

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Legislative Chambers
160 S Macy Street

September 23, 2020
6:00 PM

1. CALL TO ORDER

- a. Roll Call
- b. Declaration a Quorum Is Present
- c. Pledge of Allegiance
- d. Silent Reflection
- e. Proclamation Recognizing Fire Prevention Week

2. PUBLIC HEARINGS

3. CONSENT AGENDA

- a. September 9, 2020 Regular Council Minutes
- b. List Of Claims Dated September 16, 2020

4. AUDIENCE COMMENTS (Agenda and Non-agenda items)

- a. Virtual Instructions

To Participate In The Public Comments:

Dial in Using Your Phone.
(Toll Free) 1-877-568-4106
United States: 1-571-317-3129

Enter Access Code: 250-554-733#

Introduce Yourself To The Moderator If You Wish To Register To
Speak During The Public Comment Portion Of The Agenda.

Public Participation Sign-Up Sheets and Written Public Comment for
Non-Attendance Public Participation Forms can be found
<https://www.fdl.wi.gov/city-council/>

5. ACTION ITEMS

- a. Change Of Agent "Class A" Intoxicating Liquor and Class "A"
Fermented Malt
Entity: Ultra Mart Foods, LLC
Agent: Eric Bohling
Agent Address: 767 Millbrook Dr., Neenah, WI
d/b/a: Pick 'N Save #472
Business Address: 55 W Pioneer Rd
Introduction: City Clerk

b. Resolution No.8898

A Resolution Applying For A Cost-Share Urban Forestry Grant And
Urban Forestry Catastrophic Storm Grant
Introduction: Director of Public Works

6. PRESENTATION OF INPUT ITEMS

a. Recap and Closing Comments - 2021 Budget

Presented By: City Manager

b. Draft Resolution and Draft Lakeside Park Enhancement
Agreement

Presented by Council Member Arletta Allen

c. Legal Opinion on Proposed Direct Legislation

7. ADJOURN

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Proclamation Recognizing Fire Prevention Week

Subject: Proclamation Recognizing Fire Prevention Week

Initiator:

Recommendation:

ATTACHMENTS:

File Name

Fire_Prevention_Week_2020.pdf



Proclamation

Whereas, the city of Fond du Lac is committed to ensuring the safety and security of all those living in and visiting Fond du Lac; and

Whereas, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

Whereas, home fires killed 2,870 people in the United States in 2019 with cooking being the leading cause of home fires; and

Whereas, two of every five home fires start in the kitchen with 31% of these fires resulting from unattended cooking; and

Whereas, more than half of reported non-fatal home cooking fire injuries occurred when the victims tried to fight the fire themselves; and

Whereas, residents should stay in the kitchen when frying food on the stovetop, keep a three-foot kid-free zone around cooking areas and keep anything that can catch fire away from stove tops; and

Whereas, residents who have planned and practiced a home fire escape plan and have working smoke alarms in their homes are more likely to survive a fire; and

*Whereas, the 2020 Fire Prevention Week theme, “**Serve Up Fire Safety in the Kitchen!**” effectively serves to remind us to stay alert and use caution when cooking to reduce the risk of kitchen fires.*

***Now, Therefore,** I, Brian Kolstad, President of the Fond du Lac City Council, do hereby proclaim October 4–10, 2020, as Fire Prevention Week, and I urge all the people of Fond du Lac to check their kitchens for fire hazards, to use safe cooking practices, and to support the many public safety activities and efforts of Fond du Lac Fire/Rescue during Fire Prevention Week 2020.*

Dated: September 2020

*Brian Kolstad
City Council President*

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: September 9, 2020 Regular Council Minutes

Subject: September 9, 2020 Regular Council Minutes

Initiator:

Recommendation:

ATTACHMENTS:

File Name

Minutes_2020_9_9_Meeting(675).pdf

**CITY COUNCIL MEETING MINUTES
CITY OF FOND DU LAC, WISCONSIN**

Legislative Chambers
160 S Macy Street

September 9, 2020
6:00 PM

CALL TO ORDER

Roll Call

Present

Arletta Allen
Daniel Degner
Ben Giles
Alicia Hans
Brian Kolstad, virtual
Kay Miller
Donna Richards

Absent

None

Administrative Staff

Joseph Moore, City Manager
Tracy Salter, Dir of Admin, virtual
Dyann Benson, Dir of Comm Dev
Deb Hoffmann, City Attorney
Jordan Skiff, Dir of Public Works
Travis Kloetzke, Water Op Mgr
Jon Mark Bolthouse, Library Director, virtual
Peter O'Leary, Fire Chief, virtual
Kathryn Duveneck, IT Service Director

Declaration a Quorum Is Present

President Kolstad declared a quorum present, meeting started at 6:07 p.m.

Pledge of Allegiance

Pledge of Allegiance was recited.

Silent Reflection

A moment of silent reflection was observed.

A Proclamation Recognizing Church of Peace 150th Anniversary

President Kolstad presented a proclamation to Brenda Post from Church of Peace honoring and congratulating the Church of Peace on its 150th Anniversary.

A Proclamation Recognizing September As Chamber of Commerce Month

President Kolstad presented a proclamation to Sadie Parafiniuk President and CEO and Jim Cleveland, Vice President of Envision Greater Fond du Lac proclaiming September as "Chamber of Commerce Month" in the City of Fond du Lac and encourage all citizens of Fond du Lac to support the local business within our great community.

A Proclamation Recognizing Suicide Prevention Awareness

President Kolstad presented a proclamation to Amber Waas, CSI Coordinator designating September 2020 as Suicide Awareness Month, September 6th- 12th as Suicide Prevention Week, and join the rest of the world in recognizing September 10, 2020 as World Suicide Prevention Day, and urge everyone to play their role in preventing suicides every month, week, and day.

