to lease the Solar System from us for Twenty-Five (25) years. You agree to provide an upfront payment in the amount of \$281,440. This Agreement becomes effective when both We and You have signed it and continues in effect for Twenty (25) years ("Initial Term") following the date Your utility grants permission to operate the Solar System, unless You exercise Your early buyout right at the end of year 5,10,15, or 20, in which case, this Agreement will end. The early buyout right is a \$1 payment which ends the equipment lease term, in which you become the owner of the Solar System.

Your options after the 25-year Initial term are:

- We will remove the modules and inverters at no cost to you.
- You can upgrade to a new Solar System with the latest solar technology under a new contract.

Arch Electric may be required to carry out its Work hereunder in accordance with the Davis-Bacon Act of 1931 (CERCLA § 104(g)(1), 40 U.S.C. §§ 276a to 276a-5 and 42 U.S.C. § 3222 as set forth in CERCLA § 104 (g)) (the "Davis Bacon Act") which requires payment of federal prevailing wage rates for certain construction, repair or alteration work. If a determination of prevailing wages or Davis Bacon Act wage determination exists or is applicable, Arch Electric reserves right to increase the fees to be paid by Owner pursuant to the Proposal amount accordingly to reflect such applicable wage increases.

Payment Schedule

Payment #	Description of work completed	Payment Due
Initial	Materials Ordered	70%
Completion	Project Commissioned and Operational	30%
Annual Lease	Operations and Maintenance	\$3,000
Buyout	End of Term Buyout Right	\$1
Total		\$281,440



The Solar Energy Experts

**ARCH ELECTRIC RIGHTS AND RESPONSIBILITIES**

Subject to these Terms and the terms of any Proposal, Drawings, and Specifications between Owner and Arch Electric, **Arch Electric shall furnish the labor, materials, equipment, and services necessary to complete the Scope of Work as more particularly set forth in the Proposal between the parties in a workmanlike and professional manner (the "Work"). Where brand names have been specified, Arch Electric may select substitutes when such substitutions are due to unavailability or other circumstances beyond Arch Electric's reasonable control.** All substitutions shall be consistent in quality and character to the selections previously specified. The liability of Arch Electric for defective materials or installation is hereby limited to Arch Electric's limited warranty obligations, as set forth herein. No other claims or demands whatsoever shall be made upon or against Arch Electric.

Arch Electric shall have the right to stop Work and keep the Work idle if payments are not made when due. Failure to make payment within five (5) days of the date that payment is due, may, at Arch Electric's option may be considered a material breach of this Proposal. If the Work shall be stopped for any reason, for a period of sixty (60) days or more, then Arch Electric may, at Arch Electric's option, upon five (5) days written notice, demand and receive payment for all Work executed and material ordered or supplied to date and any other loss sustained including Arch Electric's usual fee for overhead and profit based upon the Proposal price. Thereafter, Arch Electric is relieved from any further liability under the Proposal or these Terms. In the event of Work stoppage for any reason, Owner shall provide for protection of and be responsible for, any damage, warpage, racking, or loss of Goods or other material on the Owner's property.

Arch Electric, at Arch Electric's option, may alter Specifications and Drawings in order to comply with requirements of governmental agencies having jurisdiction over Owner's property. Any such alterations or Work or Specifications undertaken by Arch Electric shall be treated as Extra Work (as defined herein) and additional fees and charges may apply.

Arch Electric reserves the right to showcase photographs, location information, and technical details of the Work, Specifications and/or the Proposal to third parties as Arch Electric may reasonably may determine in its sole discretion.

Arch Electric reserves the right to substitute system components if availability becomes limited due to manufacturer or market trends.

Arch Electric reserves the right to adjust exact system size based on materials available by its vendors at the time of performance of the Work. If system is reduced in size, Proposal price may be reduced proportionally to cost-per-watt shown in the applicable Proposal. If system size is increased, an addendum will be presented to Owner for approval prior to Work starting and the Proposal price may be increased accordingly.



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**SCHEDULE**

The Work shall be commenced based on current queues, product, equipment, and staff availability, and shall be deemed completed at the discretion of Arch Electric. The Owner shall enter the Work queue upon Arch Electric receiving the Initial Payment from Owner (as defined herein).

**ACCESS TO PROPERTY**

Owner shall keep Owner's driveway and points of entry onto the Owner's property clear and available for movement and parking of Arch Electric vehicles and other equipment during scheduled work hours. If Owner denies or does not provide access to any Arch Electric worker, agent, or material supplier during the scheduled work hours, Arch Electric shall not be responsible for related delays, and the Owner may be held in breach of the Proposal.

**COMPLETION**

The Work performed by Arch Electric hereunder shall be deemed "Completed" after it complies in all material respects with the Proposal, Arch Electric has substantially completed all punch-list items, has properly cleaned up its worksite, has provided Owner with all required warranties, manuals, and record documents, and the project has passed all required inspections. Upon completion of the Work, Owner training and system operation manual shall be provided to Owner, in addition to record of system component serial numbers.

**LICENSE AND PERMIT FEES**

Except as provided herein or in any Proposal, Arch Electric shall pay the agreed upon applicable local, state, and federal license and permit fees and charges related to the Work as outlined in the Proposal. Cost of a "Base Fee Permit" is as may be set forth in the Proposal. If "valuation based" permitting is required by the municipality in which the Owner's property is located, additional fees may be incurred by Owner. If permitting costs are greater than set forth in the Proposal, the Proposal price shall be increased accordingly and paid by Owner. Unless otherwise specifically provided, Arch Electric will obtain and pay for all required building permits required under applicable law.



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**ITEMS NOT RESPONSIBILITY OF ARCH ELECTRIC**

Arch Electric shall not be responsible for any existing violations of applicable building regulations or ordinances affecting the Owner's property, regardless of whether cited by the appropriate authority. Arch Electric is also not responsible for any abnormal or unusual preexisting conditions or any unusual or abnormal concrete footings, foundations, retaining walls, or piers required, or any unusual depth required for same, such as, but not limited to that condition caused by poor soil, lack of compaction, hillside, or other slope conditions. Correction of such violations or abnormal conditions by Arch Electric shall be considered additional work and shall be dealt with as herein provided for under "Extra Work".

**Additional electrical work not specifically set forth in the Proposal is not the responsibility of Arch Electric. If there are any code-infractions or safety issues that are identified by an electrical inspector, additional charges may be incurred by Owner.**

Arch Electric is not liable for roofing problems not directly related to its Work under the Proposal, including any leaks (existing or future) not directly related to penetrations made by the Arch Electric installation team. Owner will pay any assessments and charges required by applicable governmental authorities and utilities for financing or repaying the cost of sewers, storm drains, water service, or other utilities including sewer and storm drain reimbursement charges, use fees, revolving fund charges, and hookup charges, if any.



*The Solar Energy Experts*

**ITEMS NOT RESPONSIBILITY OF ARCH ELECTRIC (CONTINUED)**

Unless specifically agreed upon in writing between Owner and Arch Electric and made part of these Terms or any Proposal, the Work to be performed by Arch Electric does not include:

- **A Cell Modem or Internet Connection Point.** The Solar Monitoring System requires a permanent, reliable, onsite internet connection provided by the owner for monitoring access.
- Plumbing, gas, waste and water lines outside foundations of existing buildings or any required relocation or replacement of any such existing lines that may be discovered within the boundaries of any new ground floor addition.
- Electrical service, other than addition of circuit breakers or fuse blocks to distribute electric current to associated system components.
- Any work which may be required regarding cesspools or septic tanks.
- Rerouting, relocating or replacing vents, pipes, ducts or conduits not shown or those encountered during construction or changes required to existing wiring, vents, pipes, ducts or conduits in areas undisturbed by construction.
- Unless specified in writing by Arch Electric, existing wiring and electrical systems are represented by the Owner as adequate to carry load for existing structure and work to be performed herein.
- Any additional work required for excavation or foundations due to inadequate bearing capacity or rock or any other material not removable by ordinary hand tools.
- Any work to correct damage caused by termites or dry rot.
- Arch Electric is not responsible for matching existing paint or texture of the exterior of any buildings upon which Work is performed. Furthermore, there is no guarantee against hairline cracks or discoloration in stucco or concrete resulting from the Work performed by Arch Electric.
- Changes or alterations to the Specifications which may be required by any governmental entity, utility or inspector.
- Painting, preparation, filing, finishing, grading, retaining walls, new or relocating gutters and downspouts, screen doors, weather stripping, staining, seeding, landscaping, or decorating.

Any work necessary to correct, change, alter or add the above items will be considered additional work and shall be dealt with as herein provided for under "Extra Work".

Arch Electric reserves the right to reasonably adjust the Proposal price due to unforeseen conditions such as unsuitable soil conditions, extensive or large rocks, shallow bedrock, excessive erosion, high water table, underground fuel tanks, and outage fees by utility, etc. Owner is solely responsible for all turf management and soil settling upon Work completion.



*The Solar Energy Experts*

**UTILITIES**

Utility coordination, interconnection, and application assistance may be included in the Proposal, however, the Owner is solely responsible for the provision of water, gas, sewer, and electric utilities, from the appropriate utility provider to the metering device, unless otherwise agreed to in writing. It is the Owner's responsibility, at Owner's expense, to provide toilet facilities, electricity, and water to the site as needed by Arch Electric for performance of the Work.

**OWNER'S PROPERTY**

Prior to any Work being performed by Arch Electric, it is the Owner's responsibility to remove or protect any personal property including, but not limited to, carpets, drapes, furniture, driveways, lawns, and shrubs, and Arch Electric will not be held responsible for damages or loss of said items during the course of its Work.

**BOUNDARY LINES**

The Owner shall confirm ownership of the Owner's property where Work by Arch Electric is to occur. It is the Owner's duty to determine proper boundary lines of the property and Owner is responsible for the accuracy of such lines and how they are represented on Drawings and Specifications. If reasonably required by Arch Electric, the Owner will pay for a boundary survey to confirm boundary lines.

**ENGINEERING AND GEOLOGY**

Unless specifically agreed upon in writing between Owner and Arch Electric, and made a part of this Proposal under "Description of Materials", "Specifications" or "Plans", the Proposal does not include any engineering or geology surveys, drawings, studies, reports or calculations as may be required by a governmental entity or building authority as a condition for issuance of a building permit or as a condition to securing final building inspection. The cost of any such required professional services shall be paid by Owner. Any engineering fees or costs in excess of \$250.00 in the aggregate shall be an additional fee, unless expressly agreed to by Arch Electric and Owner in writing. Arch Electric shall inform Owner as soon as it becomes aware of additional engineering costs and a reasonable estimate of such increased costs. Structural Analysis, reinforcements, or enhancements to any existing building are not included in the Specifications or Proposal unless agreed to by Owner and Arch Electric in writing. A structural analysis by a professional engineer is available for an additional charge and is recommended, but will not be performed unless requested by Owner and agreed to by Arch Electric in writing or required by the municipality in which the Owner's property is located.



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**MATERIAL REMOVED AND DEBRIS: DIRT WORK**

Unless specifically designated by Owner in writing, Arch Electric may retain or dispose of all material removed from structures in course of the Work. Arch Electric is to remove construction debris at end of its Work and leave Owner's property in a neat broom-clean condition. Any damage to Owner's lawn due to the negligence or willful misconduct of Arch Electric or its agents will be cleaned up with basic site restoration not to exceed \$150.00, unless previously included in the Proposal.

