



# CITY OF RIPON

100 Jackson Street \* Ripon, WI 54971-1396

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## CITY OF RIPON COMMON COUNCIL MEETING Council Chambers, City Hall Monday, August 26, 2024 7:00 p.m.

- I. Call to order/roll call
- II. Pledge of Allegiance/Invocation
- III. Approval of agenda
- IV. Public communications and comment
- V. Mayoral Proclamation – International Overdose Awareness Day
- VI. Agenda items
  1. Resolution Authorizing Limited Bowhunting within the City Limits  
(Staff note: During the past 17 years, “Team Ripon” has removed 208 deer. Deer damage complaints remain, and Team Ripon/city staff recommend that bow hunting be allowed to control the deer population.)
  2. Resolution Amending the City of Ripon Employee Handbook – Health/Dental Insurance  
(Staff note: The resolution amends the Employee Handbook to include dental insurance into the city’s health insurance plan effective January 1, 2025.)
  3. Existing Employer Option Resolution Wisconsin Public Employers’ Group Health Insurance Program  
(Staff note: The resolution selects the City of Ripon’s group health insurance program design to include dental coverage. The city’s current selection is the P14 option with the change to P04 effective January 1, 2025.)
  4. Municipality Track Agreement with WSOR  
(Staff note: The Municipal Track Agreement allows for WSOR/WATCO to operate on the city-owned industrial rail spur. See staff report.)
  5. Ordinance to Amend Chapter 20.46 Floodplains of the Municipal Code  
(Staff note: The Plan Commission held the required public hearing on August 21, 2024. The ordinance amendments are required as part of DNR recommendations and updated FEMA mapping.)
  6. Professional Services Agreement - Selfridge Park Improvements  
(Staff note: Attached is the PSA for the Selfridge Park design. This includes the stewardship grant administration. The project is scheduled for 2025.)

7. Review Ordinance Chapter 13.35 All-Terrain and Off-Road Vehicles  
(Staff note: A request was made at the Augst 14, 2024 Common Council meeting to have the council review/discuss the city's ATV/UTV ordinance.)

8. 2025 Budget Update  
(Staff note: Staff will provide a brief update on the 2025 budget and timeline.)

VII. Project Updates & Staff Reports

VIII. Mayor's Communications and Appointments

IX. Agenda items for future Council meetings

X. Adjourn



WHEREAS; International Overdose Awareness Day is recognized globally on August 31<sup>st</sup> to raise awareness about the risks of overdosing, honor the individuals whose lives have been lost from overdosing and acknowledge the grief felt by families, friends, and communities; and

WHEREAS; Overdose Awareness Day aims to publicly challenge the stigma associated with substance use disorders and overdosing; and

WHEREAS; many – though not all – drug overdoses in the United States and in Wisconsin are related to the use of opioids such as heroin, fentanyl, and prescription oxycodone; and

WHEREAS; every person deserves our best efforts to prevent injury and death from overdose, and it is imperative to support overdose prevention policies and projects and to help make sure everyone understands overdose is a social issue, which impacts the victim, families, friends, and communities; and

WHEREAS; the City of Ripon recognizes the importance of spreading awareness about how to identify an opioid overdose and what to do in the event of an overdose.

NOW, THEREFORE, I, Theodore Grant, Mayor of the City of Ripon, do hereby proclaim August 31, 2024, as

## **INTERNATIONAL OVERDOSE AWARENESS DAY**

throughout the City of Ripon and commend its thoughtful recognition to all citizens of our city.

Proclaimed this \_\_\_\_ day of August, 2024.

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Theodore Grant, Mayor

**RESOLUTION NO. 2024- \_\_\_\_\_**

**A RESOLUTION AUTHORIZING LIMITED  
BOWHUNTING WITHIN THE CITY LIMITS**

**WHEREAS**, the City of Ripon has determined that an increasing deer population within the City limits is causing property damage, and may create health and safety issues; and

**WHEREAS**, a group of local hunters known as Team Ripon is willing to reduce the herd size through limited bowhunting on lands located within the City; and

**WHEREAS**, the City has approved certain lands identified by Team Ripon, and as Team Ripon has secured adequate liability insurance and permission from property owners for bowhunting on these lands; and

**WHEREAS**, during the past 17 years, Team Ripon conducted very successful bowhunting efforts, removing a total of 208 deer from the City.

**NOW, THEREFORE, BE IT RESOLVED** that the Ripon Common Council authorizes bowhunting by Team Ripon on the properties identified, and as discussed with City staff, for the period from September 2024 through February 2025.

\_\_\_\_\_  
Theodore Grant, Mayor

\_\_\_\_\_  
Adam Sonntag, City Administrator

AYES \_\_\_\_ NAYES \_\_\_\_  
PASSED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2024

Approved as to form:

\_\_\_\_\_  
Ludwig L. Wurtz, City Attorney

## 2023 Team Ripon Results

### \*10 Deer removed from:

2- 434 Stone Hedge Ct / 3- City Garage / 1-Lincoln St / 4-Stone Hill Ct

### Positives:

- \* 10 clean kills - 8 adult doe, 2 Buck
- \* No neighbor conflicts
- \*All deer were distributed to variety of people to use meat – no waste
- \*Zero cost to city
- \*safe hunt – no injuries & 0 property damage

### Negatives:

- \*Not allowed to hunt in some areas where the deer concentrations were found.
- \*NO BAITING ALLOWED!
- \* People activity during hunting hours
- \* Bird feeders
- \* We are aware of some residence feeding the deer

### Recommendations for next hunt:

- \*Start at beginning of bow season and run through February with DNR program with nuisance tags.
- \* Obtain more hunting locations – Around Murray Park, around Kiwanis Park and Ripon College.
- \*Use productive past sites & locate other areas where deer are concentrated
- \*Use same hunters as last year – good track record, easy to organize with minimal group size, don't trust people you don't know

Summary: Shot 208 deer in (17) years (from 31 '07 / 20 ' 08 / 16 ' 09 / 5 ' 10 / 7' 11/ 6' 12/8' 13 /9'14/19' 15 / 14' 16/27' 17/3' 18 /11' 19/6'20/6'21/10'22/10'23 This has been a productive low incident project over the last 16 years . Without baiting it was tough and will be again this year but the herd has grown and needs thinning. Without bait costs or tag costs using DNR nuisance tags there will be zero cost to the city!