A Proclamation Recognizing September As Recovery Month

President Kolstad presented a proclamation to Alex Berg and Amber Waas, CSI Coordinator proclaiming September 2020, as "Recovery Month" in the City of Fond du Lac and call upon our community to support efforts that will assist in eliminating the stigma associated with mental illness and substance misuse and promote long term recovery of those individual needing care.

CONSENT AGENDA

List Of Claims Dated September 2, 2020

August 26, 2020 Minutes

A Motion was made by Daniel Degner to approve the consent agenda and seconded by Kay Miller, and the motion was **Passed**.
Ayes: Allen, Degner, Giles, Hans, Kolstad, Miller, Richards

AUDIENCE COMMENTS (Agenda and Non-agenda items)

Spoke otherwise on Budget 2021:

Resident:

Jane Ricchio, 580 Evans Dr. B, Fond du Lac

Spoke in opposition of 2021 Budget Schedule:

Resident:

Amy Schingen, 60 Bryn Mawr Cir., Fond du Lac

Spoke in support of Ordinance No. 3722 & 3722-A

Resident:

Steve Eilbes, 52 N Lincoln Ave., Fond du Lac

Spoke on Forest Mall update:

Non-Resident:

Frank Mihalopoulos, 4645 N Central Expressway, Dallas, TX

Spoke in support of 2020 Census:

Resident:

Amber Kilawee, 233 E 2nd St., Fond du Lac

Spoke in opposition of Lighthouse:

Resident:

JoAnn Guell, 608 Western Ave., Fond du Lac

Spoke in support of Lakeside Park amenities:

Non-Resident:

Tom Schermerhorn, N5134 Summit Ct., Fond du Lac

Did not speak: In support of Lakeside Park Master Plan

Non-Resident:

Tony Ahern, N7206 Winnebago Dr., Fond du Lac

Megan Schueller, 840 Woodside Ave., Ripon

Lisa McArthur, W7010 Rogersville Rd., Fond du Lac

Resident:

Craig Molitor, 16 S Portland St., Fond du Lac

Jim Cleveland, W5337 Garden Dr., Fond du Lac

Bernadette Erickson, 260 E 2nd St., Fond du Lac

Tracy Qualmann, 304 Southview Rd., Fond du Lac

ACTION ITEMS

Class "B" Fermented Malt and "Class B" Intoxicating Liquor License

A Motion was made by Daniel Degner to approve Class "B" Fermented Malt and "Class B" Intoxicating Liquor License for Sully's Bar, LLC d/b/a Sully's Bar located at 384 S Main Street and seconded by Kay Miller, and the motion was **Passed**.

Ayes: Allen, Degner, Giles, Hans, Kolstad, Miller, Richards

Class "B" Fermented Malt and "Class B" Intoxicating Liquor License

A Motion was made by Arletta Allen to approve Class "B" Fermented Malt and "Class B" Intoxicating Liquor License for Los Mezcales Bar & Grill, LLC d/b/a Los Mezcales Bar & Grill located at 156 Western Avenue and seconded by Ben Giles, and the motion was **Passed**.

Ayes: Allen, Degner, Giles, Hans, Kolstad, Miller, Richards

Ordinance No. 3722 and 3722-A

2020-87

A Motion was made by Daniel Degner to approve Ordinance No. 3722-A amending Chapter 630, Vehicles and Traffic, of the Code of the City of Fond du Lac to remove a yield sign and add stop signs at Thomas Street and seconded by Donna Richards, and the motion was **Passed**.

PRESENTATION OF INPUT ITEMS

Update On Lead Service Line Program

Update on Lead Service Line Program was presented by Travis Kloetzke, Water Utility General Manger.

2021 Budget Schedule And Activities

2021 Budget Schedule and Activities was presented by Joe Moore, City Manager.

Social Media & Public Engagement Policy

Social Media & Public Engagement Policy was presented by Deb Hoffmann, City Attorney and Kathryn Duveneck, IT Service Director.

ADJOURN

A Motion was made by Kay Miller to adjourn at 7:41 p.m. and seconded by Daniel Degner, and the motion was **Passed**.
Ayes: Allen, Degner, Giles, Hans, Kolstad, Miller, Richards

Margaret Hefter
City Clerk

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: List Of Claims Dated September 16, 2020

Subject: List Of Claims Dated September 16, 2020

Initiator:

Recommendation:

ATTACHMENTS:

File Name

List_of_Claims_Memo_09-16-20.pdf

CITY OF FOND DU LAC - Memorandum

Department of Administration

Date: September 16, 2020

To: City Council

From: Tracy Salter, Director of Administration

Re: List of Claims

The list of claims for goods and services for the payment periods August 29, 2020 through September 11, 2020 for all funds total \$784,147.93. Wisconsin statute 66.0609 (2) requires the comptroller to file, at least monthly with the City Council, a list of approved claims paid.

Suggested Motion: Receive and File

**CITY COUNCIL MEETING AGENDA
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Initiator:

Recommendation:

ATTACHMENTS:

File Name

Virtual_Council_Meeting_Instructions_-_Ongoing.pdf



VIRTUAL COUNCIL MEETING DETAILS

Date: May 20, 2020

To help prevent the spread of COVID-19 and to protect our more vulnerable members of the community, the City of Fond du Lac City Council is encouraging everyone to watch the Council Meeting live online through the Government Channel Simulcast at: <https://www.fdl.wi.gov/city-council/webcasts/> , live via Charter Government Channel 980, or on demand the day after the meeting via our website at the above link.

In addition, to facilitate the open meeting requirement and still abide by the social distancing and mass gathering guidelines from Wisconsin Governor Evers, the City of Fond du Lac will be allowing public comments via teleconference during this pandemic.

To participate in the public comments, please call in using the info below between 5:30-5:50pm and register to speak. Once registered with the moderator, please mute your phone and remain on hold until your turn to speak.