**MEASUREMENTS**

Measurements, sizes, and shapes set forth in Drawings and Specifications are approximate and subject to field verification and change. Unless otherwise specified, all dimensions are exterior dimensions. In the event of a conflict between the Drawings, Specifications, and the Proposal, the Proposal shall control.

**ASBESTOS / HAZARDOUS MATERIALS**

Owner represents that the Owner's property does not contain asbestos and/or other hazardous materials. The Proposal does not contemplate the removal of or testing for appropriate corrective work and any other additional expenses incurred by the corrective work to remove asbestos or other hazardous materials from the Owner's property shall be borne solely by Owner.

**ADDITIONAL REQUIREMENTS FOR COMPLETION OF WORK**

Arch Electric shall promptly notify Owner of any additional requirements or Work necessary to facilitate completion of the Work. Any subsequent amendment, modification or agreement, which operates to alter these Terms or any Proposal between the parties, and which is signed or initialed by Arch Electric and Owner, shall be deemed a part of the Proposal and shall be controlling in case of conflict, to the extent that it alters these Terms or any applicable Proposal between the parties. Changes to original installation to accommodate fire protection personnel walk around space is not included as part of this Proposal. Solar monitoring requires and Owner shall provide and maintain a permanent, reliable, onsite internet connection provided by Owner. The Owner is solely responsible for any direct, indirect or consequential loss or damage related to cyber-security or any other technology required to operate the solar panels to be provided by Arch Electric per the Proposal.



*The Solar Energy Experts*

**EXTRA WORK**

The Owner and Arch Electric shall agree in writing to any modification or addition to the Work covered by these Terms and any related Proposal ("Extra Work"). Arch Electric shall perform no work that is not set forth in the Proposal without the written authorization of the Owner. Any modifications to the Proposal shall be in writing and shall list the agreed price and any changes in terms and be signed by both parties. Failure to have written authorization shall not be deemed fatal to the collection of payment for any Extra Work provided by Arch Electric. Arch Electric shall be compensated in an amount to be determined before the Extra Work is performed and such amount including Arch Electric usual fee for overhead and profit shall be made as the Extra Work progresses, concurrently with payments, made under the payments scheduled. Any change-order forms for changes or Extra Work shall be incorporated in, and become part of the Proposal.

**CORRECTIVE WORK**

If minor corrective or repair work remains to be finished after the project is completed, Arch Electric shall in its discretion perform work expeditiously and Owner shall not withhold any payment pending completion of such work. If major corrective or repair work remains to be finished after the project is completed, and the cost exceeds ten percent (10%) of the gross Proposal price, the Owner may withhold payment sufficient to pay for completion of the corrective work, pending completion of the work, but may not withhold an amount which is greater than ten percent (10%) of the gross Proposal price.

**DELAYS**

Arch Electric shall start and diligently pursue the Work through to completion, but shall not be responsible for delays for any of the following reasons, including, without limitation: failure of the issuance of all necessary building permits within a reasonable length of time, funding of loans, disbursement of funds into funding control or escrow, acts of neglect or omission of Owner or Owner's employees or Owner's agent, acts of God, stormy or inclement weather, strikes, lockouts, boycotts, or other labor union activities, Extra Work ordered by Owner, acts of public enemy, riots or civil commotion, inability to secure material through regular recognized channels, imposition of government priority or allocation of materials, failure of Owner to make payments when due, or delays caused by inspection or changes ordered by the inspectors of authorized governmental bodies, or for acts of independent contractors, or holidays, or other causes beyond Arch Electric's reasonable control.

**AUTOMATIC PAYMENT(S): FEES: LATE CHARGES**

In addition to the other amounts Owner is required to pay under the Proposal, Owner agrees to pay, and Proposal pricing does not include up to a three percent (3%) fee for credit card or debit card processing. Owner will avoid this fee by paying by ACH, Cash, or Check. Any check or withdrawal right that is returned or refused by Owner's financial institution you shall be charged \$40.00 per occurrence (or such lower amount as required by law). If invoices are not paid within five days after the date set forth in the invoice, delinquency charges shall be the greater of: (i) 1.0% monthly, 12% annually; or (ii) the maximum rate allowed by applicable law. Collection fees for delinquent accounts including attorneys / collection agency fees and expenses incurred by Arch Electric related to the collection of past due invoices are the responsibility of the Owner.



*The Solar Energy Experts*

**DEFAULT**

Owner shall be deemed in default under these Terms and the Proposal if any one of the following occurs:

- I. Owner fails to make any payment when it is due and such failure continues for a period of five (5) days;
- II. Owner has provided any false or misleading financial or other information to obtain internal financing from Arch Electric;
- III. Owner makes an assignment for the benefit of creditors, admits in writing to your insolvency, file or there is filed against you a voluntary petition in bankruptcy, are adjudicated bankrupt or insolvent or undertake or experience and substantially similar activity, if applicable.
- IV. Owner breaches any term or terms set forth in these Terms or in any Proposal entered into between Owner and Arch Electric.

**REMEDIES IN CASE OF DEFAULT**

If Owner is in breach of any term set forth in these Terms or in any applicable Proposal with Arch Electric, Arch Electric may take any one or more of the following actions. If required by applicable law, Arch Electric will provide required legal notice and delay accordingly before taking any of the following actions:

- I. Terminate these Terms and any related Proposal;
- II. Take any reasonable action to correct Owner's default or to prevent loss; and any reasonable amount Arch Electric pays will be added to the amount owed under the Proposal and will be immediately due;
- III. Proceed, by appropriate court action, to enforce performance of these Terms or any applicable Proposal and to recover damages for Owner's breach;
- IV. Recover from Owner all accrued but unpaid payments, taxes, late charges, penalties, interest and all or any other sums then accrued or due and owing; or
- V. Utilize any other remedy available at law or equity by Arch Electric.

**WAIVER**

Any delay or failure of a party to enforce any of the provisions of these Terms or any term set forth in the Proposal, including but not limited to any remedies listed in these Terms or the Proposal, or to require performance by the other party of any of the provisions of these Terms or any Proposal, shall not be construed to be a waiver of such provisions or a party's right to enforce that provision; or affect the validity of these Terms or the Proposal.



*The Solar Energy Experts*

**WARRANTIES**

**OPERATIONS AND MAINTENANCE WARRANTY**

During the lease term, Arch Electric will provide the following services annually:

- Warranty management
  - Interfacing with OEM for warranty claims
- Manufacturer specific recommendations
  - Perform all manufacturer-specific recommendations to maintain warranty
- Array inspection
  - Check the PV modules for damage or debris. Include glass face, frame, cells, j-box, back sheet, etc. Report any damage to rack and damaged modules for warranty replacement. Note location and serial number of questionable modules.
- Inverter inspection
  - Check conduit fittings, inverter covers, racking and mounting. Inspect inverter housing or shelter for physical maintenance required if present. Use an infrared camera to check connections.
  - DC disconnect - Check proper position of DC disconnect switches. Check for signs of water intrusion, rust, corrosion, etc.
  - AC disconnect - Verify there are no signs of water intrusion, rust, or mineral deposits. Ensure there is no damage or potential damage to the breaker panels, including circuit breakers and cable insulation. Use an infrared camera to check connections.
  - Clean (vacuum) dust from heat rejection fins
  - Check connections for damage and torque specification
- Racking inspection
  - Inspect for oxidation, corrosion, loose bolts/nuts, clamps, parts, etc
  - Inspect ballast blocks, including broken, missing, or improperly installed blocks
- Grounding inspection
  - Inspect for oxidation, corrosion, loose bolts/nuts, clamps, parts, etc
- Combiner box inspection
  - Check for water incursion, corrosion damage, debris, rust, or pests.
  - Open each combiner box and check that no fuses have blown and that all electrical connections are tight. Inspect cabling, fuse holders, and fuses for discoloration, signs of arcing, damaged plastic, defects, open circuits, and ground faults. Use an infrared camera to check connections
  - Check connections for damage and torque specification



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**OPERATIONS AND MAINTENANCE WARRANTY (CONTINUED)**

- Electrical box inspection
  - Inspect electrical boxes for corrosion or intrusion of water or insects. Seal boxes if required. Check position of disconnect switches and breakers.
  - Exercise operation of all protection devices.
  - Check connections for damage and torque specification
- Cable/Wire inspection
  - Inspect cabling for signs of cracks, defects, UV damage, pulling out of connections, touching sharp edges, or being improperly secured; overheating, arcing, short or open circuits, and ground faults. Use an infrared camera to check connections.
- Signage and labeling inspection
  - Inspect placards and labels to ensure readability, weatherization
- Check or replace transient voltage surge suppression device
  - Check/replace transient voltage surge suppression devices
- Ground fault test
  - Verify that all ground connections to inverters, electrical boxes, conduits, and racking system are properly torqued, corrosion free, and functioning properly. Measure currents on ground cables.



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**LIMITED WORKMANSHIP WARRANTY**

Arch Electric warrants to Owner for a period of five (5) years from the Work Completion date that all labor furnished under the Proposal are of the type and quality required by the Proposal, Drawings, and Specifications, and is installed in a good and workmanlike manner and otherwise in accordance with the Proposal, Drawings, and Specifications. If, within such applicable period, any such labor furnished under the Proposal shall be proved to Arch Electric's satisfaction to be defective, such labor shall be (i) repaired by Arch Electric or its agent at Arch Electric's expense; or (ii) the amount necessary to remediate such defective labor shall be refunded, in Arch Electric's sole and absolute discretion. Such repair or refund shall be Arch Electric's sole obligation and Owner's exclusive remedy hereunder and shall be conditioned upon Arch Electric's receiving written notice of any alleged defect within ten (10) days after its discovery. **THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.** Arch Electric makes no warranties or representations related to any third party goods or services not provided by Arch Electric or its agents. Any modification of the labor, materials, or equipment, or Work furnished by Arch Electric or its agents, or use inconsistent with any instructions provided to Owner by Arch Electric by any person or entity other than Arch Electric or its agents shall void all Arch Electric's obligations with respect to the limited warranties and remedies provided herein. The limited warranties provided herein are conditioned upon the proper operation, maintenance, and use of the labor and materials provided by Arch Electric. This limited warranty extends only to Owner and is not transferable.

**MANUFACTURER'S WARRANTY**

Owner shall be notified in writing of all applicable manufacturers' warranties by Arch Electric during the course of Arch Electric's Work. All manufacturers' warranties are subject to change and are subject to confirmation by each applicable manufacturer in writing. All material and equipment shall be as warranted by the manufacturer and installed in a manner consistent with standard practices at this time of installation. Equipment, assemblies, or units purchased by Arch Electric or Owner via direct purchase that are included in the Proposal are sold and installed subject to the manufacturers or processor's guarantee or warranties, and not by Arch Electric. To the extent permitted by applicable law, all warranties given by manufacturers pertaining to materials used by Arch Electric in connection with the Work will be passed through and inure to the benefit of Owner.



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### **TAXES and INCENTIVES**

Any incentives, electricity rates, net metering laws, solar electricity production, depreciation values, tax benefits, and any other related incentives provided by Arch Electric are ESTIMATES ONLY. Legislation enacted by the Wisconsin legislature to exempt wind, solar, and anaerobic digester systems from Wisconsin sales and use tax are subject to change and/or repeal. If such legislation is repealed or amended, Owner shall be solely responsible for all costs and fees associated with related sales and used tax revisions and changes. In order for Owner to be eligible to receive appropriate sales & use tax exemptions (if any), Owner shall complete the applicable sales and use tax exemption certificates and provide the completed form to Arch Electric upon request. Arch Electric makes no representations or warranties regarding the availability or amount of any incentives available to Owner.