Any questions please contact

Kraig Bauman

**RESOLUTION NO. 2024 – \_\_\_\_\_**

**AMENDING THE CITY OF RIPON EMPLOYEE HANDBOOK**

**WHEREAS**, the City of Ripon has approved a comprehensive Employee Handbook to determine employee work conditions and benefits; and

**WHEREAS**, from time-to-time amendments to the Employee Handbook are required to address changing benefits structures, current/best practices, and required updates; and

**WHEREAS**, the City is participating in the WI ETF State Health Insurance Plan and would like to amend the plan design to include dental insurance starting January 1<sup>st</sup>, 2025.

**NOW, THEREFORE BE IT RESOLVED**, by the Common Council of the City of Ripon, that the City of Ripon Employee Handbook be amended to as follows effective January 1<sup>st</sup>, 2025:

**314 HEALTH INSURANCE**

The City of Ripon provides group health insurance benefits with dental insurance to all WRS-eligible employees under the following contribution schedule:

- A. Full-time (30-40 hours): Employer 88% / Employee 12% of the average premium cost of qualified tier one health plans in the county.
- B. Regular Part-time (20-29 hours): Employer 50% / Employee 50% of the average premium cost of qualified tier one health plans in the county.
- C. Part-time (under 20 hours): Employer 25% / Employee 75% of the premium cost.

The City Administrator’s Office will provide detailed information regarding health insurance upon request.

The City of Ripon offers employees the option of participating in comprehensive vision insurance with the employer covering 100% of the premium cost. Participation is optional and is funded through payroll deduction. For more information regarding dental and vision plans contact the City Administrator’s office.

\_\_\_\_\_  
Theodore Grant, Mayor

ATTEST:

\_\_\_\_\_  
Adam Sonntag, City Administrator

AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2024

Approved as to form:

\_\_\_\_\_  
Ludwig L. Wurtz, City Attorney



# Existing Employer Option Resolution Wisconsin Public Employers' Group Health Insurance Program

Wisconsin Department  
of Employee Trust Funds  
PO Box 7931  
Madison WI 53707-7931  
1-877-533-5020 (toll free)  
Fax 608-267-4549  
etf.wi.gov

RESOLVED, by the Common Council of the City of Ripon  
(Governing Body) (Employer Legal Name)

that pursuant to the provisions of Wis. Stat. § 40.51 (7) hereby determines to offer the Wisconsin Public Employers (WPE) Group Health Insurance program to eligible personnel through the program of the State of Wisconsin Group Insurance Board (Board), and agrees to abide by the terms of the program as set forth in the *Local Employer Health Insurance Standards, Guidelines and Administration Manual* (ET-1144).

All participants in the WPE Group Health Insurance program will need to be enrolled in a program option. An employer may elect participation in program options listed below, **with each program option to be offered to different employee classifications (pursuant to collective bargaining). Individual employees cannot choose between program options.**

We choose to participate in the: (check applicable options)

- Traditional HMO-Standard PPO W/Dental, P02
- Deductible HMO-Standard PPO W/ Dental, P04
- Coinsurance HMO-Standard PPO W/ Dental, P06
- High Deductible Health Plan HMO-Standard HDHP PPO W/ Dental, P07
- Traditional HMO-Standard PPO W/O Dental, P12
- Deductible HMO-Standard PPO W/O Dental, P14
- Coinsurance HMO-Standard PPO W/O Dental, P16
- High Deductible Health Plan HMO-Standard HDHP PPO, P17

Send resolution(s) to:  
Department of Employee Trust Funds  
Division of Insurance Services  
PO Box 7931  
Madison WI 53707-7931  
or  
[ETF SMBESSNewEmployer@etf.wi.gov](mailto:ETF SMBESSNewEmployer@etf.wi.gov)

The resolution must be received by the Department of Employee Trust Funds no later than October 1 for coverage to be effective the following January 1. The proper officers are herewith authorized and directed to take all actions and make salary deductions for premiums and submit payments required by the Board to provide such Group Health Insurance.

### Certification

I hereby certify that the foregoing resolution is a true, correct and complete copy of the resolution duly and regularly passed by the above governing body on the 26th day of August, year 2024 and that said resolution has not been repealed or amended, and is now in full force and effect.

Dated this 26th day of August, year 2024.

I understand that Wis. Stat. § 943.395 provides criminal penalties for knowingly making false or fraudulent statements, and hereby certify that, to the best of my knowledge and belief, the above information is true and correct.

\_\_\_\_\_  
Federal tax identification number (FEIN/TIN)

69-036-  
\_\_\_\_\_  
ETF employer identification number

Number of eligible employees \_\_\_\_\_

Fond du Lac  
\_\_\_\_\_  
Employer county

\_\_\_\_\_  
Employer benefit contact email address

\_\_\_\_\_  
Authorized employer representative signature

Theodore Grant  
\_\_\_\_\_  
Authorized employer representative printed name

Mayor  
\_\_\_\_\_  
Authorized representative title

100 Jackson St., Ripon, WI 54971  
\_\_\_\_\_  
Mailing address

*For ETF use only*  
EFFECTIVE DATE OF COVERAGE ENTERED BY ETF:



# CITY OF RIPON

100 Jackson Street \* Ripon, WI 54971-1396

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## Staff Report

### **Agenda Item:** Municipality Track Agreement with WSOR

**Overview:** The City of Ripon has been working toward a Municipal Track Agreement with Wisconsin & Southern Railroad, L.L.C. (WSOR) for approximately 9+ months. The agreement outlines the responsibilities and terms for the operation and maintenance of a railroad track owned by the City on N. Douglas St. that serves the Industrial Park. The track will be utilized by WSOR for rail operations serving the City's industrial businesses.

### **Key Terms for the City:**

#### **1. Ownership & Maintenance:**

- The City of Ripon owns the track and is responsible for its maintenance, including drainage, snow and ice removal, vegetation control, and grade crossing maintenance. This is no change from current practice or responsibilities.
- In our research, the possibility of selling the rail was brought up. The city received a WisDOT TEA grant to fund the spur, and a sale would require a repayment of approximately \$148,000 to the state. The city remains interested in selling the rail to any interested party and is willing to work through the TEA grant repayment with the acquiring party. No party has expressed interest in acquiring the rail.
- As an alternative to a sale, the city discussed the closure of the rail with WisDOT, and they did not object to this approach. The city would be required to keep the track in working order if it were closed.