City Council Regular Meeting - Virtual Instructions

To participate in the public comments:

Step 1: Dial in using your phone. United States (Toll Free): 1-877-568-4106
United States: 1-571-317-3129

Step 2: Enter Access Code: 250-554-733 # #

Step 3: Introduce yourself to the moderator to get registered to speak during the public comment portion of the agenda.

Note: The call in instructions are available for those that want to **speak** during public comments. To **watch the meeting** without speaking, the webcast, Charter channel, or on demand the next day are the recommended methods and calling in is not necessary.

For more information about Fond du Lac's COVID-19 precautions visit www.fdl.wi.gov.

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Change Of Agent "Class A" Intoxicating Liquor and Class
"A" Fermented Malt

Subject: Entity: Ultra Mart Foods, LLC
Agent: Eric Bohling
Agent Address: 767 Millbrook Dr., Neenah, WI
d/b/a: Pick 'N Save #472
Business Address: 55 W Pioneer Rd
Introduction: City Clerk

Initiator:

Recommendation:

ATTACHMENTS:

File Name

Pick_N_Save_Agent_Change__(1)_Redacted.pdf

Fond du Lac Police Department MEMO



To: City Manager Joe Moore
From: Chief Lamb
RE: Change of Agent Request for Pick 'n Save Store
#5372 55 West Pioneer Road.
Date: 08-28-20

Roundy's Supermarkets Incorporated d/b/a Pick 'N Save has notified the City regarding a Change of Agent request for the following store location in the City of Fond du Lac: Store #5372 located at 55 West Pioneer Road. Eric Bohling will be the new licensed agent for this establishment. Background checks conducted on Mr. Bohling, both in-house and NCIC/CIB, indicate no prior criminal history that would preclude the issuance of the change of agent request. The Police Department has no objections to the change of agent request.

Schedule for Appointment of Agent by Corporation / Nonprofit Organization or Limited Liability Company

Submit to municipal clerk.

All corporations/organizations or limited liability companies applying for a license to sell fermented malt beverages and/or intoxicating liquor must appoint an agent. The following questions must be answered by the agent. The appointment must be signed by an officer of the corporation/organization or one member/manager of a limited liability company and the recommendation made by the proper local official.

To the governing body of: Town Village of FOND DU LAC County of FOND DU LAC
 City

The undersigned duly authorized officer/member/manager of ULTRA MART FOODS, LLC
(Registered Name of Corporation / Organization or Limited Liability Company)

a corporation/organization or limited liability company making application for an alcohol beverage license for a premises known as PICK 'N SAVE #472
(Trade Name)

located at 55 W PIONEER RD FOND DU LAC, WI 54935

appoints ERIC BOHLING
(Name of Appointed Agent)

767 Millbrook Dr Neenah WI 54956
(Home Address of Appointed Agent)

to act for the corporation/organization/limited liability company with full authority and control of the premises and of all business relative to alcohol beverages conducted therein. Is applicant agent presently acting in that capacity or requesting approval for any corporation/organization/limited liability company having or applying for a beer and/or liquor license for any other location in Wisconsin?

Yes No If so, indicate the corporate name(s)/limited liability company(ies) and municipality(ies).

Is applicant agent subject to completion of the responsible beverage server training course? Yes No

How long immediately prior to making this application has the applicant agent resided continuously in Wisconsin? 12 years

Place of residence last year Oshkosh & Neenah WI

For: ULTRA MART FOODS, LLC
(Name of Corporation / Organization / Limited Liability Company)

By: [Signature]
(Signature of Officer / Member / Manager)

Any person who knowingly provides materially false information in an application for a license may be required to forfeit not more than \$1,000.

ACCEPTANCE BY AGENT

ERIC BOHLING, hereby accept this appointment as agent for the
(Print / Type Agent's Name)

corporation/organization/limited liability company and assume full responsibility for the conduct of all business relative to alcohol beverages conducted on the premises for the corporation/organization/limited liability company.

Eric Bohling 8/14/20
(Signature of Agent) (Date)

767 Millbrook Dr Neenah WI
(Home Address of Agent)

APPROVAL OF AGENT BY MUNICIPAL AUTHORITY (Clerk cannot sign on behalf of Municipal Official)

I hereby certify that I have checked municipal and state criminal records. To the best of my knowledge, with the available information, the character, record and reputation are satisfactory and I have no objection to the agent appointed.

Approved on 08/27/20 by [Signature] Title ASST. POLICE CHIEF
(Date) (Signature of Proper Local Official) (Town Chair, Village President, Police Chief)

Auxiliary Questionnaire Alcohol Beverage License Application

Submit to municipal clerk.

Individual's Full Name (please print) (last name)		(first name)		(middle name)	
BOHLING		ERIC		P	
Home Address (street/route)		Post Office	City	State	Zip Code
767 Millbrook Dr			Neenah	WI	54956
Home Phone Number		Age			
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The above named individual provides the following information as a person who is (check one):

- Applying for an alcohol beverage license as an individual.
 A member of a partnership which is making application for an alcohol beverage license.
 AGENT of **ULTRA MART FOODS, LLC**
(Officer / Director / Member / Manager / Agent) (Name of Corporation, Limited Liability Company or Nonprofit Organization)

which is making application for an alcohol beverage license.