### **DAMAGE OR DESTRUCTION**

If the Work and any materials and equipment provided by Arch Electric hereunder or any portion of the Owner's property is destroyed or damaged by fire, storm, flood, landslide, earthquake, theft, or other disaster or accidents before Completion, any Work performed by Arch Electric to rebuild or repair such damage shall be paid for by Owner at an extra cost and shall be considered Extra Work. In the event of any of the above occurrences, if the cost of replacement work, for work already done by Arch Electric, exceeds twenty percent (20%) of the gross Proposal price, the Owner shall have the option to cancel the Proposal. However, if the Owner cancels the Proposal, Owner shall pay Arch Electric for all costs incurred for work performed as of the date of destruction, plus Arch Electric's usual fee for overhead and profit for all Work performed by Arch Electric to date of cancellation.

### **LIMITATION OF LIABILITY**

To the fullest extent permitted by law, Owner shall indemnify, defend, protect, save and hold harmless Arch Electric, its employees, officers, directors, agents, subcontractors, direct partners, successors and assigns from any and all third party claims, actions, costs, expenses (including reasonable attorneys' fees and expenses), damages, liabilities, penalties, losses, obligations, injuries, demands and liens of any kind or nature arising out of, connected with, relating to or resulting from Owner or its agents' negligence or willful misconduct; provided, that nothing herein shall require Owner to indemnify Arch for Arch Electric's negligence or willful misconduct. Owner acknowledges that the price to be paid by Owner under the Proposal is predicated on the enforceability of the following limitation of liability, that the price would be substantially higher if Arch Electric could not limit its liability as herein provided, and that Owner accepts this limitation of liability in exchange for the lower price.

**ACCORDINGLY, ARCH ELECTRIC SHALL NOT BE LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ALTERNATIVE TORT REMEDIES, OR ANY OTHER THEORY OF LAW OR EQUITY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DAMAGE TO EQUIPMENT, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF OWNER'S PROPERTY, PLANT, EQUIPMENT, SYSTEM, OR DOWNTIME COSTS. ARCH ELECTRIC'S TOTAL AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC WORK FROM WHICH ANY CLAIM OR DAMAGES MAY ARISE.** Owner acknowledges that Owner's sole and exclusive remedy arising out of or in connection with these Terms or any related Proposal between the parties shall be limited solely to the replacement of any defective or non-conforming Work, or a refund of the amount paid by Owner, at Arch Electric's option. The provisions of this paragraph shall survive the termination or expression of these Terms and the Proposal.



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**SEVERABILITY**

If any section of these Terms is held by a court of competent jurisdiction to be illegal, or unenforceable for any reason, such determination shall not affect the remainder of these Terms.

**NOTICE**

Any notice required or permitted under these Terms or any Proposal between the parties may be given by ordinary mail sent to the address of either the Owner or Arch Electric as listed in the Proposal, but the address may be changed by written notice from one party to the other. Notice is considered received five (5) days after deposited in the mail, postage paid.

**ATTORNEY FEES**

In the event legal action or arbitration is instituted for the enforcement of any term or condition of these Terms or any Proposal, the prevailing party shall be entitled to an award of reasonable attorney fees in said action or arbitration, in addition to costs and reasonable expenses incurred in the prosecution or defense of said action or arbitration.

**CONFIDENTIALITY**

Owner acknowledges that, unless and only to the extent Arch Electric specifically agrees to the contrary in advance in writing, these Terms, any Proposal between the parties, and all other information as to cost and prices charged to Owner by Arch Electric for the Work, and other information identified or reasonably identifiable as confidential or proprietary, shall be maintained in confidence by Owner (hereinafter the "Confidential Information"). The confidentiality obligations of this section shall not apply to information which (i) Owner is compelled to disclose by judicial or administrative process; provided that Owner shall promptly give Arch Electric advance notice of its intention to make such disclosure so that Arch Electric may have the opportunity to prevent or restrict such disclosure if it deems such prevention or restriction in its best interest; (ii) Owner can show to have been generally available to the public other than as a result of a breach of this section; (iii) Owner can show was within its legitimate possession prior to the time of disclosure by Arch Electric; or (iv) is disclosed to Owner by a third party having legitimate possession thereof and the unrestricted right to make such disclosure. Owner's burden of proof is by clear and convincing evidence with respect to exceptions (i) to (iv) above. This obligation of confidentiality is for one (1) year from the date of completion of Arch Electric's Work under any applicable Proposal between the parties, except for Confidential Information that is defined under the laws of the State of Wisconsin as a trade secret, which shall be remain confidential for the maximum period of time allowed under the laws of the State of Wisconsin. Owner acknowledges that the Confidential Information of Arch Electric is valuable to Arch Electric, and there is no adequate remedy at law for a breach of these Terms, and Arch Electric will be entitled to an injunction to prevent and restrain the use of Confidential Information other than as authorized herein in addition to any other remedies available at law or equity.



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**LIEN NOTICE**

As required by the Wisconsin construction lien law, claimant hereby notifies owner that persons or companies performing, furnishing, or procuring labor, services, materials, plans, or specifications for the construction on owner's land may have lien rights on owner's land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned claimant, are those who contract directly with the owner or those who give the owner notice within 60 days after they first perform, furnish, or procure labor, services, materials, plans or specifications for the construction. Accordingly, owner probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Claimant agrees to cooperate with the owner and the owner's lender, if any, to see that all potential lien claimants are duly paid.

**THE FOLLOWING PROVISIONS ARE APPLICABLE TO NON-RESIDENTIAL NON-CONSUMER TRANSACTIONS ONLY:**

These Terms and the terms of any Proposal between the parties shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, without application of choice of laws principles. In the event of a controversy arising under these Terms, the Parties shall first consult and negotiate with each other in an attempt to reach a solution acceptable by both Parties. If such a solution is not achieved within sixty (60) days from the first day either party delivers notice in writing that such consultations or negotiations must occur, then any dispute, controversy, or claim arising out of these Terms, including their interpretation, performance, or termination shall be finally resolved by binding arbitration. The arbitration, including the rendering of the award, shall take place in Sheboygan, Wisconsin, by a single arbitrator. Owner waives any objection that it may have based on improper venue or *forum non conveniens* to conducting the arbitration in Sheboygan, Wisconsin. The decision of the arbitrator shall be binding upon the parties, and each party shall bear its own costs (including without limitation, attorneys' fees). The decision of the arbitrator shall be executory, and judgment thereon may be entered by any court of competent jurisdiction. The arbitration shall be governed by the Commercial Arbitration Rules then in effect of the American Arbitration Association. The Arbitrator shall have no authority or jurisdiction or power to alter, amend, change, modify, add to or subtract from any provisions of these Terms or to decide any issues or controversies other than those set forth in the Notice of Arbitration. Notwithstanding the foregoing, the obligation herein to arbitrate shall not be binding upon any party with respect to requests for preliminary injunctions, temporary restraining orders, specific performance, or similar procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.



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**IN WITNESS WHEREOF, THE OWNER AND THE CONTRACTOR HAVE EXECUTED THIS CONTRACT AS OF THE DATE FIRST WRITTEN BELOW.**

\_\_\_\_\_  
CONTRACTOR'S REPRESENTATIVE

\_\_\_\_\_  
OWNERS REPRESENTATIVE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE



Village of Whitefish Bay  
5300 N. Marlborough Drive  
Whitefish Bay, Wisconsin 53217

Phone: 414-962-6690

Fax: 414-962-5651

## Memorandum

To: President Julie Siegel and the Village Board of Trustees  
CC: John Edlebeck, Public Works Director  
From: Kevin Kaegi, Public Works Superintendent/Village Forester  
Date: May 15, 2019  
Re: **Recommendation to Award 2019 EAB Treatment Project**

The Village is in the ninth year of a multi-year Emerald Ash Borer Management Plan which began in 2011. The preventative treatment portion of our EAB Management Plan began in 2013. As part of that plan, the Village continues treating existing ash street trees in order to protect them from the destructive emerald ash borer. Of the current stock of 8,626 parkway trees in the Village, 2,421 or 28% are ash trees. Our short term goal is to reach an ash tree population of approximately 20%. This year's EAB Treatment Project is proposed to treat approximately 1100 of those 2,421 existing ash street trees. The ash trees recommending treatment range in size from 7" DBH (diameter at breast height) to 27" DBH.

The following two bids for this project were received and opened on Friday, May 3, 2019:

<u>Bidder</u>	<u>Unit Bid Amount</u>	<u>Total Bid Amount</u>
M & M Tree Care	(\$4.58/inch x 19,210 inches)	\$ 87,981.80
First Choice Tree Care	(\$4.58/inch x 19,210 inches)	\$ 87,981.80

Both M & M Tree Care and First Choice Tree Care have successfully completed annual EAB Treatment Projects for the Village in the recent past. Both companies are highly professional and have "certified arborists" who conduct the treatment process (tree injections) on site throughout the Village. I believe it is important that we recognize and support both companies in order to encourage them to continue to bid on our future EAB treatment projects.

### **Recommendation:**

To vote to award the Village of Whitefish Bay 2019 EAB Treatment Project to both:

- M & M Tree Care in the amount of \$43,990.90
- First Choice Tree Care in the total amount of \$43,990.90

Funding for this work will come from account #88000-542. The total amount in the 2019 approved budget for this account is \$225,000.

Village of Whitefish Bay, Wisconsin  
Policy Report  
**Silver Spring Drive Parking Meter Project**

Prepared By:  
Tim Blakeslee  
Assistant Village Manager

Reviewed By:  
Paul Boening  
Village Manager

**ISSUE:**

Discussion/action on proposal for new parking meters on Silver Spring Drive and adjacent side streets.

**COMMUNITY DEVELOPMENT AUTHORITY (CDA) RECOMMENDATION:**

The Community Development Authority, at their meeting on April 25, 2019, recommended by a vote of 6-0 that the Village Board approve the parking meter project as recommended by Village Staff as outlined in the Policy Report.

**SECTION 1:**

*BACKGROUND:*

The Village of Whitefish manages a small parking meter system on Silver Spring Drive and adjacent side streets. The current single-space meters are 20-year-old Park-O-Meter, Inc. (POM) Model E's that were installed in 1999. These meters are reaching end-of-life and are becoming more difficult and costly to maintain on a yearly basis. The Village parking system currently includes 153 on-street metered parking spaces in the following configuration:

Current Meter Configuration			
15 of the 153 spaces are served by a single meter and pole.	118 of the 153 spaces are served by a single pole that holds two meters.	18 of the 153 spaces are served by a single pole that holds two meters attached to a street light.	2 of the 153 spaces are served by a single pole that holds one meter and a handicap sign.
			

Metered parking is enforced from 8:00 a.m. to 6:00 p.m. Monday through Saturday (except holidays), with rates set at \$0.50 per hour. Meters currently only accept coins. The Village of Whitefish Bay Department of Public Works (DPW) and Police Department enforce, maintain, and repair the parking meters and associated hardware. Enforcement is currently done by hand ticketing via Community Service Officers (CSOs) and coin collection is done by hand via CSOs.