#### **2. Operations:**

- The agreement requires compliance with all relevant legal requirements, especially concerning hazardous materials and infrastructure safety.
- Through our communication with the business users of the rail, it has become clear that one of the users is not interested in utilizing the rail (APE Paper). The other business, MSI Express, is interested in keeping the rail option but does not use it frequently.

#### **3. Financial Obligations:**

- The City is responsible for covering all costs related to the track's maintenance and operation.

#### **4. Liability & Insurance:**

- Both parties agree to indemnify each other for liabilities arising from negligence or willful misconduct, with specific limitations as per Wisconsin law.
- Both parties are required to maintain adequate insurance coverage as outlined in the agreement.
- The city's insurance provider has reviewed the Agreement. A major point of contention was the city's request to be listed as additionally insured by WSOR. WSOR has agreed to add language to Section 7.2 to additionally insure the City of Ripon.



**5. Termination:**

- Either party can terminate the agreement with 30 days' notice. The agreement also details specific conditions under which immediate termination can occur.

**Recommendation:** It's recommended that the Common Council approve the Municipal Track Agreement with WSOR if it is determined to be in the city's best interest to maintain rail access across this line, provided a sale is not currently an option.

**WSOR**  
**MUNICIPALITY TRACK AGREEMENT**

This **Municipality Track Agreement** (“Agreement”), is dated as of 12/14/2023, (“Effective Date”) by and between the following:

**Railroad**

Railroad:	Wisconsin & Southern Railroad, L.L.C
Entity State/Type:	DE / Limited Liability Company
Mailing Address:	315 W. Third Street
City, State, Zip:	Pittsburg, KS 66762
Agreement Originator Name:	Jamaar Benton
Agreement Originator Phone:	608-235-9066
Agreement Originator Email:	Jamaar.Benton@watco.com

And

**Municipality**

Municipality:	City of Ripon
Mailing Address:	100 E Jackson St
City, State, Zip:	Ripon, WI, 54971
Agreement Originator Name:	
Agreement Originator Phone:	
Agreement Originator Email:	

**WHEREAS**, Municipality desires Railroad to operate over certain Municipality owned track shown on **Exhibit “A”**, located at Mile Post **170.15**, in City of **Ripon**, County of **Fond du Lac**, and State of **WI** (“Municipality Track”), for the purpose of serving a facility operated by Municipality (“Plant”).

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree to the maintenance and operation of the Municipality Track on the following terms and conditions:

**1. OWNERSHIP AND MAINTENANCE.**

- 1.1. Municipality owns the Municipality Track, and it shall at its sole risk and expense, maintain, or cause to be maintained, the Municipality Track.
- 1.2. The term “Maintenance” for the purpose of this Agreement includes, but is not limited to, responsibility for providing proper drainage along the relevant portion of the Municipality Track

and for keeping the Municipality Track free and clear of snow, ice, vegetation, structures, and other obstacles, and for maintaining all grade crossing surface and grade crossing warning devices, stop signs, gates, fences or barriers, roadway construction, track drainage facilities, lighting, track signals and signal maintenance, all in accordance with all applicable laws, statutes, regulations, ordinances, orders, covenants and restrictions (collectively, “Legal Requirements”).

- 1.3. Without relieving Municipality from any of its obligations under this Agreement, Railroad may refuse to operate over the Municipality Track whenever Railroad, in its reasonable discretion, determines that the condition of Municipality Track is unsatisfactory for Railroad’s operation. When Municipality has remedied such unsatisfactory condition to Railroad’s reasonable satisfaction, Railroad shall resume operation over the Municipality Track.

## **2. OPERATION.**

- 2.1. Municipality shall, at its sole expense, pay all costs for changes, repairs or alterations to the Municipality Track that may be necessary in order to conform to any changes of grade or relocation of any track owned by Railroad (“Railroad Track”) at the point of connection with the Municipality Track, if such change of grade or relocation is required to comply with any Legal Requirement or is made for any other reason beyond Railroad's reasonable control.
- 2.2. In the event the Municipality Track is used for receiving, forwarding, or storing hazardous materials as defined by any federal, state, or local environmental law or regulation, Municipality agrees to comply with all applicable Legal Requirements and with Railroad's further requirements concerning the same.
- 2.3. Municipality shall construct, install, use, maintain, and repair all non-railroad related infrastructure, hereinafter “Facilities” at its sole risk and expense, in a manner and of materials satisfactory to provided safe Railroad operations. Municipality, during the installation, construction, use, operation, renewal, relocation, modification, maintenance and repair of these Facilities, shall exercise reasonable diligence to prevent damage to the property of Railroad or injury to its agents, employees, invitees and contractors. The presence of any Facilities must never be a source of danger to or interfere with the safe operations of Railroad over the Municipality Track.
- 2.4. Municipality shall keep any gates across the Municipality Track open whenever necessary, in Railroad’s sole judgment, to enable Railroad to safely and efficiently operate over the Municipality Track. Municipality shall keep unloading pits securely covered when not in actual use, and at all times when Railroad is operating over Municipality Track. Municipality must keep all doors firmly secured, and adjustable loading docks at warehouses shall likewise be securely fastened in

an upright position when not in actual use and at all times when Railroad operations are being performed. Municipality shall operate and maintain all other Facilities so as not to negatively affect the safe and efficient operation of Railroad over Municipality Track.

### **3. DEFINITION OF COST AND EXPENSE.**

- 3.1. For the purpose of this Agreement, “cost” or “costs” “expense” or “expenses” include, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
- 3.2. All invoices are due thirty (30) days after Municipality’s receipt of an invoice from Railroad. In the event Municipality shall fail to pay any monies due to Railroad within thirty (30) days after Municipality’s receipt of such invoice, then Municipality shall pay a service charge at the rate of 1.5% per month (or at the legal maximum in the jurisdiction where the Municipality Track is located, whichever is less) on the amount of any such unpaid amount.

### **4. CLEARANCES.**

- 4.1. Municipality shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within 8 feet 6 inches laterally from the center (9 feet 6 inches on either side of the centerline of curved Municipality Track) or from 23 feet 6 inches vertically from the top of the rail of said Municipality Track (“Minimal Clearances”), provided that if any Legal Requirement requires greater clearances than those provided for in this Section 8, then Municipality shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this Section 8, so long as Municipality strictly complies with the terms of any such Legal Requirement.
- 4.2. Railroad's operation over the Municipality Track with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Municipality contained in this Section 8 or of Railroad's right to recover and be indemnified and defended against such damages to property, or injury to or death of persons, that may result therefrom.
- 4.3. Municipality shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on the Municipality Track.