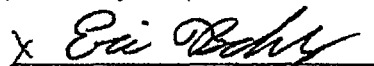
The above named individual provides the following information to the licensing authority:

- How long have you continuously resided in Wisconsin prior to this date? 12 years
- Have you ever been convicted of any offenses (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of any other states or ordinances of any county or municipality? Yes No
If yes, give law or ordinance violated, trial court, trial date and penalty imposed, and/or date, description and status of charges pending. (If more room is needed, continue on reverse side of this form.)
- Are charges for any offenses presently pending against you (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of other states or ordinances of any county or municipality? Yes No
If yes, describe status of charges pending.
- Do you hold, are you making application for or are you an officer, director or agent of a corporation/nonprofit organization or member/manager/agent of a limited liability company holding or applying for any other alcohol beverage license or permit? Yes No
If yes, identify. (Name, Location and Type of License/Permit)
- Do you hold and/or are you an officer, director, stockholder, agent or employe of any person or corporation or member/manager/agent of a limited liability company holding or applying for a wholesale beer permit, brewery/winery permit or wholesale liquor, manufacturer or rectifier permit in the State of Wisconsin? Yes No
If yes, identify. (Name of Wholesale Licensee or Permittee) (Address By City and County)

6. Named individual must list in chronological order last two employers.

Employer's Name	Employer's Address	Employed From	To
ROUNDYS SUPERMARKETS	875 E WISCONSIN AVE MKE WI	Dec 19, 2016	Current
OSKOSH School District	215 S. Eagle st, Osh WI	Sept. 2016	Dec. 17, 2016

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the undersigned states that each of the above questions has been truthfully answered to the best of the knowledge of the signer. The signer agrees that he/she is the person named in the foregoing application; that the applicant has read and made a complete answer to each question, and that the answers in each instance are true and correct. The undersigned further understands that any license issued contrary to Chapter 125 of the Wisconsin Statutes shall be void, and under penalty of state law, the applicant may be prosecuted for submitting false statements and affidavits in connection with this application. Any person who knowingly provides materially false information on this application may be required to forfeit not more than \$1,000.


 (Signature of Named Individual)

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Resolution No.8898

Subject: A Resolution Applying For A Cost-Share Urban Forestry
Grant And Urban Forestry Catastrophic Storm Grant
Introduction: Director of Public Works

Initiator:

Recommendation:

ATTACHMENTS:

File Name

8898_Resolution_Applying_for_DNR_Grant.pdf

RESOLUTION NO. 8898

A RESOLUTION APPLYING FOR A COST-SHARE URBAN FORESTRY GRANT AND URBAN FORESTRY CATASTROPHIC STORM GRANT

WHEREAS, the City of Fond du Lac is interested in obtaining a cost-share grant from Wisconsin Department of Natural Resources for the purpose of funding urban and community forestry projects or urban forestry catastrophic storm projects specified in Sections 23.097(1g) and (1r), Wis. Stats; and

WHEREAS, the City of Fond du Lac attests to the validity and veracity of the statements and representations contained in the grant application; and

WHEREAS, the City of Fond du Lac requests a grant agreement to carry out the project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fond du Lac that the City will comply with all local, state and federal rules, regulations and ordinances relating to this project and the cost-share agreement.

BE IT FURTHER RESOLVED, that the City has budgeted a sum sufficient to complete the project and hereby authorizes the proper City officials (City Manager, Director of Public Works or their designee) to sign and submit the grant application, sign a grant agreement between applicant and the DNR, submit interim and/or final reports to the DNR to satisfy the grant agreement, submit reimbursement claims and signed documents and to take any other necessary actions to undertake and complete the project.

ADOPTED:

Brian Kolstad, President
Fond du Lac City Council

Attest:

City Attorney:

Margaret Hefter, City Clerk

Reviewed 

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Recap and Closing Comments - 2021 Budget

Subject: Presented By: City Manager

Initiator:

Recommendation:

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Draft Resolution and Draft Lakeside Park Enhancement Agreement

Subject: Presented by Council Member Arletta Allen

Initiator:

Recommendation:

ATTACHMENTS:

File Name

Proposed_Resolution_LSP_Dev._Agreement.pdf

Draft_Lakeside_Park_Enhancement_Agreement.9.17.20.pdf

RESOLUTION NO. _____

**AN RESOLUTION APPROVING IMPLEMENTATION OF
LAKESIDE PARK MASTER PLAN AND APPROVING BINDING
LAKESIDE PARK ENHANCEMENT AGREEMENT**

WHEREAS, in 2014, the City council (hereinafter the “Council”) formed the Lakeside Park Exploratory Committee (hereinafter “LPEC”) to function in an advisory capacity to the Council regarding future utilization options for Lakeside Park located within the city and to provide recommendations to the Council; and,

WHEREAS, the LPEC completed their review in 2015 and presented 27 recommendations for future Lakeside Park Developments. A copy of the LPEC’s Final Report and Recommendations dated June 2015 and approved by the Council in 2016 is incorporated herein by reference; and,

WHEREAS, in 2017, 2018, and 2019 items from the master plan were completed; and,

WHEREAS, the City is in the process of preconstruction and construction of a new Pavilion and outdoor plaza; and,

WHEREAS, the City thereafter approved an Alternative Master Plan for Lakeside Park (hereinafter the “AMP”) at its February 12, 2020 Council meeting, the terms of which are hereby incorporated herein by reference; and,

WHEREAS, the Supporters Group is willing to invest and donate at least 5.2 million dollars into implementation of the AMP if and only if the City agrees to the basic binding framework set forth in this Resolution and in the attached Lakeside Park Enhancement Agreement at the Council’s September 23, 2020 meeting; and,

WHEREAS, a third-party firm by the name of Johnson Consulting has already been hired by the City to complete a “Feasibility Study Report” which is expected to be forthcoming in October 2020, and the attached Lakeside Park Enhancement Agreement has provisions in it which will allow either the City or the Supporters Group, at their respective options, to amend the AMP or terminate the Lakeside Park Enhancement Agreement

altogether in the event that the Feasibility Study Report indicates that the Projects are not feasible without material modifications to the projects as depicted in the AMP; and,

WHEREAS, the City wishes to enter into the attached binding Lakeside Park Enhancement Agreement so that the Supporters Group can move forward with fundraising and all parties can take further steps to implement the projects as depicted in the AMP.