**SECTION 2:**

*PROPOSALS:*

In early 2018, Village Staff begin an exploratory process on upgrading or replacing the parking meters on Silver Spring Drive. This process was undertaken, in part, because members of the Whitefish Bay Business Improvement District (WFBID) believed newly upgraded meters, which allow alternatives to coin-only payment, could help draw customers to and retain visitors in Whitefish Bay. Recent meter revenue trends do point to lesser coin usage (\$80,280 in 2015, \$69,522 in 2016, \$72,487 in 2017, and \$68,500 in 2018), however levels of meter enforcement, driver education/awareness, and the type of district businesses can also affect meter revenue.

In order to develop a list of desired features, Village Staff met with various meter companies to discuss meter capabilities, met on-site with the City of Milwaukee's Parking Financial Manager, and spoke with representatives of the WFBID. In summary, Village Staff determined that new meters, at a minimum, should accept coins, credit cards, and pay-by-phone (i.e. pay-by-app) that displays payment immediately on the meter. The full list of requested technological requirements as stated in the proposal can be found in **Attachment 1**.

Village Staff released a Request for Proposals (RFP) for new or upgraded parking meters on February 1, 2019. Three proposals were received before the deadline of March 1, 2019. Responses were received from:

- Park-O-Meter, Inc. (POM)
- Tapco
- IPS Group

Following a Village Staff review of the proposals, staff choose to interview POM and Tapco. Both POM and Tapco recommended using 68 double meters (one meter for two spaces) and 17 single space meters. See the figures to the right for an example of a POM and Tapco double space meter. Having one meter for two spaces reduces the number of meters that need to be purchased by 68 total meters. The City of Milwaukee has begun the process of implementing 3,500 POM meters in this double space configuration in early 2018 with success. Several other communities contacted by Village Staff noted that after a small initial learning curve for double space meters, users experienced very few issues.



Figure 1: POM Double Meter      Figure 2: Tapco Double Meter

**SECTION 3:**

*METER VENDOR COMPARISON:*

Following a detailed review of the proposals and vendor interviews, the following key comparisons directed Village Staff's recommendation:

Subject	Analysis	Staff Preference
Overall Meter Use	POM's meter is more intuitive and easier to use. The selection buttons are located next to the screen. The POM meter uses the left or right buttons to select left or right on the	

	screen. The Tapco meters use up and down arrow to select left and right on the screen.	
Double Space Meters/Displayed Info	<p>POM's meter screen displays the parking time remaining to customers and enforcement personnel on single and on double space meters without needing to press any buttons. This allows for easy enforcement and for parkers to be more confident that a meter is paid. The Tapco double space meters require a button to be pressed to see the parking time remaining.</p> <p>*Note: Tapco did provide follow-up information noting that the display can be configured to show parking time remaining without needing to press additional buttons. Regardless, Village staff believes the double meter information is more clearly indicated on the POM meter.</p>	
Meter Communication	POM's meters wirelessly communicate with cell networks. No additional equipment is required. Additional communications equipment is needed for the Tapco meters to allow pay-by-phone purchases and would be installed on at least six light posts in the Silver Spring district.	
Meter Screen/Information	POM's meter screen is significantly larger and easier to read than the Tapco screen. The POM screen is liquid ink (i.e. Kindle), which has very low power draw and high contrast. POM's meter screen is configurable. It can display the Village logo, messages, or other information. Tapco meter's use an LED screen, with more limited configuration capability.	
Meter Power	POM's meters use battery power. The battery is charged by imbedded solar panels. As a result of a specialized modem, the POM meters connect only when a transaction is made and save power when not in use. POM meters also include a backup battery. POM backup batteries typically last 2 years. Tapco uses a rechargeable battery that lasts six months to one year between charges. Tapco meters are always connected.	
Meter Hardware Cost	Meter hardware includes meters, installation, shipping, and the extended warranty. POM's hardware cost is \$81,522.24 with an estimated Village staff install labor cost of \$1,335.48. Tapco's hardware cost is \$82,423.50.	Equal
Monthly Meter Fees	Tapco charges \$4 per month per meter for wireless communication fees and \$6 per month for each communication gateway (est. 6 required). Tapco provides a free gateway fee if the Village uses their preferred processor or charges a \$0.06 per purchase gateway fee if the Village uses another processor. POM charges \$5 per month per meter for web/back office fees plus a \$0.10 per purchase gateway fee. Meter costs are expanded in Section 5 below.	
Installation	Tapco meters will be installed by Tapco. Training is provided by Tapco. POM Meters will be installed by Village Staff with support and training by an on-site POM representative.	Equal

Warranty	Tapco provides a 5-year extended warranty (\$16,300). POM provides a 2-year extended warranty (\$3,400). These fees are incorporated into the hardware costs listed above.	
Meter Management Technology	Both POM and Tapco offer similar backend management systems. These systems provide meter diagnostics, the amount of revenue collected daily, and parking usage in real-time. Silver Spring District visitors with the parking app will have access to meter usage diagram below.  	Equal
Overall Staff Meter Preference	Village Staff has familiarity with maintenance and service of POM meters for over 20 years. Overall consensus by involved Village Staff (Village Manager, Assistant Village Manager, DPW Director, DPW Foreman, DPW Superintendent, and DPW Technician) was that the POM meter is the preferred meter and superior product for Silver Spring Drive. A full comparison chart of the POM and Tapco proposals can be found in <b>Attachment 2</b> .	

**SECTION 4:**

*MOBILE APP VENDOR COMPARISON:*

Village staff reviewed proposals from vendors ParkMobile and Passport with regards to usage of a mobile pay-by-phone option to accompany the new meters. Village Staff, along with the WFBID, believe that including pay-by-phone is necessary for both convenience and technological advancement. As part of pay-by-phone, payments display immediately on the meter (within 10 to 15 seconds) which helps visitors be confident that their spot has been correctly paid for. Following a detailed review of the proposals and vendor demos, the following key comparisons directed Village Staff's recommendation:

Subject	Analysis	Staff Preference
Overall App Use	ParkMobile and Passport have similar products. Both apps are easy to use and are highly rated in Google Play and the Apple App Store. Staff preference leans toward ParkMobile because MKE Park is a ParkMobile product and visitors could use that in addition to downloading the standard ParkMobile App.	
Set-up and Training	ParkMobile provides signage, meter info stickers, marketing, and training at no cost. Passport charges a \$6,500 initial set-up fee for signage, meter info stickers, marketing, and training.	
Village Fees	ParkMobile charges \$0.03 plus 15% from each parking purchase (i.e. \$0.18 would be deducted	

	from a \$1.00 parking purchase before being remitted to the Village). Passport charges \$650 per month, plus a merchant service fee of 19.7% per transaction (i.e. \$0.197 would be deducted from a \$1.00 parking purchase before being remitted to the Village).	
User Fees	ParkMobile charges a \$0.35 user convenience fee. The Village can choose to pay a portion of the convenience fee if desired. Passport charges a \$0.25 user convenience fee.	
Overall Staff App Preference	The ParkMobile option is significantly less costly, includes meter set-up at no additional cost, and works with MKE Park.	

**SECTION 5:**

*BUDGET IMPACT:*

It is proposed that the funding for the hardware (meters, installation, shipping, and warranty)

would be provided by TID #1 because the new meters would be a permanent improvement to the district. Fixed monthly costs (meter fees), monthly credit card/app costs (gateway fees, processing fees) would be directly offset by credit card revenue. Overall, the estimated total cost of ownership over 20 years is \$356,578 for the POM meters and \$308,384 for the Tapco Meters. Full cost details can be found in Figure 3 to the right.

TOTAL COST OF OWNERSHIP		
	Tapco	POM
Hardware	\$82,423.50	\$82,857.72
Monthly Fixed Costs	\$376.00	\$425.00
Est. Monthly CC Costs: Offset by CC Revenue. Assumes \$3,000 of CC/APP Revenue per month	\$565.50	\$715.50
Projections:		
1yr	\$11,298.00	\$13,686.00
2yr	\$22,596.00	\$27,372.00
5yr	\$56,490.00	\$68,430.00
Hardware + 5yr	\$138,913.50	\$151,287.72
Hardware + 20yr	308,384	356,578

Figure 3

While dependent on a number of factors, meter vendors noted that on average, the Village could expect to see a 30% (or more) increase in revenue as a result of accepting credit cards and pay-by-phone. Figure 4 displays estimated payback period on estimated total cost of ownership over 20 years for new meters based on a 30% revenue increase as a result of implementing credit cards.

PAYBACK PERIOD - 2018 Revenue \$68,500	
Assumptions:	30% Revenue Increase
Est. Revenue Per Year	\$ 89,050.00
Est. Per year increase	\$ 20,550.00
	Pay Back Period (Years)
POM	17.35
Tapco	15.01

Figure 4

Staff also received feedback from meter vendors, mobile app companies, and vendor references that the Village's parking rate of \$0.50/per hour is low. While not part of this recommendation, the Village may wish to consider increasing the parking rate \$1.00/per hour to be more in line with nationwide trends and to more quickly recoup the cost of the new meters.

**SECTION 6:**

*STAFF RECOMMENDATIONS TO THE VILLAGE BOARD:*

Recommend that the Village Board approve:

- The selection of POM as the vendor to provide parking meter upgrades to the Village.

- Replacement of all current meters with brand new double meters (quantity: 68) and single space meters (quantity: 17). The hardware cost of this option is \$81,522.24 and the estimated staff labor cost is \$1,335.48.
- A minimum purchase via credit card of \$1.00 (coin purchases would not require minimum payment). This minimum credit card purchase was recommended by POM to help offset credit card fees.
- The selection of ParkMobile as the vendor to provide pay-by-phone service to the Village.
- A minimum purchase via pay-by-phone of \$1.00. This was recommended by ParkMobile to help offset credit card fees.

The full POM proposal can be found in **Attachment 3**. The full ParkMobile proposal can be found in **Attachment 4**.

**SECTION 7:**

*ATTACHMENTS:*

1. Requested Meter Specifications
2. POM and Tapco Meter Comparison Chart
3. Negotiated Proposal with POM, Inc.
4. ParkMobile Proposal

# Attachment 1

## Technological Requirements

### *Hardware*

#### **A. Single Space Meter Solution Configuration**

- Technology for inventory, maintenance and remote auto-configuration purposes.
- Support for retrofits into existing single space meter housings is desirable, but not required.
- Supports 3G/4G LTE communications and wirelessly communicates in real-time to vendor-hosted back office software system using a cellular network.
- Easy to see and varied colored lights to provide a visual indication of parking paid status and fault status.
- Support for Near Field Communication (NFC) payment options (contactless cards and smart phones) is desirable.
- Support for a Chip-Enabled Card (EMV) Level 1 & 2 Certified Credit Card Reader is desirable.
- Support pushing of mobile payments to the meter display within several seconds of purchase is highly desirable.
- Support for one meter to handle two parking spots is desirable.

#### **B. Graphic Display**

- Display shall be easily readable by users and allow for customized inputs.
- Display shall be securely protected under a traditional single-space meter housing dome or similar protection integrated into the design.
- Display shall feature a readable display capable of displaying lines of text in all lighting conditions.
- The displays must be remotely programmable via web-based meter management system, such that the village staff is not required to be present at the meter for changes to be made.
- For increased visibility in low-light conditions, the display shall be backlit. The backlight will be enabled automatically via light sensitivity.
- Shall be able to operate without failure under weather conditions that are typical year-round to the region, including, but not limited to, humidity, snow, sleet, rain, road grime, street vibrations, and extreme temperature variations.
- Shall include a user-friendly keypad for operations.