### **5. COMPLIANCE WITH LAWS.**

- 5.1. Municipality shall obtain, at its sole expense, all necessary real property rights and public authority and permission, including applicable permits, for the Maintenance of, and operation over, the Municipality Track. Municipality shall timely pay all compensation, assessments and levies

required at any time by a municipality or any other public authority for the privilege of maintaining and operating the Municipality Track and shall not cause or permit any liens to be filed against the Railroad Track or any Railroad property. In the event any such liens are filed, Municipality shall cause such liens to be released or provide security sufficient to bond over any such lien within fifteen (15) days.

- 5.2. Both Parties further agree to fulfill all obligations, and exercise all rights, in full compliance with all laws, statutes, regulations, ordinances, orders, covenants and restrictions and Legal Requirements.

## **6. LIABILITY.**

- 6.1. **TO THE FULLEST EXTENT PERMITTED BY LAW, MUNICIPALITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "RAILROAD INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD.**
- 6.2. **TO THE FULLEST EXTENT PERMITTED BY LAW, RAILROAD SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS MUNICIPALITY AND MUNICIPALITY'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "MUNICIPALITY INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD.**
- 6.3. **NOTHING CONTAINED WITHIN THIS AGREEMENT IS INTENDED TO BE A WAIVER OR ESTOPPEL OF THE CONTRACTING MUNICIPALITY OR ITS INSURER TO RELY UPON THE LIMITATIONS, DEFENSES, AND IMMUNITIES CONTAINED WITHIN WISCONSIN LAW, INCLUDING BUT NOT LIMITED TO,**

**THOSE CONTAINED WITHIN WISCONSIN STATUTES 893, 80, 895, 52, AND 345.05. TO THE EXTENT THAT INDEMNIFICATION IS AVAILABLE AND ENFORCEABLE, NEITHER THE MUNICIPALITY NOR ITS INSURER SHALL BE LIABLE IN INDEMNITY OR CONTRIBUTION FOR AN AMOUNT GREATER THAN THE LIMITS OF LIABILITY FOR MUNICIPAL CLAIMS ESTABLISHED BY WISCONSIN LAW.**

## **7. INSURANCE**

- 7.1. Municipality shall, at its sole cost and expense, procure and maintain during the life of this Agreement the insurance coverage as outlined in **Exhibit "B"**.
- 7.2. Railroad shall, at its sole cost and expense, procure and maintain during the life of this Agreement a Railroad Liability policy, in an amount of \$5,000,000 per occurrence and in the aggregate. Railroad shall add Municipality as an additional insured under such policy, subject to the obligations of Railroad under Section 6 and elsewhere in this Agreement.

## **8. ENVIRONMENTAL.**

- 8.1. Municipality shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Municipality Track. Municipality shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on, under, or within the Minimal Clearances of the Municipality Track. Municipality shall not release or suffer the release of any pollutant, as defined by Environmental Laws on, under or within the Minimal Clearances of the Municipality Track and any leased area by the Municipality
- 8.2. Municipality shall give Railroad immediate notice to Railroad at 866-386-9321 of any release of pollutants on or from the Municipality Track, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Municipality's use of the Municipality Track. Municipality shall use the best efforts to promptly respond to any release on or from the Municipality Track. Municipality also shall give Railroad immediate notice of all measures undertaken on behalf of Municipality to investigate, remediate, respond to or otherwise cure such release or violation.
- 8.3. In the event that Railroad has notice from Municipality or otherwise of a release or violation of federal, state, or local environmental health and safety regulations on the Municipality Track which occurred or may occur during the term of this Agreement, Railroad may require Municipality, at Municipality's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Plant, Municipality Track or Railroad's right-of-way.

- 8.4. Municipality shall promptly report to Railroad in writing any conditions or activities upon the Plant or Municipality Track which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Municipality's reporting to Railroad shall not relieve Municipality of any obligation whatsoever imposed on it by this Agreement. Municipality shall promptly respond to Railroad's request for information regarding said conditions or activities.

## **9. DEFAULT.**

- 9.1. If Municipality creates or maintains any condition on or about the Municipality Track, which in Railroad's reasonable judgment interferes with or endangers the operations of Railroad, or in case of any assignment or transfer of this Agreement by operation of law, Railroad may, at its option, terminate this Agreement by serving fifteen (15) days' notice in writing upon Municipality. Notwithstanding the foregoing, if such termination is a result of a condition interfering with or endangering operations of Railroad and Municipality commences work to remedy such condition within said fifteen (15) day notice period and is diligently pursuing such remedy, Railroad may suspend all service to Municipality while the condition exists but may not terminate the Agreement unless and until Municipality ceases in its efforts to remedy the condition prior to completion whereupon the Agreement shall immediately terminate without further notice.
- 9.2. Except as otherwise set forth in subparagraph 9.1 above, if Municipality defaults on any of the covenants or agreements of Municipality contained in this document, for a period of thirty (30) days following written notice of such default by Railroad, Railroad may, at its option, terminate this Agreement on five (5) days' notice in writing to Municipality.

## **10. TERM; TERMINATION.**

- 10.1. This Agreement, unless terminated by either party due a default as outlined in Section 9, will remain in full force and effect until terminated by either party for any reason upon thirty (30) days' advance written notice.
- 10.2 In addition to all other remedies available at law or in equity, Railroad may, without incurring any liability to Municipality, terminate this Agreement and discontinue the maintenance and operation of the Municipality Track and remove the Railroad Track, in the event of any of the following contingencies:
- 10.2.1 If Municipality fails to utilize rail service from Railroad to or from the Plant for a period of eight (8) consecutive months, Railroad may, at its option, expressed in writing, terminate this Agreement, effective immediately.

10.2.2 If Railroad is required by competent public authority to abandon its line to which the Municipality Track is connected, Railroad may, upon written notice to Municipality, terminate this Agreement effective immediately.

10.2.3 If Railroad is dispossessed of the right to operate over the Municipality Track or its connecting track or any part thereof which effectively prevents service to Municipality, Railroad may terminate this Agreement effective immediately by written notice to Municipality.