THEREFORE, the City Council of the City of Fond du Lac does resolve as follows:

- 1) The attached Lakeside Park Enhancement Agreement is hereby approved and ratified and the appropriate designated City administrative representative(s) are hereby directed to negotiate any necessary additions or changes while preserving the essential terms and spirit and intent of said agreement, and thereafter sign the final product so as to bind the parties thereto as soon as reasonably possible.
- 2) All terms of the attached Lakeside Park Enhancement Agreement are approved and incorporated herein by reference as if fully set forth and approved herein.
- 3) Implementation of the attached Lakeside Park Enhancement Agreement according to its terms is hereby approved.

ADOPTED:

Brian Kolstad, President
Fond du Lac City Council

Attest:

City Attorney:

Reviewed _____

Margaret Hefter, City Clerk

LAKESIDE PARK ENHANCEMENT AGREEMENT

THIS LAKESIDE PARK ENHANCEMENT AGREEMENT (“Agreement”) is entered into as of this ___ day of _____, 2020, by and between the City of Fond du Lac, Wisconsin, a Wisconsin Municipality (“City”) and Lakeside Forward LLC (“LSF”), a Wisconsin Limited Liability Company. The City and LSF may be referred to jointly as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, City is a municipal corporation organized and existing under and pursuant to Chapter 62 of the Wisconsin Statutes and exercises all of the powers provided for therein;

WHEREAS, City is the owner of certain property located along the southern shore of Lake Winnebago, known as Lakeside Park;

WHEREAS, City and LSF desire to make certain improvements to Lakeside Park including but not limited to renovating an existing pavilion building, constructing a new amphitheater on the area known as Oven Island, constructing a restaurant with exhibition space west of the Lakeside Park Lighthouse, and varied other improvements (as described in greater detail below, the “Projects”);

WHEREAS, LSF is a Wisconsin Limited Liability Company whose sole purpose is to receive privately donated funds to enable LSF to work with the City to improve Lakeside Park and whose members are individuals or entities located in and around the City of Fond du Lac, desiring to aid the City financially, logistically, and operationally in enacting the Project;

WHEREAS, LSF’s members have business expertise necessary to create vibrant, successful Projects and private capital to supplement the public funding and services to be provided by the City;

WHEREAS, the Fond du Lac City Council already passed Resolution No. 8858 and Resolution No. 8859 at the February 12, 2020 meeting of the Fond du Lac City Council to study the feasibility of the Alternative Master Plan for Lakeside Park (the “AMP”) and to adopt the Alternate Master Plan for Lakeside Park, respectively;

WHEREAS, although the City and LSF may enter into additional agreements, amended agreements, and/or more definitive agreements concerning the Projects in the future, both parties must have a basic binding framework in place to allow LSF to raise funds and to allow the parties to advance their plan to the next step.

WHEREAS, the City and LSF intend to use this Agreement to set forth their understanding of the development of the Project and their respective rights and obligations in connection therewith.

NOW THEREFORE, THE PARTIES THEREFORE AGREE AS FOLLOWS:

Article 1: Basic Provisions and Definitions

1. The foregoing Recitals are true and accurate and are incorporated into this Agreement as if fully set forth herein.
2. Development Regulations. Except as provided otherwise in this Agreement, development of the Projects shall be governed by City development regulations in effect as of the Effective Date of

this Agreement. Except as expressly stated otherwise herein, any amendments to or additions to City development regulations shall not apply to or affect the conditions of the development of the Projects. As used in this Agreement, “development regulations” shall be deemed to include regulations, policies, procedures, legislation, direct legislation, and guidelines addressing zoning, environmental review, building and site design, permitting of any kind, utilities, stormwater regulations, transportation, and other laws, ordinances, policies and administrative regulations and guidelines of the City governing land development or parks.

3. Term. This Agreement becomes effective upon the date all parties have signed (the “Effective Date”) and shall continue until the parties’ obligations are satisfied at the conclusion of the Ground Lease referenced herein, unless earlier terminated by the parties as permitted herein.
4. Projects. The “Projects” that are the subject of this Agreement are depicted in the AMP and consist of the following:
 - a. Amphitheater. The “Amphitheater” project means the design and construction of an amphitheater as depicted on the AMP with adjacent amenities, service facilities and buildings, improved parking areas, restrooms, and support structures on the area of Lakeside Park commonly known as Oven Island.
 - b. Restaurant/Mixed Use. The “Restaurant/Mixed Use” project means the design and construction of a restaurant and mixed-use event space as depicted in the AMP directly to the west of the existing lighthouse. The mixed-use space shall include approximately 2,000 square feet of space to be designated as community space to be used by community groups per the direction, rules, and procedures established by the LSF Board.
 - c. Pavilion. The “Pavilion” project means the design and renovation of the existing pavilion as depicted in the AMP as thereafter revised in subsequent architectural documents approved by the City, located north of Promen Drive.
 - d. Walking Paths. The “Walking Paths” project means the design, improvement, and new construction of the walking path improvements designated on the AMP.
 - e. Site Improvements. The “Site Improvements” project means the design and new construction or improvement of all other aspects of the AMP including the design and new construction or improvement of promontories, bike paths, infrastructure, utilities, landscaping, boat docks, and parking areas not incorporated into the Amphitheater, Restaurant/Mixed Use, or Pavilion, as shown on the AMP.

Article 2: Completion of Feasibility Study and Other City Responsibilities

1. Feasibility Study
 - a. The City has previously contracted with a third party by the name of Johnson Consulting to produce a feasibility study to determine, amongst other things, whether the design, location, construction, funding, and operation of the proposed Projects are feasible (hereinafter the “Feasibility Study”). The Feasibility Study is not yet complete but its completion is anticipated in October 2020. The City will deliver Johnson Consulting’s written report stemming from the Feasibility Study (hereinafter the “Feasibility Study Report”) to LSF on or before October 30, 2020 or as soon thereafter as reasonably possible.