# Attachment 1

## C. Payment Options

- Shall have the ability to accept coins, credit cards, debit cards, smart cards, and pay-by-mobile-phone payments.
- Support of NFC and EMV payment options are desirable
- Shall feature advanced coin track sensors for self-calibration and detection of nonmetallic items and other foreign objects.
- The coin chute shall be easily and quickly field serviceable.

## D. Card Reader

- Credit card data transmission shall meet current Payment Card Industry Security Standards Council (PCI SSC) Data Security Standards and any other payment standards or criteria.
- The Vendor shall provide evidence of PCI SSC certifications and compliance.
- Card slot shall be functional in all weather, including rain, snow, freezing temperatures, and shall not be disabled by water or other liquids.
- Have the capability of accepting all credit and debit payment card options.
- Capability of supporting NFC and EMV payment options are desirable – vendor must supply certification document.
- Card reader shall be compatible with all ISO standard magnetic-stripe card readers.
- Mechanism shall default to "Coin-Only" condition whenever card payments are unavailable and vice-versa, along with an alert/alarm.
- The time/amount the meter defaults to upon insertion and removal of a credit card shall be user-defined.
- User shall be able to increase/decrease the amount of parking time/amount being requested.
- The card reader shall be designed to be internal to the meter mechanism.

## E. Power System

- Battery packs shall have a proven long-term life expectancy. Expected number of years of life for the battery packs as well as warranty length shall be included in the proposal submittals.
- Integrated solar power system is highly desirable.
- Rechargeable batteries, if used, must have a warranty. Vendor shall specify warranty length.

# Attachment 1

- All batteries shall be easily replaceable.

## **F. Internal Time Keeping**

- Mechanism shall include a real-time clock.
- Mechanism shall be fully programmable for automatic daylight saving time change.
- Mechanism shall support automated linear and complex rate structures.

## **G. Inventory of Parts**

- The Vendor must provide a detailed list of inventory supplies and cost of each part in the proposal, along with the estimated delivery time. The list should also include the recommended number of parts the Village should have in its inventory, for each part, per meter.

## *Software – Back End*

The Vendor shall provide a comprehensive vendor hosted or cloud-based back office software system. Vendor will confirm their compliance and describe their proposed solution as it relates to the following mandatory back office software requirements:

- Back office software shall be fully hosted by the Vendor with secured user access.
- Back office software will provide one common backend platform to manage, control and report on all aspects of the meters, Mobile Pay solutions and other optional components. Describe the ability of the system to integrate with current on-street metered system.
- Software shall provide the ability to divide the parking system into defined multiple parking zones, areas or sub-areas.
- Software shall support reporting of cash box status and revenue collection reporting, alarm status and operation status listing.
- Software that supports exporting financial and activity data to spreadsheet software and external databases.
- Data shall be available 24 hours a day, 7 days a week, 365 days a year.
- Back office software shall provide for real-time alarm and status reporting for system monitoring and maintenance.
- Back office software shall provide for remote meter configuration, updates, and rate programming.
- Back office software shall provide for real-time and historical management information reporting all of which will be exportable in PDF, .xls, .csv and/or similar.

# Attachment 1

- Reporting should include pre-defined reports as well as customizable and/or users defined reporting capability and have the ability to be scheduled.
- Spatial data, such as that in a back-end mapping system shall be exportable into a shapefile, geodatabase or similarly, ESRI compatible format for allowed use in the Village's GIS system is desirable.
- Vendor must provide remote technology applications such as that on a Smartphone, tablet or another mobile device to provide access to maintenance functions and configurations in the field.
- Back office system shall provide a variety of exportable reports to include financial, technical, and administrative functions via a single web-portal.
  - Credit card reconciliation (daily, weekly, monthly, annually)
  - Cash collection reports (by date, time, meter/space, and collector)
  - Revenue Summary reports (daily, weekly, monthly, annually, by zone, route, street/block-face or meter/space)
  - Coin box level (% full)
  - Individual transactions (cash or credit) by meter/space
  - GPS or x/y coordinate location of meters on a map in a projection that can be aligned with Village data is desirable
  - Meter uptime (over time, by zone, street/block-face, and meter/space)
  - Meter paid occupancy reports
  - Accumulative totals of all cash and card transactions
  - Exception reports for units not performing as required (communications or payment faults)
  - Access to help materials, videos and user manuals shall be available online

ATTACHMENT 2

<p><b>Meter Base Equipment Cost</b></p> <table border="1"> <tr> <td>Tapco</td> <td>\$2,892.00</td> <td>POM</td> <td>61,607.72</td> </tr> </table> <p>Meter hardware includes meter, installation, shipping, and the extended warranty. Install included with Tapco. Staff install with POM support. Tapco 5 Year Extended Warranty. POM 2 Year Extended Warranty.</p>	Tapco	\$2,892.00	POM	61,607.72	<p><b>Meter New Housing Hardware Cost**</b></p> <table border="1"> <tr> <td>Tapco</td> <td>24,531.50</td> <td>POM</td> <td>212,250.00</td> </tr> </table> <p>Recommended by Tapco. POM will replace if damaged with 2 yr. warranty.</p>	Tapco	24,531.50	POM	212,250.00
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<p><b>Monthly Costs CC Fees* (App included)</b></p> <table border="1"> <tr> <td>Tapco (App ParkMobile)</td> <td>\$41.50</td> <td>POM (App ParkMobile)</td> <td>1,045.00</td> </tr> </table> <p>*Assumes 1500 \$1 CC transactions per month and 1500 \$1 App purchases per month.</p>	Tapco (App ParkMobile)	\$41.50	POM (App ParkMobile)	1,045.00	<p><b>5 year cost to own: Hardware + New Housing Monthly Costs CC Fees* (App included)</b></p> <table border="1"> <tr> <td>Tapco (App ParkMobile)</td> <td>135,311.50</td> <td>POM (App ParkMobile)</td> <td>151,287.72</td> </tr> </table>	Tapco (App ParkMobile)	135,311.50	POM (App ParkMobile)	151,287.72
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Quote Number: 22039

Quote

Page: 1 of 2

<p><b>Quote To:</b></p> <p>VILLAGE OF WHITEFISH BAY  POLICE DEPARTMENT  ATTN: MR. MIKE HARPER  WHITEFISH BAY  USA  53217</p>	<p><b>Date:</b> 3/20/2019</p> <p><b>Expires:</b> 4/3/2019</p> <p><b>Sales Person:</b> Terry Henderson  <b>Fax:</b> 479-968-2840  <b>terry@pom.com</b></p>
--	--

VILLAGE OF WHITEFISH BAY WISCONSIN  
REQUEST FOR PROPOSALS  
SINGLE SPACE SMART PARKING METER SOLUTION  
PROPOSAL DUE FEBRUARY 1, 2019

THIS PRICING AS PER PROPOSAL CONTRACT NEGOTIATIONS FEBRUARY/MARCH 2019

FREIGHT IS ESTIMATED - ACTUAL FREIGHT WILL BE ADDED TO INVOICE

LEAD TIME 6-8 WEEKS AFTER RECEIPT OF ORDER AND SPECIFICATIONS.

Base Currency.

Line	Part Number	Description	Rev	Drawing	
2	cfg-emeter-0022039-002	APM-E Parking Meter Configuration			
<p>PARKTEL METER COMPLETE  ALL ZINC HOUSING POWDER PAINTED GRAY OR BLACK  ILLINOIS DUO LOCKS IN UPPER HOUSING AND VAULT  OPEN TOP COIN CUP  STANDARD WEDGE ASSEMBLY READY TO INSTALL ON YOUR EXISTING POSTS  PARKTEL COIN AND CREDIT CARD MECHANISM  MAY BE TWO SPACE OR SINGLE SPACE</p> <p>EACH METER HAS THE FOLLOWING FEES:</p> <p>\$5 PER METER PER MONTH FOR CONNECTIVITY - INCLUDES HOSTED DASHBOARD METERMANAGER.NET</p> <p>\$0.10 PER CREDIT CARD TRANSACTION</p>					
		<b>Quantity</b>	<b>Unit Price</b>	<b>Disc %</b>	<b>Net Price</b>
		87.00	900.00		78,300.00

Line	Part Number	Description	Rev	Drawing
4	500-016	MECH ASSY, PARKTEL, COMPLETE	091715-01	
<p>PARKTEL MECHANISM ONLY - RECOMMENDED SPARES  DOES NOT INCLUDE DOME OR UPPER HOUSING</p> <p>EACH METER HAS THE FOLLOWING FEES:</p> <p>\$5 PER METER PER MONTH FOR CONNECTIVITY - INCLUDES HOSTED DASHBOARD METERMANAGER.NET</p> <p>\$0.10 PER CREDIT CARD TRANSACTION</p>				

200 S Elmira Avenue  
P. O. Box 430  
Russellville  
USA  
72802

PHONE: 479-966-2880

Fax: 479-968-2840

Quote Number: 22039

Quote

Page: 2 of 2

Line	Part Number	Description	Quantity	Unit Price	Disc %	Net Price	Rev	Drawing
			2.00	720.00		1,440.00		
6	cfg-doortp-0022039-006	ZINC DOOR ASSEMBLY						
		ZINC VAULT DOOR POWDER PAINTED GRAY OR BLACK						
		ILLINOIS DUO LOCK						
		BRACKET ASSEMBLY FOR OPEN CUP						
		SPARES						
			2.00	60.62		121.24		
7	COMMENTS	SECOND YEAR WARRANTY					090108-01	Drawing
			87.00	40.00		3,480.00		
8	108-402-002	KEY, ILL DUO UPPER HOUSING					090108-01	Drawing
		INCLUDED WITH PURCHASE						
			2.00			(Not Quoted)		
9	108-402-002	KEY, ILL DUO VAULT					090108-01	Drawing
		INCLUDED WITH PURCHASE						
			2.00			(Not Quoted)		
10	301-235	CARD, CHIP, AUDIT, PARKTEL, PROGRA					02/02/12	NO
		INCLUDED WITH PURCHASE						
			2.00	7.00		14.00		
11	301-235	TEST CARD					02/02/12	NO
		INCLUDED WITH PURCHASE						
			2.00			(Not Quoted)		
						Line(11) - Miscellaneous Charge -		
						STIMATED FREIGHT CHGS	200.00	

**PARKING SERVICES AGREEMENT**

**THIS PARKING SERVICES AGREEMENT** (this “Agreement”) is made and entered into as of this 1st day of April, 2019 (the “Effective Date”), by and among **PARKMOBILE, LLC**, a Delaware limited liability company (“Parkmobile”), and **VILLAGE OF WHITEFISH BAY**, a Wisconsin municipality (“Client”).

**RECITALS:**

**WHEREAS**, Parkmobile is engaged in the business of providing integrated solutions for the management of all parking-related matters, including providing a system for the payment of on-street and off-street parking through proprietary mobile applications; and

**WHEREAS**, Parkmobile and Client desire to enter into a mutually beneficial arrangement, pursuant to which Parkmobile will market through Parkmobile Applications, Sites and other Parkmobile owned or controlled assets, mobile parking services to Client, upon the terms and subject to the conditions contained herein rates.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and in order to effectuate the above arrangement, the parties hereto agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

Except as otherwise specifically indicated in this Agreement, the following terms have the following meanings in this Agreement (such meanings to be applicable equally to the singular and plural forms of the terms defined):

**1.1** “Application” means Parkmobile’s proprietary mobile applications, websites and other properties as Parkmobile may develop for the purpose of, among other things, scheduling, starting, extending and completing Transactions and making payment for all related charges and fees, including but not limited to on-street and off-street parking, etc.