10.3 In addition to all other remedies available at law or in equity, Municipality may, without incurring any liability to Railroad, terminate this Agreement and discontinue the maintenance and operation of the Municipality Track and remove the Municipality Track, at its option, in the event Railroad ceases to provide service to Municipality for a period of eight (8) consecutive months. In the event of a default by Railroad continuing for a period of thirty (30) days following written notice of such default by Municipality, Municipality may, at its option, terminate this Agreement on five (5) days' notice in writing to Railroad. Any waiver by Municipality of any default or defaults shall not constitute a waiver of the right to terminate this Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Municipality's ability to enforce any Section of this Agreement. The remedy set forth in this Subsection 10.3 shall be in addition to, and not in limitation of, any other remedies that Municipality may have at law or in equity.

10.4 Upon the expiration or earlier termination of this Agreement as provided herein, Municipality shall, at its sole cost and expense, remove any Facilities or improvements upon, over, or under the Municipality Track and restore the Railroad's right-of-way to substantially the state in which it was on the Effective Date of this Agreement. In the event Municipality shall fail within thirty (30) days after the date of such termination to make such removal and restoration, the Railroad may, at its option, remove the Facilities or improvements or otherwise restore its right-of-way, and in such event Municipality shall, within thirty (30) days after receipt of a bill therefor, reimburse Railroad for any costs incurred.

10.5 Municipality hereby agrees to waive and release all claims, rights, and causes of action that Municipality has, may have, or may assert against Railroad because of the discontinuance of operation and removal of the Railroad Track as provided in this Section 10.2 of this Agreement.

## **11. MISCELLANEOUS.**

11.1 **Assignment; Binding on Successors.** Municipality may not assign this Agreement, nor any of its individual rights or obligations under this Agreement, without the prior consent of Railroad, which consent may not be unreasonably withheld, delayed or conditioned. Municipality may,



however, after providing Railroad with notice, assign this Agreement to an affiliate or subsidiary as part of any corporate reorganization or recapitalization, without seeking the consent of Railroad. This Agreement will inure to the benefit of and be binding upon the successors and assigns of the Parties.

- 11.2 **Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing, and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

**If to Railroad**

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Company: Wisconsin & Southern Railroad, L.L.C  
 Attention: General Counsel  
 Mailing Address: 315 W. Third Street  
 City, State, Zip: Pittsburg, KS 66762

**If to Municipality**

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Company: CITY OF RIPON  
 Attention: Adam Sonntag  
 Mailing Address: 100 E Jackson St,  
 City, State, Zip: Ripon, WI, 54971

- 11.3 **Survival.** Neither termination nor expiration will release either party from any liability or obligation assumed under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, the date when the Municipality Track, Facilities, and improvements are removed and the right-of-way is restored to its condition as of the Effective Date.
- 11.4 **Recordation; Announcements.** This Agreement will not be made of public record, nor will any press release or announcement be issued with respect to this Agreement, without the prior written consent of Railroad.
- 11.5 **Governing Law.** The laws of the state where the Municipality Track is located, without giving effect to any choice of law or conflict of law rules or provisions, govern all matters arising out of

or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the state courts of the such state, or in the United States District Court for the district where the Municipality Track is located.

- 11.6 **Severability.** To the maximum extent allowed by law, if any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement are not affected or impaired in any way. Each covenant, agreement, obligation or other provision of this Agreement is separate and independent of any other provision of this Agreement unless expressly provided herein. Notwithstanding the foregoing, if it is judicially determined that the indemnities voluntarily assumed in this Agreement exceed the maximum limits under applicable law, it is agreed that said indemnities will automatically be amended to conform to the maximum limits permitted under such law.
- 11.7 **Entire Agreement.** This Agreement, together with any exhibits or schedules, sets forth the entire agreement between the Parties, and replaces and supersedes any prior agreements, understandings, negotiations, or discussions between the Parties relative to the subject matter of this Agreement. Nothing contained herein, however, is intended to terminate any surviving obligation of a Party in any prior written agreement between the parties, including, but not limited to, the Parties' obligation to defend and hold the other harmless. This Agreement may only be modified by a written amendment signed by an authorized representative of both Parties and said written amendment must expressly refer to this Agreement. At no time shall either Party use a purchase order or other invoicing or payment document to attempt to modify the terms and conditions of this Agreement. Any attempt to modify the terms in such a manner shall be considered null and void.
- 11.8 **Joint and Several.** In the event Municipality consists of two or more parties, all covenants and agreements of Municipality are joint and several covenants and agreements of such parties.
- 11.9 **Non-waiver.** The failure of either party to insist upon or enforce, in any instance, strict performance by the other party of any of the requirements, covenants, conditions, or restrictions of this Agreement or to exercise any rights herein conferred, may not be construed as a waiver or relinquishment of the party's right to assert or rely upon such terms or rights on any future occasion, except to the extent the party specifically expresses, in writing, its intent to waive its rights.

- 11.10 **Captions & Terminology.** The descriptive headings of the articles, sections, and subsections of this Agreement are for convenience of reference only and do not constitute a part of this Agreement. Any reference in this Agreement to the singular includes the plural where appropriate, and any reference in this Agreement to the masculine gender includes the feminine and neuter genders where appropriate.
- 11.11 **Authority.** By execution of this Agreement, the parties represent to the other that they are entities validly existing, duly constituted and in good standing under the laws of the jurisdiction in which they were formed and in which they presently conduct business. The parties further represent that all acts necessary to permit them to enter into and be bound by this Agreement have been taken and performed, and the persons signing this Agreement on their behalf have due authorization to do so. The parties further represent that they have carefully read this Agreement, and that they have consulted with legal counsel regarding the terms and provisions of this Agreement (or have had the opportunity to consult with legal counsel and have chosen not to do so), and that they have relied solely upon their own judgment without the influence of anyone in entering into this Agreement.
- 11.12 **Drafting.** The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 11.13 **Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or by e-mail in portable document format “PDF”, is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

**IN WITNESS WHEREOF**, the said parties hereto have caused this Agreement to be duly executed and delivered as of the day and year above first written.