- b. LSF shall have forty-five (45) days to inspect and review the Feasibility Study Report. LSF shall have, in its sole discretion, the unconditional right to:
 - i. Determine, in its reasonable judgment, that the Feasibility Study Report substantially comports to the AMP and agree to proceed with its delegated Projects substantially in accordance with the AMP.
 - ii. Determine, in its reasonable judgment, that the Feasibility Study Report does not comport to the AMP, Return the Feasibility Study Report to the City with a proposal to amend the AMP to conform to the Feasibility Study Report, in which case the City shall have forty-five (45) days to agree to a modified AMP or terminate this Agreement; or
 - iii. Determine, in its reasonable judgment, that the Feasibility Study Report does not comport to the AMP and terminate this Agreement.
 - c. The City Manager, in consultation with City staff, shall have forty-five (45) days to inspect and review the Feasibility Study Report. If the City Manager reasonably and in good faith determines that the Projects are not feasible as a result of reviewing the Feasibility Study Report, within said forty-five (45) days of the City Manager's receipt of the Feasibility Study Report, the City Manager may request that the Council terminate this Agreement, and upon receiving such reasonable request, the Council may terminate this Agreement by resolution within forty-five days of the City Manager's receipt of the Feasibility Study Report.
2. Park Maintenance. Before, during, and after the completion of the Projects, the City shall continue its normal, ongoing park maintenance for all improvements and Projects, including the Walking Paths and Amphitheater but excluding the Restaurant/Mixed Use Project, which shall be maintained by LSF, its lessee, its designee, or its assigns.

Article 3: Project Funding and Basic Responsibilities of City and LSF

1. Funding by LSF and Basic Duties of LSF.
 - a. Funding Schedule. LSF will provide a minimum of \$5.2 million in donated funds (hereinafter the "Donated Funds") to be used by LSF for the design and construction the Projects that are designated as LSF's responsibility herein.
 - b. Restaurant/Mixed Use – LSF shall enter into the Ground Lease referenced in this Agreement for the land under the proposed Restaurant/Mixed use project. LSF shall fund 100% of the costs for the Restaurant/Mixed Use development. LSF shall directly contract with contractors and material suppliers for said construction, shall solely be responsible to complete said construction substantially in accordance with the AMP, and shall solely responsible for all costs of said construction. LSF shall specifically be responsible to build the Restaurant/Mixed Use building core and shell (a/k/a the "white box"); and LSF's operator/subtenant shall be responsible to construct the remaining buildout in accordance with the terms of this Agreement and in accordance with the terms of a future sublease agreement between LSF and said operator/subtenant. Because LSF is

funding 100% of the construction costs of the Restaurant/Mixed Use project, responsibility for completion of the Restaurant/Mixed Use project is delegated to LSF.

- c. Walking Paths. It is anticipated that additional Donated Funds will remain after the design, construction, tangential expenses associated with the Restaurant/Mixed Use project are paid. If and to the extent additional Donated Funds remain after the costs of the design, construction, tangential expenses associated with the Restaurant/Mixed Use project are paid (and retention of a suitable Reserve Fund for initial operations), remaining Donated Funds shall be expended by LSF to design, construct, and improve the Walking Paths as shown on the AMP. LSF shall directly contract with contractors and material suppliers for said construction if LSF Donated Funds are expected to cover 100% of the costs of the Walking Paths; in such case, responsibility for completion of the Walking Paths shall be delegated to LSF. If the remaining Donated Funds are insufficient to cover 100% of the costs of the Walking Paths, the City shall lead the Walking Paths Project in accordance with the AMP, and except for professional services, said public works shall be bid by the City in accordance with the public bidding law. If responsibility to construct the Walking Paths is delegated to the City in accordance herewith, LSF shall donate the remaining Donated Funds to the City to be used for said purpose.
- d. Amphitheater – If and to the extent additional Donated Funds remain after the costs of the design, construction, tangential expenses associated with the Walking Paths project are paid, remaining Donated Funds shall be expended by LSF to design, construct, and improve the Amphitheater project. LSF shall directly contract with contractors and material suppliers for said construction if LSF Donated Funds are expected to cover 100% of the costs of the Amphitheater; in such case, responsibility for completion of the Amphitheater shall be delegated to LSF. If the remaining Donated Funds are insufficient to cover 100% of the costs of the Amphitheater, the City shall lead the Amphitheater project in accordance with the AMP, and except for professional services, said public works shall be bid by the City in accordance with the public bidding law. If responsibility to construct the Walking Paths is delegated to the City in accordance herewith, LSF shall donate the remaining Donated Funds to the City to be used for said purpose.

2. Funding by City and Basic Duties of City.

- a. Pavilion – The City shall fund 100% of the costs for the Pavilion renovation with public funds and said construction shall be substantially complete in 2021.
- b. Walking Paths. The City shall fund any portion of the Walking Paths project with public funds that cannot be funded by LSF as discussed in Article 3 Section 1, above. If responsibility for completion of the Walking Paths is delegated to the City, except for professional services, said public works shall be bid by the City in accordance with the public bidding law. If responsibility for the forgoing is delegated to the City, the City shall cause the Walking Paths to be designed, constructed, and improved substantially in conformance with the AMP.
- c. Amphitheater – The City shall fund any portion of the Amphitheater project with public funds that cannot be funded by LSF as discussed in Article 3 Section 1, above. If responsibility for completion of the Amphitheater is delegated to the City, except for professional services, said public works shall be bid by the City in accordance with the

public bidding law. If responsibility for the forgoing is delegated to the City, the City shall cause the Amphitheater to be designed, constructed, and improved substantially in conformance with the AMP.