**1.2** “IVR System” means our interactive voice response system.

**1.3** “Law” means any applicable law, regulation, legal or regulatory process of any government agency, rule or regulation, or official interpretation thereof that governs or relates to this Agreement, the Services, the Platform or the parties’ respective businesses.

**1.4** “Minimum Reporting Elements” means the information and data related to the Transactions as described in Schedule 4 attached to this Agreement.

**1.5** “Parking Fee” means, for each Transaction, the amount set by Client for a given Transaction.

**1.6** “Platform” means our Application; Services; Site; IVR System; our backend technologies, functions, servers, databases; parking management systems; and our other products, services, content, features, technologies, functions, applications, and related websites or other applications; and any future updates, changes, revisions or additions thereto, that are related to the management of Transactions.

**1.7** “Report” means a detailed statement of information related to the Transactions, as more particularly described in Schedule 2 to this Agreement.

**1.8** "Member Fee" means the fees applicable to the Services, as set forth on Schedule 3. Schedule 3 may be updated from time to time in writing upon the mutual agreement of the parties to reflect any changes or modifications in the Fees payable hereunder.

**1.9** "Services" means the provision of solutions and resources to market, sell, process, track, redeem, and manage Transactions, as further defined in Schedule 1.

**1.10** "Site" means any website owned or controlled by Parkmobile.

**1.11** "Total Price" means the total amount to be charged to the User for each type of Transaction, including the Parking Fee and any Member Fee or other fees which may be charged in accordance with Schedule 3

**1.12** "Transaction" means a Member's purchase through the Platform of the right to use a parking space, charging station, or other service for a certain period of time.

**1.13** "Transaction Data" means all data other than Member Data related to a Member's parking session, including, time, Total Price, rate paid and other information related to the parking transaction.

**1.14** "Member" means the individual end user using the Platform other than Client.

**1.15** "Member Data" means all data collected from Members in the process of registering Members and in connection with their usage of the Platform.

**1.16** "Net Parking Revenue" mean the Total Price generated by Members, less Member Fees charged by Parkmobile, Transaction Processing Fee, bank transfer and other third-party fees.

**1.17** "Transaction Processing Fee" means merchant processing and gateway fees at \$.15 plus 3% per authorized Transaction.

**1.18** "Emerging Payment Revenue" means the Total Price by Members less Member Fees charged by Parkmobile, Transaction Processing Fees, bank transfer and other third-party fees if applicable.

**1.19** "Parking Service Agreement" means our document entitled "Service Agreement" or other document bearing a similar title, or may refer to any similar document setting forth the applicable pricing, Service description, and additional terms and conditions which is executed or otherwise acknowledged by you in writing and, in any case, also includes all current and subsequent amendments, modifications or supplements thereto as such are implemented from time to time upon the written agreement of the parties. Parking Service Agreements include, but are not limited to a RSA, PSA, or ODSA. All Parking Service Agreements incorporate fully these Terms (as amended from time to time) without limitation, restriction, or qualification.

## **ARTICLE 2 SERVICES**

**2.1** **Services Provided by Parkmobile.** During the Term (as defined herein), Parkmobile shall direct its personnel to perform the services for Client as described on Schedule 1 hereof (as amended, modified or supplemented from time to time upon the mutual written agreement of the parties, the "Services"). Parkmobile shall render the Services faithfully and to the best of its ability and in compliance with all applicable law, regulation, legal or regulatory process or government agency, rules or regulations (collectively, "Law"), devoting such time as is reasonably necessary to provide the Services. The precise times and manner of the performance of Services shall be as reasonably requested by Client, consistent with a schedule to be reasonably agreed upon from time to time by Parkmobile and Client. In connection with Parkmobile's performance of the Services, Parkmobile shall be subject to, and agrees to abide by, such policies, procedures, directions and restrictions as Client may reasonably establish from time to time.

If Client requires additional work that is not included in this Agreement, Parkmobile and Client shall negotiate the additional work, mutually agree on the amount of additional compensation, and memorialize the terms in either a separate written contract or an amendment to this Agreement.

**2.2 Help and Support.** Parkmobile agrees to use its reasonable efforts to assist Client with any technical support that Client may reasonably require in relation to using the Services. In furtherance of the foregoing, Parkmobile agrees to provide Client with preventative maintenance, corrective maintenance, adaptive maintenance and online, on-site and telephone support, in each case to the extent reasonably necessary for Parkmobile to provide the Services pursuant to this Agreement. In the event a party becomes aware of any errors or interruptions in the Services, each party shall notify the other Party.

**2.3 Error Corrections.** In the event of any errors or interruptions in the Services, Parkmobile shall use commercially reasonable efforts to repair or restore that portion of the Services as promptly as possible. Repair may take the form, at the option of Parkmobile, as the case may be, of: (i) corrected software applicable to the Services; (ii) corrected materials in hard copy or electronic form describing the use and operation of the software applicable to the Services, including any manuals and programming tools; (iii) instructions or procedures to bypass the problem until a more permanent correction can be implemented; or (iv) correction/clarification of the functional definition of the Services.

**2.4 No Performance Warranty.** The Services are provided to Client "AS IS" with no warranty of any kind. Notwithstanding the foregoing, Parkmobile shall provide the Services in accordance with the service levels set forth on Schedule 2, as the same may be amended from time to time, upon written agreement of the parties.

**2.5 Reservation of Rights.** All rights not expressly granted to Client herein are reserved to Parkmobile. All intellectual property rights related to the Services, as well as any additional services, software, technology or systems developed by Parkmobile, belong to Parkmobile.

**2.6 Publicity of Services.** All brochures and promotional materials to be distributed by Client in connection with the Services shall be in a form mutually agreed upon by the parties.

**2.7 Cooperation.** Each party shall reasonably cooperate with the other party to permit such party to perform its duties and obligations under this Agreement in a timely manner.

**2.8 Exclusivity.** Parkmobile shall be the exclusive mobile parking service provider for Client during the Term of this Agreement.

**2.9 Authority of the Parties.** Each party acknowledges and agrees that it has no authority to act on behalf of the other party other than as set forth in this Agreement or to enter into any contract or to incur any liability on behalf of the other party, except with prior written consent of an authorized officer of such party. Each party covenants that it shall not at any time represent, either orally or in writing, that it has any right, power or authority with respect to the other party not expressly granted to the other party by such party.

**2.10 Technology Sublicense.** Parkmobile hereby grants Client the nonexclusive, non-transferable, non-sub-licensable, revocable right and sublicense to use the proprietary technology that relates to the Services (the "Technology") in connection with the Services. Client shall not use the Technology for any use other than in connection with the Services. Client acknowledges and agrees that (a) Parkmobile shall be its exclusive source of the Technology for the Term; and (b) all Services obtained by Client shall use the Technology as necessary. Client has no interest in or right to use the Technology or any improvements thereto or modifications thereof except as set forth herein. In all instances, Client's use of the Technology shall inure to Parkmobile's benefit. During the Term or at any time thereafter, Client shall not commit, or cause any third party to commit, any act challenging, contesting or impairing or attempting to impair Parkmobile's right, title and interest in and to the Technology or the validity thereof.

### ARTICLE 3 FEES; EXPENSES

**3.1 Fees.** The fees (the "Fees") applicable to the Services, are set forth on Schedule 3. Schedule 3 may be updated from time to time in writing upon the mutual agreement of the parties to reflect any changes or modifications in the Fees payable hereunder. For each Transaction, Parkmobile shall charge the Member the Total Price. If Parkmobile is the Merchant of Record ("MOR"), **Client shall provide to Parkmobile a Client Electronic Funds Authorization Form (Schedule 6), W-9, and copy of a voided check or bank letter with account info ("Distribution Information") prior to remittance.** Parkmobile will retain all Client funds without penalty until Parkmobile receives distribution information from Client. Thereafter, Parkmobile shall remit Net Parking Revenue to Client on a monthly basis.

**3.2 Payment.** If Client is the MOR, payment is due not later than thirty (30) days after invoice. Late payment interest of ten percent (10%) per annum may be assessed by Parkmobile on any payment past due, in which case such interest shall accrue from the payment due date to the date payment is received.

**3.3 Taxes.** Parkmobile's prices do not include sales, use, revenue or excise taxes, and accordingly, in addition to the price specified herein, the amount of any sales, use, excise or other similar tax applicable to the Services provided hereunder shall be paid by Client, or, in lieu thereof, Client shall provide Parkmobile with a tax exemption certificate issued by the appropriate taxing authority.

**3.4 Billing Disputes.** Client shall not be entitled to suspend payment of any disputed invoices. Any disputes must be submitted to Parkmobile in writing and with an explanation of the reason for the dispute. In the event that any payment dispute is resolved in favor of Client, Parkmobile shall credit Client on the immediately subsequent invoice issued to Client.

**3.5 Expenses.** Except as otherwise provided herein, Parkmobile shall not charge Client any costs for the integration of its system(s) or for the management of the project and the Services. Parkmobile shall charge Client for ordinary, necessary and reasonable third-party costs only on direct cost basis and only after the prior approval of Client.

### ARTICLE 4 TERM; TERMINATION

**4.1 Term.** The initial term of this Agreement shall commence as of the Effective Date and terminate on March 31, 2022 (the "Initial Term"). Following the Initial Term, the Agreement shall be automatically extended for consecutive one (1) year renewal terms (each a "Renewal Term"), provided that neither party gives written notice to the other of its intent not to renew this Agreement at least sixty (60) days prior to the expiration of the then-current Renewal Term. The date on which this Agreement is terminated or expires as provided herein is called the "Termination Date," and the period from the Effective Date through the Termination Date is herein called the "Term."

**4.2 Termination for Cause.**

(a) Either party may terminate this Agreement and the rights granted herein if the other party breaches any of the provisions of this Agreement and (i) fails to remedy such breach within forty-five (45) days after receiving written notice thereof, or (ii) provided the breach does not relate to a monetary obligation, fails to (A) commence a good faith action to remedy such breach within five (5) days after receiving written notice thereof, and (B) diligently pursue such action to conclusion.

(b) Should either party (i) make a general assignment for the benefit of creditors; (ii) institute liquidation proceedings or proceedings to be adjudicated as voluntarily bankrupt; (iii) consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being

bankrupt or insolvent; (v) seek reorganization under any bankruptcy act; (vi) consent to the filing of a petition seeking such reorganization; or (vii) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in an insolvency covering all or substantially all of such party's property or providing for the liquidation or dissolution of such party's property or business affairs; then, in any such event, the other party, at its option and without prior notice, may terminate this Agreement effective immediately.

#### **4.3 Effect of Termination.**

(a) Upon termination or expiration of this Agreement, (i) each party shall promptly return to the other party or destroy all of such other party's Confidential Information in its possession or control; and (ii) any licenses granted hereunder shall immediately expire unless stated otherwise, and (iii) Client shall discontinue all use of the Technology and intellectual property of Parkmobile.