Wisconsin & Southern Railroad, L.L.C (Railroad)

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

Printed Name:

Title:

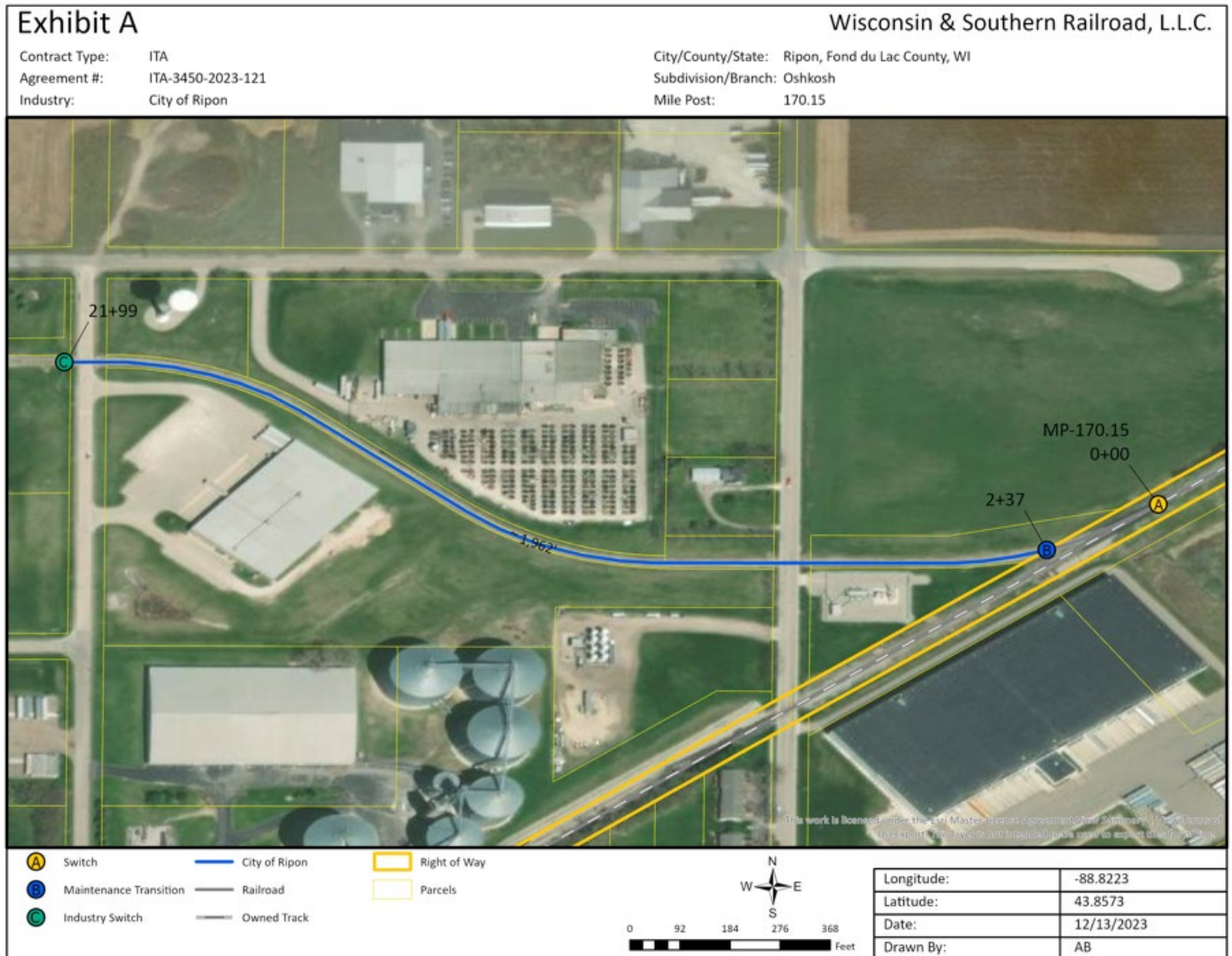
The City of Ripon (Municipality)

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

Printed Name:

Title:

# Exhibit A



1. Railroad	Wisconsin & Southern Railroad, L.L.C
2. Municipality	CITY OF RIPON
3. City, State	Ripon, WI
4. Milepost	170.15
5. Track ID(s)	Lead
<b>Point B to Point C</b>	Point of ownership and maintenance responsibility transition from Railroad to Municipality.

## Exhibit B

### MUNICIPALITY TRACK AGREEMENT INSURANCE REQUIREMENTS

Municipality shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

**Before** commencing work, the following categories of Municipality must provide a Certificate of Insurance certifying that the insurance limits and coverages, with the appropriate endorsements, all as outlined below are in effect.

COVERAGE TYPE	MINIMUM COVERAGE
<p><b><u>Commercial General Liability (CGL)</u></b></p> <p>Must include coverage for blanket contractual liability for the obligations assumed under contract including but not limited to:</p> <ul style="list-style-type: none"> <li>• Bodily injury and property damage</li> <li>• Fire legal liability</li> <li>• Pollution liability (sudden and accidental)</li> <li>• Emergency evacuation</li> <li>• The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.</li> <li>• Any exclusions related to the explosion, collapse and underground hazards shall be removed.</li> <li>• No other endorsements limiting coverage may be included on the policy with regards to the work being performed under this agreement.</li> </ul>	<p>\$5,000,000 Per Occurrence</p>
<p><b><u>All Risk Property</u></b></p> <p>All risks property insurance covering all of Municipality's property including property in the care, custody or control of Municipality. Coverage shall include the following:</p> <ul style="list-style-type: none"> <li>• Issued on a replacement cost basis.</li> <li>• Include a standard loss payable endorsement naming Railroad as the loss payee as its interests may appear.</li> </ul>	<p>Replacement Value</p>
<p><b><u>Automobile Liability</u></b></p> <p>Coverage must extend to all owned, hired, and non-owned vehicles and must include coverage for blanket contractual liability for the obligations assumed under contract.</p>	<p>\$2,000,000 Combined Single Limit Each Occurrence</p>
<p><b><u>Workers' Compensation</u></b> <b><u>Employers Liability</u></b></p> <p>Must include coverage for Longshoremen's and Harbor Workers' Compensation, if applicable, and coverage for Federal Employers' Liability Act, if applicable.</p>	<p>Statutory Limits where Services are to be performed \$1,000,000 Each Occurrence \$1,000,000 Disease Per Employee</p>
<p><b><u>Pollution Liability</u></b></p> <ul style="list-style-type: none"> <li>• Non-Hazmat</li> <li>• Hazmat</li> </ul> <p>The policy shall provide for protection against claims for third-party bodily injury, property damage, environmental damage, and clean-up cost caused by pollution conditions resulting from actions taken under this contract.</p>	<p>\$1,000,000 each occurrence \$5,000,000 each occurrence</p>

**\*\*An Umbrella liability policy, which follows form, may be used to obtain the aforementioned limits.**

### **Certificate Holder and Endorsement Requirements**

1. Railroad shall be listed as Certificate Holder as follows:  
**Watco Companies, L.L.C., and its affiliates, subsidiaries and assigns 315 W. 3rd St.  
Pittsburg, KS 66762.**
2. All aforementioned policies shall contain a blanket waiver of subrogation in favor of Certificate Holder, and an additional insured endorsement naming Certificate Holder as Additional Insured (with the exception of Workers' Compensation and Employer's Liability). All aforementioned policies shall be primary and non-contributory with respect to any insurance carried by Railroad.
3. If any policies are purchased on a "claims made" basis, Municipality hereby agrees to maintain coverage in force for a minimum of three years and shall provide evidence of such coverage to Railroad, on an annual basis, during this additional three-year period.