- d. Site Improvements – The City shall fund 100% of the costs for the additional Site Improvements with public funds and shall construct said site improvements substantially in accordance with the AMP.
 - e. Utility Infrastructure. The City shall fund 100% of any related utility infrastructure with public funds, which shall include the construction, installation, improvement, or extension of any public utilities reasonably necessary to accommodate the Projects as shown on the AMP, including, but not limited to, roads, electric service, natural gas service, water service, sewer service, storm sewer service, and/or cable/data service.
3. Project Deadlines. The City and LSF agree to work together and independently, as circumstances require, to complete all Projects as soon as reasonably possible. LSF acknowledges that time is of the essence, so the City shall have ample time to complete its own obligations under this Agreement and so any disruptions to Lakeside Park are kept to a minimum. The City and LSF agree to cooperate and work in partnership with each other to establish and implement a logical and efficient timeline. Each Party shall be responsible to complete all projects delegated to it within four (4) years of the Effective Date of this Agreement at the latest.

Article 4: LSF Structure and Obligations

1. Provide Authorized Representative
 - a. LSF shall appoint an authorized representative (the “LSF Authorized Representative”) to coordinate with the City Authorized Representative.
2. Facilitate LSF Funding
 - a. LSF shall solicit and collect pledges from LSF members and other community donors and community organizations.
 - b. LSF shall facilitate payment of draw requests for portions of Project delegated to LSF.
 - c. LSF will provide evidence of LSF Donated Funds within forty-five (45) days after the Execution Date of this Agreement.
3. LSF Board of Directors and Decision Making
 - a. LSF shall develop an Operating Agreement and therein shall establish a seven-member Board of Directors who shall have authority and responsibility for the governance of LSF.
 - b. LSF’s initial seven (7) member Board of Directors shall be made up of four of LSF’s initial donors to be selected by LSF’s initial donors (hereinafter, each a “Donor Director”), the City of Fond du Lac Parks Director, the City of Fond du Lac City

Manager, and a City Council representative to be chosen from time to time by the City Council. Any vacancy created by an outgoing Donor Director shall be filled by the affirmative vote of the Remaining Donor Directors or their replacements. Any vacancy created by an outgoing City of Fond du Lac Parks Director or City of Fond du Lac City Manager shall be filled by the incoming City of Fond du Lac Parks Director or City of Fond du Lac City Manager, respectively. The City Council may remove or replace the City Council's designated Board member at any time.

Article 5: Joint Obligations

1. Good Faith. The City and LSF agree to work with each other in good faith at all times, keep each other informed of all material matters that arise in their implementation of this Agreement, and frequently and continuously share respective plan updates to ensure that the parties continue to work together to achieve their common goal to implement all Projects in a coordinated, seamless, cost-effective, and logical manner.
2. Additional Agreements. The City and LSF acknowledge that this Agreement is designed to incorporate only the bare essential terms of their respective relationship, so that the parties can immediately move forward, raise money, and plan for implementation in a binding fashion. However, the parties also agree and understand that this Agreement might have to be amended, altered, expanded, or modified as circumstances evolve. For example, the Feasibility Study Report may show that a particular aspect of the Project needs to be modified or eliminated. Subject to the parties' respective termination rights and related rights and obligations stated herein, the parties agree to work together in good faith on any necessary amendment, alteration, expansion, or modification to this Agreement as necessary.
3. Definitive Plan Review and Approval. The parties acknowledge that the project plan detail in the AMP in most cases will be further refined and detail will be added in the form of final construction plans. To the extent that LSF is delegated with primary construction responsibility on any particular Project, LSF shall present its final construction plans to the City, and the City administration shall review said plans and approve or disapprove said plans within thirty (30) days of receipt; however the City may not unreasonably withhold approval if said construction plans are substantially in accordance with the AMP and this Agreement.

Article 6: Restaurant / Mixed Use Space

1. Ground Lease
 - a. LSF and the City will enter into a twenty-five (25) year ground lease for the land under the Restaurant/Mixed Use space, whereby the City will lease said land to LSF in exchange for \$1.00 per year (the "Ground Lease"). The Ground Lease shall be renewable, at LSF's option, for up to two additional successive twenty-five (25) year terms if and only if LSF remains in substantial compliance with all provisions of this Agreement. At the conclusion of the Ground Lease, ownership of all improvements to the real property (excepting the subtenants' improvements) shall revert to the City at no cost to the City.
 - b. After initial construction drawings and site plans have been prepared for the Restaurant/Mixed Use space, LSF shall obtain surveying services to determine the

precise metes and bounds description of the parcel of land to be leased. Said leased parcel shall consist of the land under the proposed Restaurant/Mixed Use building substantially as shown on the AMP, the land under all directly-related improvements such as related parking lots, access driveways, and patios, and a ten (10) foot perimeter around all of the above (hereinafter the "Leased Property"). The Ground Lease shall provide for a way of access to the Leased Property, if necessary, for the ingress and egress of LSF, its contractors, its representatives, its sublessee(s), its sublessee(s)' customers, its sublessee(s)' vendors, its sublessee(s)' employees, and its sublessee(s)' contractors and invited guests.

- c. A material term of the Ground Lease will provide that LSF must lease the Restaurant/Mixed Use space to an operator chosen in accordance with the procedures referenced herein.