(b) Upon termination or expiration of this Agreement, (i) Client shall pay to Parkmobile any portion of the Fees then accrued and properly payable under this Agreement; (ii) Client shall promptly return to Parkmobile all materials in its possession provided by Parkmobile or otherwise created or produced by Parkmobile in connection with the performance of the Services hereunder; and (iii) Client shall discontinue all use of the Technology and intellectual property of Parkmobile.

(c) Notwithstanding the exercise by any party of its rights under this Article 3, no termination of this Agreement shall relieve either party of its liability for the payment or performance of any obligation accrued prior to the Termination Date (including any indemnification obligation arising hereunder, whether or not notice of such indemnification claim has been given before such termination, or of any rights or obligations under any other provisions, which, by their meaning or content, are intended to survive the termination hereof).

### **ARTICLE 5 ADDITIONAL COVENANTS OF THE PARTIES**

#### **5.1 Confidentiality.**

(a) Each party (sometimes referred to herein as a "receiving party") acknowledges that all information and trade secrets relating to any of the other party's products and the services hereunder, including, without limitation, pricing, software, business and financial information, marketing and promotion plans, any changes or improvements therein, including any cost savings measures, is the confidential and proprietary information of such other party ("Confidential Information"). Except as otherwise set out herein, neither party shall disclose any Confidential Information of the other party to any third party or use it for its own benefit or the benefit of a third party, and each party shall take all commercially reasonable measures to protect the confidentiality of Confidential Information of the other party and prevent its disclosure to others.

(b) Each receiving party may disclose the Confidential Information of the disclosing party to its affiliates and their respective employees and agents who are directly involved in the performance of this Agreement, who have a need to know and who are obligated to honor the restrictions on disclosure and use of such Confidential Information set forth in this Agreement (the persons to whom such disclosure is permissible being collectively known as "Representatives"). Each party shall be responsible for any breach of this Section 4.1 by its Representatives. The parties shall not disclose, without the prior written consent of the disclosing party, any of such disclosing party's Confidential Information that it has learned either during the course of this Agreement or in discussions and proposals leading up to this Agreement, except as may be required by Law. The parties shall not use the Confidential Information of a disclosing party for any purpose other than that for which it was disclosed.

(c) Each Party's Confidential Information shall remain the property of each respective party. Upon any termination or expiration of this Agreement, each party shall return to the other party the other

party's original version of all Confidential Information of such other party in document form, including any electronic media version, such as CD-ROM or computer disk, and shall confirm to such other party in writing that all such documents and things have been so provided and that all copies thereof have been destroyed subject to compliance with applicable Law. The term "Confidential Information" shall not apply to: (i) any information that is or becomes available in the public domain without breach of this Agreement; (ii) information that a party can demonstrate was known prior to receipt from the other party; or (iii) information that was subsequently received from a third party

(d) To the extent any receiving party determines it necessary or advisable to (i) file a copy of this Agreement with a governmental agency including the United States Securities and Exchange Commission, or (ii) make disclosure of Confidential Information of the disclosing party pursuant to a court order or otherwise in accordance with Law, the receiving party and/or its legal counsel shall (a) provide prompt written notice of such expected impending filing or disclosure to the disclosing party, (b) use reasonable best efforts and work with the disclosing party and its counsel to obtain confidential treatment of relevant portions of this Agreement, including, without limitation, product and service specifications and pricing information prior to any such filing or disclosure and (c) disclose in such filing or disclosure only what is required by Law or judicial process as to both manner and content.

(e) Each party agrees that irreparable damage would occur, and that monetary damages would be an insufficient remedy at law, in the event that any of the provisions of this Section 4.1 were not performed by the other party in accordance with the terms hereof and that each party shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

(f) Each party's obligation with respect to the Confidential Information of a disclosing party shall expire three (3) years after the termination or expiration of this Agreement; provided, however, that each party's obligations with respect to the trade secrets of a disclosing party shall remain in effect throughout the Term and at all times thereafter, but only for so long as such information remains a trade secret.

**5.2 Information.** Subject to Section 5.1 and any applicable Laws and privileges, each party covenants and shall provide the other party with all information regarding itself and the transactions under this Agreement that the other party reasonably believes is required to comply with all applicable Law and to satisfy the requesting party's obligations hereunder. Any information owned by one party that is provided to any other party pursuant to this Agreement shall remain the property of the providing party. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any such information.

**5.3 Records.** Each party shall maintain and retain records related to the provision of the Services under this Agreement consistent with such party's historical policies regarding retention of records. As needed from time to time during the period in which Services are provided, and upon termination of the provision of any Service, unless otherwise prohibited by applicable Law, the parties shall provide each other with records related to the provision of the Services under this Agreement to the extent that (a) such records exist in the ordinary course of business, and (b) such records are reasonably necessary for the requesting party to comply with its obligations under this Agreement or applicable Law.

**5.4 Status Meetings.** On periodic basis, but not less than quarterly, an appropriate representative of each party shall conduct a joint meeting to discuss the status of the Services, as well as to answer questions, gather information and resolve disputes that may occur from time to time. It is the expectation of the parties that the representatives of the parties shall communicate directly with one another and work directly with one another to ensure that all Services provided hereunder are completed on a timely and complete basis. All meetings pursuant to this Section 4.4 may be face to face, video or telephonic meetings as may be agreed upon by the parties. Each party shall bear its own costs of attending or participating in such meetings.

**5.5 Privacy.** Client agrees (a) to comply with all applicable Law; (b) that it will use reasonable security measures to safeguard the PI; and (c) not to disclose to others the PI.

**5.6 Insurance.** Parkmobile shall keep all of its insurable properties adequately insured against losses, damages and hazards as are customarily insured against by businesses engaging in similar activities or owning similar properties and at least the minimum amount required by applicable Law and any other agreement to which Parkmobile is a party or pursuant to which Parkmobile provides any services, including liability, property and business interruption insurance, as applicable.

**4.7 Ownership of Intellectual Property.** Client acknowledge and agree that Parkmobile or its licensors or providers are the owners of all right, title and interest in and to the Platform, Member Data, all websites owned by Parkmobile, all work product or deliverables, our Intellectual Property and all appurtenant patent, copyright, trademark, trade secret and other intellectual property rights associated with the foregoing. To the extent we provide any work product or deliverable to Client for your direct use (e.g. material for inclusion on a Client-hosted website to direct Members to a Parkmobile Website or Reservation Demand Management System), Client is hereby granted a limited, revocable and personal right to use such work product or deliverable during the Term in accordance with any instructions we provide. The provision of any such work product or deliverable to Client does not constitute a sale of such work product or deliverable to Client. Client shall not assign, sublicense, transfer, pledge, lease, rent or share any rights under the foregoing license to any third party unless expressly permitted in writing by Parkmobile. Client further agree that all work product or deliverable shall be treated as our Confidential Information. For the avoidance of doubt, any work product or deliverable that is created or used by Parkmobile as part of providing the Services (e.g., a landing page for Client hosted by Parkmobile) shall not be subject to the foregoing license.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

**6.1 Representations and Warranties.** Each of Parkmobile and Client hereby represents, warrants and covenants to the other party hereto as follows:

(a) It is duly organized and validly existing under the laws of the state of its incorporation and has full power and authority to carry on its business as it is now being conducted and to own and operate its properties and assets;

(b) The execution, delivery and performance of this Agreement by such party has been duly authorized by all requisite corporate or limited liability company action, as applicable;

(c) It has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and

(d) The execution, delivery and performance by it of this Agreement and its compliance with the terms and provisions hereof do not and will not conflict with or result in a breach of any of the terms or provisions of or constitute a default under the provisions of its charter documents or bylaws, or any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound.

**6.2 Disclaimer of Warranties.** THE SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS. CLIENT ACKNOWLEDGES AND AGREES THAT PARKMOBILE SHALL NOT BE LIABLE FOR ANY ERROR, OMISSION, DEFECT, DEFICIENCY OR NONCONFORMITY IN THE TRIAL PROGRAM OR SERVICES. WITHOUT LIMITING THE FOREGOING, CLIENT ASSUMES ALL RISKS ASSOCIATED WITH THE SERVICES. OTHER THAN AS SPECIFICALLY SET FORTH HEREIN, NEITHER OF THE PARTIES MAKES ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, DIRECTLY OR INDIRECTLY, INCLUDING, WITHOUT LIMITATION, ANY

WARRANTY OF CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, WITH RESPECT TO, ARISING OUT OF, OR IN CONNECTION WITH THE SERVICES TO BE PERFORMED HEREUNDER BY SUCH PARTY OR THE RESULTS OBTAINED THEREBY.

### **6.3 Indemnification.**

(a) Indemnification by Parkmobile. Parkmobile shall indemnify, defend and hold harmless Client, its affiliates, their respective successors and assigns, and their respective officers, directors, employees, consultants, agents and representatives from any liability, damage, diminution in value, loss, cost, claim or expense, including reasonable attorneys' fees and expenses that result from or arise out of: (i) the breach or inaccuracy of any of Parkmobile's representations or warranties in this Agreement; (ii) the breach of any of Parkmobile's covenants or agreements in this Agreement; or (iii) any violations of Law by Parkmobile in performing its obligations in connection with this Agreement.

(b) Indemnification by Client. Without waiving any statutory or common law immunities or limitations on liability. Client shall indemnify, defend and hold harmless Parkmobile, its affiliates, their respective successors and assigns, and their respective officers, directors, employees, consultants, agents and representatives from any liability, damage, diminution in value, loss, cost, claim or expense, including reasonable attorneys' fees and expenses that result from or arise out of: (i) the breach or inaccuracy of any of Client's representations or warranties in this Agreement; (ii) the breach of any of Client's covenants or agreements in this Agreement; or (iii) any violations of Law or governmental rules or regulations by Client in performing its obligations in connection with this Agreement.

(c) Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF PARKMOBILE NOT OTHERWISE COVERED BY INSURANCE, FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID FOR THE SERVICES PURCHASED HEREUNDER. EACH PARTY HERETO AGREES THAT EACH OTHER PARTY SHALL NOT BE LIABLE TO SUCH PARTY OR ANYONE ACTING THROUGH SUCH PARTY UNDER ANY LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL THEORY) FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT.

## **ARTICLE 7 MISCELLANEOUS**

**7.1 Force Majeure.** Neither party shall be liable for failure or delay in performance of its obligations under this Agreement to the extent such failure or delay is caused by an act of God, act of a public enemy, war or national emergency, rebellion, insurrection, riot, epidemic, quarantine restriction, fire, flood, explosion, storm, earthquake, interruption in the supply of electricity, power or energy, terrorist attack, labor dispute or disruption, or other event beyond the reasonable control of such party and without the fault of or negligence by such party (each, a "Force Majeure Event"). If a party's performance under this Agreement is affected by a Force Majeure Event, such party shall give prompt written notice of such event to the other party, stating the date and extent of such suspension and the cause thereof, and shall at all times use commercially reasonable efforts to mitigate the impact of the Force Majeure Event on its performance under this Agreement; provided, that such party shall take measures to overcome the condition that are consistent in all material respects with the measures taken in connection with such party's business. The parties shall promptly confer, in good faith, on what action may be taken to minimize the impact, on both parties, of such condition. In the event of a Force Majeure Event that affects either or both parties' ability to perform under this Agreement, the parties agree to cooperate in good faith to resume the affected services as soon as commercially possible to the extent commercially reasonable.