### **Other Requirements**

1. All policies required shall be written by a reputable insurance company reasonably acceptable to Railroad or with a Best's Guide Rating of A- and Class VII or better and authorized to do business in the state(s) in which Municipality is conducting business.
2. Municipality shall notify Railroad in writing at least thirty (30) days prior to any cancellation, non-renewal, and substitution or material alteration to any of the aforementioned policies.
3. Failure to provide evidence as required shall entitle, but not require, Railroad to terminate immediately.
4. Acceptance of a certificate that does not comply with this document shall not operate as a waiver of Municipality's obligations hereunder.
5. Municipality is not allowed to have a self-insure greater than \$250,000 without prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other similar financial responsibility for claims shall be covered directly by Municipality in lieu of insurance. Any and all Municipality liabilities that would otherwise, in accordance with the provisions of this document, be covered by Municipality's insurance will be covered as if Municipality elected not to include a deductible, self-insured retention or other financial responsibility for claims.
6. If any portion of the operation is to be subcontracted by Municipality, Municipality shall require that the subcontractor shall provide and maintain insurance coverage as set forth herein, naming Railroad as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Municipality is required to release, defend and indemnify Railroad herein.
7. Failure to provide evidence as required by this section shall entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Municipality's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Municipality shall not be deemed to release or diminish the liability of Municipality including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

# SUMMARY OF CHANGES

## COMMUNITY CHECKLIST FOR FLOODPLAIN ORDINANCE REVIEW – All Sections

Form 3500-141 (8/21)

Pages 1 of 5

Community Name Ripon County FDL State WI Date 06/27/24

Community Contact Adam Sonntag Title City Administrator Phone (920)748-4914 DNR Reviewer M. Van Horn

<u>Item Description / Ordinance Requirements</u>	<u>Model Section</u>	<u>Present?</u>	<u>Local Section</u>	<u>Comments</u>
<b>Statutory Authority, Fact</b>	1.1-2	<input type="checkbox"/>		
<b>Purpose</b>	1.3	<input type="checkbox"/>		
<b>Title</b>	1.4	<input type="checkbox"/>		
<b>General Provisions</b>	1.5	<input type="checkbox"/>		
- areas to be regulated	1.5(1)	<input type="checkbox"/>		
- official maps and revisions	1.5(2)(a-b)	<input type="checkbox"/>		55039CIND0A can be removed. Please add panel 55039C0208F Please change the FIS date to 12/20/2024
- establishment of districts	1.5(3)	<input type="checkbox"/>		
- locating floodplain boundaries	1.5(4)(a-b)	<input type="checkbox"/>		
- removal of lands from floodplain	1.5(5)(a-c)	<input type="checkbox"/>		
- compliance	1.5(6)(a-c)	<input type="checkbox"/>		
- agencies regulated (3/10/22 updated)	1.5(7)	<input type="checkbox"/>		
- abrogation/greater restrictions	1.5(8)(a-b)	<input type="checkbox"/>		
- interpretation	1.5(9)	<input type="checkbox"/>		
- warning and disclaimer of liability	1.5(10)	<input type="checkbox"/>		
- severability	1.5(11)	<input type="checkbox"/>		
- annexed areas for cities and villages	1.5(12)	<input type="checkbox"/>		Please replace Manitowoc County with Fond du Lac County
<b>General Standards – All Districts</b>	2.0	<input type="checkbox"/>		
- flood-prone area	2.0(1)(a-d)	<input type="checkbox"/>		(d) updated in 2022 for all versions.
- subdivision in a flood-prone area	2.0(2)(a-c)	<input type="checkbox"/>		
<b>H &amp; H Analysis</b>	2.1	<input type="checkbox"/>		
- obstruction/increase	2.1(1)	<input type="checkbox"/>		
- deny if obstruct flow or cause any increase	2.1(2)	<input type="checkbox"/>		
<b>Watercourse Alterations</b>	2.2	<input type="checkbox"/>		



**COMMUNITY CHECKLIST FOR FLOODPLAIN ORDINANCE REVIEW – All Sections**

Form 3500-141 (8/21)

<u>Item Description / Ordinance Requirements</u>	<u>Model Section</u>	<u>Present?</u>	<u>Local Section</u>	<u>Comments</u>
<b>Chapter 30 and 31 Wis. Statutes.</b>	2.3	<input type="checkbox"/>		
<b>Public or Private Campgrounds (3/10/22 updated)</b>	2.4 (1-12)	<input type="checkbox"/>		
<b>Flooded Agricultural – Cranberry Farms (FA-C)</b>	2.5	<input type="checkbox"/>		
<b>Floodway District (FW)</b>	3.0	<input type="checkbox"/>		
<b>Applicability</b>	3.1	<input type="checkbox"/>		
<b>Permitted Uses</b>	3.2(1-11)	<input type="checkbox"/>		
<b>Standards for Development (FW)</b>	3.3	<input type="checkbox"/>		
General	3.3(1)(a-c)	<input type="checkbox"/>		
Structures	3.3(2)(a-g)	<input type="checkbox"/>		
Public Utilities, Streets/Bridges and Fill	3.3(3-4)	<input type="checkbox"/>		
<b>Prohibited Uses (FW)</b>	3.4(1-8)	<input type="checkbox"/>		
<b>Floodfringe District (FF)</b>	4.0	<input type="checkbox"/>		
<b>Applicability</b>	4.1	<input type="checkbox"/>		
<b>Permitted Uses</b>	4.2	<input type="checkbox"/>		
<b>Standards for Development (FF)</b>	4.3	<input type="checkbox"/>		
- Standards for Development (FF)Residential uses	4.3(1)(a-d2)	<input type="checkbox"/>		
- Accessory Structures or Uses	4.3(2)	<input type="checkbox"/>		
- Standards for Development (FF) (commercial, manufacturing and industrial uses)	4.3(3)&(4)	<input type="checkbox"/>		
- Storage of Materials	4.3(5)	<input type="checkbox"/>		
- Public Utilities, Streets and Bridges	4.3(6)(a-b)	<input type="checkbox"/>		
- Sewage Systems and Wells	4.3(7)&(8)	<input type="checkbox"/>		
- Solid Waste Disposal Sites	4.3(9)	<input type="checkbox"/>		
- Deposition of Materials	4.3(10)	<input type="checkbox"/>		
- Manufactured Homes	4.3(11)(a-c)	<input type="checkbox"/>		
- Mobile Recreational Vehicles	4.3(12)(a-b)	<input type="checkbox"/>		
<b>Other Floodplain Districts</b>	5.0	<input type="checkbox"/>		