2. Operator

- a. LSF shall issue a Request for Proposals (hereinafter "RFP") to interested parties for operation of the Restaurant/Mixed Use space no later than thirty (30) days after execution of the Ground Lease.
- b. An ad-hoc committee to be comprised of two (2) City Council members, two (2) citizens at large to be chosen by the LSF Board, and three (3) donors to be chosen by the LSF Board, shall evaluate any responses to the RFP and provide a recommendation and ranking of operator applicants to the LSF Board.
- c. The LSF Board shall consider the ad-hoc committee's recommendation and ranking, but shall also consider the proposed operators' credit worthiness, experience, proposed lease term, and proposed rental revenue, and shall choose the operator who best exemplifies intent and substance of the AMP (the "Operator").
- d. LSF shall enter into an agreement with the Operator (the "Operation Agreement and Sublease") which will provide, at a minimum, that:
 - i. The Operator shall use its own capital to finish the tenant improvements.
 - ii. The Operator may provide reasonable input to the final layout of the Restaurant/Mixed Use Project to ensure the Restaurant/Mixed Use Project will operate as a profitable, working facility.
 - iii. The Operator shall pass through all rental fees for the meeting space to the LSF.
 - iv. The Operator shall pay a rental fee for the entire Restaurant/Mixed Use space to the LSF which shall consist of a combination of a fixed rate and a percentage of sales acceptable to the LSF Board.
 - v. The Operation Agreement and Sublease shall be triple net.
- e. If a replacement tenant and/or operator must be selected during the initial term or any successive renewal term of the Ground lease, the process contained in this Article 6, Section 2 shall be repeated.

3. Disbursements of Accrued Revenues

- a. LSF shall receive the rental income and shall set aside a portion of the revenue which, in the LSF Board's reasonable discretion, is necessary to enable the LSF to meet its recurring and reasonably foreseeable operating obligations (hereinafter the "Reserve Fund").
- b. LSF shall periodically donate, disburse, or allocate the remaining, accrued revenues for future projects in Lakeside Park or any other park located in the City as directed by LSF's Board of Directors and as approved by the City. Notwithstanding the forgoing, the City and LSF acknowledge that the primary target of any such distributions shall be the improvement of facilities located in Lakeside Park.
- c. In no event, shall any accrued revenues be distributed as profit to any donor or LSF Board member.
- d. Other usual and customary terms may be added to the Ground Lease by agreement of the Parties, which shall not unreasonably be refused by either party.

Article 7: Insurance

- 1. LSF Insurance. LSF shall purchase and maintain adequate liability and property insurance and shall cause its construction manager, architect/engineer, and future tenant to purchase and maintain adequate liability, property, and workers' compensation insurance in reasonable amounts as recommended by LSF's insurance agent and as approved by the City (said approval may not unreasonably be withheld). All such insurance policies pertaining to the Projects shall name the City as an additional insured.

Article 8: General Terms

- 1. Notices. Any and all notice and other communications required or permitted under this Agreement shall be deemed adequately given only if in writing delivered either in hand or by certified mail, return receipt requested. All notices and other communications shall be deemed to have been given for all purposes of this Agreement upon the date of receipt or refusal. All such notices shall be addressed to the parties at their respective addresses set forth below or at such other addresses as any of them may designate by notice to the other parties:

Notice to LSF shall be addressed to:

Notice to the City shall be addressed to:

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2. Successor and Assigns. The agreements contained herein shall be binding upon and inure to the benefits of the permitted successors and assigns of the respective parties hereto.
 3. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
 4. Severability. If for any reason any provision of this Agreement is determined to be invalid, or unenforceable in any circumstance, such invalidity or unenforceability shall not impair the effectiveness of the other provisions in this Agreement or, to the extent permissible, the effectiveness of such provision in other circumstances.
 5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement binding on the parties hereto.
 6. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes all prior understandings or agreements between the parties.
 7. Titles. Titles of provisions of this Agreement are for descriptive purposes only and shall not control or alter the meanings of this Agreement as set forth in the text.
 8. Further Assurances. The parties agree to execute and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purposes of this Agreement.
 9. Consent to Jurisdiction. Each party consents to the personal jurisdiction of the federal and state courts of the State of Wisconsin and each party agrees not to assert in any action brought in any such court that such action is brought in an inconvenient forum, or otherwise make any objection to venue or jurisdiction.
 10. Waiver of Jury Trial. Each of the parties hereto waives trial by jury in any litigation, suit, or proceeding between them in any court with respect to, in connection with or arising out of this Agreement, or the validity, interpretation, or enforcement thereof.
 11. Amendments. No amendment or modification of this Agreement, including waiver of any provision, shall be effective unless reflected in a document and delivered by all parties hereto.
 12. Remedies Cumulative. All rights, privileges, and remedies afforded the parties by this Agreement shall be cumulative and not exclusive, and the exercise of any one of such remedies shall not be deemed to be a waiver of any other right, remedy, or privilege provided for herein or available at law or equity.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Lakeside Forward LLC

City of Fond du Lac

By: _____

Its: _____

Date: _____

Joseph Moore
City Manager

Date: _____

Attest:

Margaret Hefter
City Clerk

Approved as to Form:

City Attorney

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Legal Opinion on Proposed Direct Legislation

Subject:

Initiator:

Recommendation:

ATTACHMENTS:

File Name

Direct_Legislation.pdf

Proposed Direct Legislation language

- No part of Lighthouse Point Island in Lakeside Park which remains in free and open use as of the effective date of this Ordinance shall be leased, developed or improved with structures unless such lease, development or improvement is first approved by a majority of the electors in a general or special election.
- No part of Oven Island in Lakeside Park which remains in free and open use as of the effective date of this Ordinance shall be leased, developed or improved with structures unless such lease, development or improvement is first approved by a majority of the electors in a general or special election

Resolution 8859 (Passed on 2.12.20)

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fond du Lac that the City Council accepts and adopts the general concepts contained in the Alternative Master Plan for Lakeside Park and instructs staff to start planning and investigation for implementing the Alternative Master Plan for Lakeside Park.

Relevant Case Law

Direct legislation cannot be used to compel a city council to repeal an existing ordinance or resolution or to compel the passage of an ordinance which would be in clear conflict with one already in existence, such that it would act as a repealer of the existing ordinance. [Althouse, 79 Wis. 2d at 107, 255 N.W.2d at 453-54](#) (citing [Landt, 30 Wis. 2d 470, 141 N.W.2d 245](#)).