**7.2 Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered (a) in person; (b) by any national overnight courier or other service providing evidence of delivery, or by registered or certified mail (postage prepaid, return receipt requested); or (c) by facsimile with a copy delivered the next business day by any overnight courier or other service providing evidence of delivery, to the respective parties at the following addresses:

To Parkmobile: Parkmobile, LLC  
1100 Spring Street NW, Suite 200  
Atlanta, Georgia 30309  
Attention: Jonathan Ziglar  
Telephone: (404) 818-9036  
Facsimile: (770) 818-9039  
Email: [legal@parkmobileglobal.com](mailto:legal@parkmobileglobal.com)

To Client: Village of Whitefish Bay  
5300 N. Marlborough Drive  
Whitefish Bay, WI 53217  
Attention: Tim Blakeslee  
Telephone: 414-962-6690 ext 139  
email: [t.blakeslee@wfbvillage.org](mailto:t.blakeslee@wfbvillage.org)  
Fax: \_\_\_\_\_

or to such other address (or fax number, if applicable) as the party to whom notice is given may have previously furnished to the others in writing in the manner set forth above (provided that notice of any change of address or fax number shall be effective only upon receipt thereof).

**7.3 Independent Contractors.** The parties are independent contractors under this Agreement, which shall not be construed to create any employment relationship, partnership, joint venture, franchisor-franchisee or agency relationship that did not already exist prior to the Effective Date, or to authorize any party to enter into any commitment or agreement binding on the other party except as expressly stated herein. The parties have no authority to make statements, warranties, or representations or to create any liabilities on behalf of the other.

**7.4 Entire Agreement.** This Agreement and the documents and schedules referred to herein contain the complete agreement between the parties hereto and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way; provided, however, that this provision is not intended to abrogate any other written agreement between the parties executed with or after this Agreement.

**7.5 Amendment and Waiver.** The parties hereto may not amend or modify this Agreement except as may be agreed upon by a written instrument executed by the parties hereto. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default.

**7.6 Successors and Assigns.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld); provided that Parkmobile may assign its rights, interests or obligations under this Agreement without the consent of Client to (i) any affiliate of Parkmobile or (ii) any lender to Parkmobile or its affiliates as security for borrowings.

7.7 **Third-Party Beneficiaries.** The parties to this Agreement do not intend this Agreement to benefit or create any right or cause of action in or on behalf of any person or entity other than Parkmobile and Client.

7.8 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.9 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

7.10 **Arbitration.** Should there be any ambiguity, contradiction or inconsistency in this Agreement, or should any disagreement or dispute arise between the parties in connection with this Agreement, the component representatives of the parties shall first attempt in good faith amicably to settle the matter by mutual negotiations. If such negotiations are unsuccessful, any controversy, dispute or claim arising out of, or in connection with, this Agreement must be settled by final and binding arbitration to be held exclusively in the State of Wisconsin in accordance with the Commercial Arbitration Rules, as amended and in effect from time to time, of the American Arbitration Association (the “Rules”). The procedures and law applicable during the arbitration of any controversy, dispute or claim shall be both the Rules and the internal laws of the State of Wisconsin excluding, and without regard to, its or any other jurisdiction’s rules concerning any conflict of laws. The arbitrator shall have the power to order injunctive relief or provide further equitable remedies. All fees and expenses relating to the work performed by the arbitrator(s) shall be shared equally between the parties. Nothing in this paragraph shall prevent a party from seeking injunctive relief from any the state or federal courts located in the State of Wisconsin. The parties consent to the exclusive jurisdiction and venue of such courts with respect to any matter not within the arbitrator’s jurisdiction. Any award of the arbitrator may be enforced in any court of competent jurisdiction.

7.11 **No Strict Construction; Headings.** The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. The headings used in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

7.12 **Counterparts; Delivery.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. The parties agree that this Agreement may be executed and delivered by facsimile or other electronic transmission.

*(Signatures begin on following page)*

**IN WITNESS WHEREOF**, this Parking Services Agreement has been executed as of the day and year first above written.

**“PARKMOBILE”**:

**PARKMOBILE, LLC**

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

Name: Jonathan Ziglar

Title: CEO

**“CLIENT”**:

**VILLAGE OF WHITEFISH**

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

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

Title: \_\_\_\_\_

## SCHEDULE 1

### SERVICES

Parkmobile offers a service to Client's parking customers ("Users") that facilitates the activation and payment of parking transactions using the Application. For use of the Application, a Service Fee per Transaction as reflected in Schedule 3 is charged.

Parkmobile accepts several electronic payment methods from Members:

- a. Traditional credit card payments are accepted with Visa, MasterCard, Discover, & AMEX ("Traditional Payments")
- b. Emerging Payments ("Emerging Payments"). Emerging payments represent the numerous alternative payment methods that have begun to hit the marketplace today. Mostly, these innovations involve the use of virtual account-based membership profiles that a customer can utilize to transact purchases based upon the member's individual payment preferences. Examples of emerging payments include PayPal, Parkmobile's Stored Value Wallet, ACH, MasterPass, and Visa checkout.

Users who are registered with Parkmobile can begin and, if applicable, end a parking transaction in a variety of ways: visiting the website of Parkmobile - [www.parkmobile.com](http://www.parkmobile.com); calling an Intelligent Voice Response (IVR) 1-800 Number, or using Parkmobile's or its partners' mobile applications. In order to register and begin a parking event, Users simply provide the required information to create an account including credit card data and license plate number which is stored in a secure, PCI Level 1 compliant environment. Thereafter, subsequent parking visits only require the Member to enter or select the applicable parking duration options available for the location.

The tariff code of the parking area is indicated on parking signs or on parking meters. Enforcers of the Client check the validity of parking status real time against the Parkmobile database via a web service offering, free of charge to the Client, to determine if a valid parking right exists. This service can be accessed by using a handheld terminal or PDA.

The supply of handheld terminals (or PDA's) for enforcement and GSM cards for communication between the handheld terminals and the database and back-office systems are outside the scope of the Services.

Members can use Mobile Parking anywhere the Parkmobile mobile payment service is available.

All parking charges are charged to the preferred payment method of the Member. Members have real time access to an online account-based personal page accessible from [www.parkmobile.com](http://www.parkmobile.com) to check and print their parking history, receipts, and statements.

## SCHEDULE 2

### SERVICE LEVELS

#### 1. Operation, Management and Maintenance of the System

(a) Parkmobile shall use its best efforts not to perform maintenance during business hours. In emergency cases, adjustments to the system may also take place during hours for paid parking. If necessary, Parkmobile may perform maintenance of the system during business hours, provided Parkmobile provides Client with at least twenty-four (24) hours advance notice before the start of the work.

(b) Parkmobile makes a daily backup of data in the (local) database, which data are retained for three (3) months.

#### 2. Errors and Interruptions

(a) When an error or interruption occurs in the Services, whichever party identifies the error or interruption shall inform the other party as soon as possible. Parkmobile shall confirm its receipt of such notification in writing. If any error or interruption cannot be repaired by Parkmobile within five (5) business days from the date when the error or interruption is reported to Parkmobile, then Parkmobile may issue a credit for the Services during such downtime. Time spent by Parkmobile to restore and support to interruptions and errors caused by Client and not attributable to Parkmobile shall be charged at the hourly rate of \$180.

(b) In the event that Client and Parkmobile disagree about whether an error or interruption has been resolved, Client and Parkmobile shall discuss in good faith and reach a mutual resolution regarding whether such error or interruption has occurred or been adequately resolved. If the parties agree that the problem was in fact an error or interruption, then Client shall not be entitled to a credit for the Software during the downtime.

#### 3. Security and Authorization

Parkmobile shall protect and authenticate a limited number of representatives that shall have access to the system and confidential information. The parties shall respect and utilize security access codes.

#### 4. Reports

- a. In addition to the Minimum Reporting Elements, Parkmobile shall provide Client access to several reports related to the Services via a web portal. All reports are available immediately. Those reports include;
- b. Parking Transaction Report: Ad hoc and automated reports that include all information related to parking reservations which can be used for operations and management.
- c. Payment Transaction Report: Ad hoc and automated reports that include payment information necessary for reconciliation.
- d. Daily Summary Reports which include all reservations for the previous date and the current date.

## SCHEDULE 3

### FEES

Parkmobile shall charge the Client or Member a member fee of \$0.35 cents per transaction ("Member Fee").

#### Traditional Payment Credit Card Fees/Merchant Processing/Other Third-Party Fees:

Parkmobile can pass real time authorized debit/credit card transactions daily in batch format to Parkmobile's preferred payment processor, subsequently funded directly into a Parkmobile-controlled escrow account. In this scenario, Parkmobile acts as the MOR in the arrangement and passes Net Parking Revenues in accordance with Parkmobile's standard settlement procedures to the Client.

#### Emerging Payments Fees

Parkmobile shall collect the Total Price for each Emerging Payment transaction and pass the Emerging Parking Revenue to the Client in accordance with Parkmobile's standard settlement procedures.

#### Other Terms and Conditions

Parkmobile's Member Fee does not cover any Transaction Processing Fees or other third party fees associated with the acceptance of Traditional or Emerging Payments.

Parkmobile reserves the right to pass through increases in third party transaction processing and related fees.

The use of mobile devices for enforcement as well as data plans are not part of this agreement.

Cost for initial standard stickers shall be borne exclusively by Parkmobile. Client will be responsible for all installation.

Cost of marketing shall be borne exclusively by Parkmobile based on Parkmobile's standard marketing program. Parkmobile reserves the right to change its name, branding and signage at any time during the Term of this Agreement

Parkmobile reserves the right to increase Member Fees and Additional Service (as defined below) fees upon sixty (60) days written notice to Client.

Other development activities and additional services (listed below) for a fee at the request of and after written approval by Client as described below.

#### Additional Services:

1. Non-Integrated Gateway Service
2. Additional Marketing/Advertising
3. Customized Reporting
4. Custom Integration to 3<sup>rd</sup> parties
5. Citation/Enforcement support
6. Replacement Signage/Stickers
7. Additional Training
8. Zone & Rate structure changes after implementation
9. Event Override Solution
10. Self-Administration Service

#### **SCHEDULE 4**

##### **Minimum Reporting Elements**

- 1) Time/Date when Transaction was completed (with time zone)
- 2) Time/Date range for parking purchased in Transaction (with time zone)
- 3) Total price charged to Member
- 4) Price breakdown
  - (a) Member Fee
  - (b) Parking Fee
- 5) Payment Method - Credit Card, PayPal, Samsung Pay, etc.

## SCHEDULE 5

### PAYEE/CLIENT INFORMATION

CLIENT NAME:
ADDRESS:
CONTACT PERSON:
TELEPHONE NUMBER:
EMAIL:
SIGNATURE & TITLE OF AUTHORIZED OFFICIAL:

### FINANCIAL INSTITUTION INFORMATION

BANK NAME:
ADDRESS:
CONTACT PERSON:
TELEPHONE:
EMAIL:
NINE DIGIT ROUTING TRANSIT NUMBER:
DEPOSITOR ACCOUNT TITLE:
DEPOSITOR ACCOUNT NUMBER:
TYPE OF ACCOUNT:

This authorizes Parkmobile, LLC to send credit entries (and appropriate debit and adjustment entries), electronically or by any other commercially accepted method, to the account indicated above and to other accounts specified by Client in the future (the "Account"). This authorizes the financial institution holding the Account to post all such