**COMMUNITY CHECKLIST FOR FLOODPLAIN ORDINANCE REVIEW – All Sections**

Form 3500-141 (8/21)

<u>Item Description / Ordinance Requirements</u>	<u>Model Section</u>	<u>Present?</u>	<u>Local Section</u>	<u>Comments</u>
<b>General Floodplain District (GFD)</b>	5.1	<input type="checkbox"/>		
- applicability	5.1(1)	<input type="checkbox"/>		
- floodway boundary	5.1(2)	<input type="checkbox"/>		
- permitted uses	5.1(3)	<input type="checkbox"/>		
- standard for development	5.1(4)(a-d)	<input type="checkbox"/>		
- determining FW and FF limits	5.1(5)(a-b3)	<input type="checkbox"/>		
<b>Flood Storage Districts</b>	5.2	<input type="checkbox"/>		
- applicability	5.2(1)	<input type="checkbox"/>		
- permitted uses	5.2(2)	<input type="checkbox"/>		
- standards for development (FSD)	5.3(3)(a-d)	<input type="checkbox"/>		
<b>Coastal Floodplain District (CFD)</b>	5.3	<input type="checkbox"/>		
- applicability	5.3(1)	<input type="checkbox"/>		
- development standards	5.3(2)(a-i)	<input type="checkbox"/>		
<b>Nonconforming Uses</b>	6.0	<input type="checkbox"/>		
<b>General</b>	6.1	<input type="checkbox"/>		
- applicability	6.1(1)(a-b)	<input type="checkbox"/>		
- modifications and additions < 50%	6.1(2)(a)	<input type="checkbox"/>		
- deck conditions	6.1(2)(a)	<input type="checkbox"/>		
- discontinued use 12 for months	6.1(2)(b)	<input type="checkbox"/>		
- recordkeeping	6.1(2)(c)	<input type="checkbox"/>		
- modifications and additions definition	6.1(2)(d)	<input type="checkbox"/>		
- maintenance > 50%	6.1(2)(e)	<input type="checkbox"/>		
- modification/maintenance combined > 50% & dryland access	6.1(2)(f)	<input type="checkbox"/>		
- destroyed or damaged > 50%	6.1(2)(g)	<input type="checkbox"/>		
- non-flood disasters	6.1(2)(h)(1-2)	<input type="checkbox"/>		h.1.a. please change flood protection elevation to base flood elevation, unless the city wants to keep the higher standard.
- historic structures	6.1(3)	<input type="checkbox"/>		

**COMMUNITY CHECKLIST FOR FLOODPLAIN ORDINANCE REVIEW – All Sections**

Form 3500-141 (8/21)

<u>Item Description / Ordinance Requirements</u>	<u>Model Section</u>	<u>Present?</u>	<u>Local Section</u>	<u>Comments</u>
- Act 175 participants (3/10/22 update)	6.1(4)(a-p)	<input type="checkbox"/>		
<b>Floodway District</b>	6.2	<input type="checkbox"/>		
- floodproofing modifications and additions	6.2(1)(a-e4)	<input type="checkbox"/>		
- no sewage disposal	6.2(2)	<input type="checkbox"/>		
- no wells	6.2(3)	<input type="checkbox"/>		
<b>Floodfringe District</b>	6.3	<input type="checkbox"/>		
- modifications and additions on fill	6.3(1)	<input type="checkbox"/>		
- variance to 6.3(1)	6.3(2)(a-f)	<input type="checkbox"/>		
- sewage systems to SPS 383	6.3(3)	<input type="checkbox"/>		
- wells to NR 811 and NR 812	6.3(4)	<input type="checkbox"/>		
<b>Flood Storage Areas</b>	6.4	<input type="checkbox"/>		
<b>Coastal Floodplain District</b>	6.5 (1-2)	<input type="checkbox"/>		
- new construction and substantial damage	6.5(1)	<input type="checkbox"/>		
- equalized assessed value	6.5(2)	<input type="checkbox"/>		
<b>Administration</b>	7.0	<input type="checkbox"/>		
<b>Zoning Administrator</b>	7.1	<input type="checkbox"/>		
- ZA duties	7.1(1)(a-g)	<input type="checkbox"/>		
- substantial damage assessment	7.1(1)(c)	<input type="checkbox"/>		
- land use permits	7.1(2)	<input type="checkbox"/>		
- general information	7.1(2)(a)(1-2)	<input type="checkbox"/>		
- site development plan	7.1(2)(b)(1-9)	<input type="checkbox"/>		
- H & H data for analysis to DNR	7.1(2)(c)(1-2)	<input type="checkbox"/>		
- expiration	7.1(2)(d)	<input type="checkbox"/>		
- certificate of compliance	7.1(3)(a-f)	<input type="checkbox"/>		
- other permits	7.1(4)	<input type="checkbox"/>		
<b>Zoning Agency</b>	7.2(1-2)	<input type="checkbox"/>		

**COMMUNITY CHECKLIST FOR FLOODPLAIN ORDINANCE REVIEW – All Sections**

Form 3500-141 (8/21)

<u>Item Description / Ordinance Requirements</u>	<u>Model Section</u>	<u>Present?</u>	<u>Local Section</u>	<u>Comments</u>
<b>Board of Adjustment/Appeals</b>	7.3	<input type="checkbox"/>		
- powers and duties	7.3(1)(a-c)	<input type="checkbox"/>		
- appeals to the Board	7.3(2)(a-c)	<input type="checkbox"/>		
- boundary disputes to board	7.3(3)(a-c)	<input type="checkbox"/>		
- variance	7.3(4)(a-d)	<input type="checkbox"/>		
<b>To Review Appeals of Permit Denials</b>	7.4	<input type="checkbox"/>		
- review appeals-data	7.4(1)(a-d)	<input type="checkbox"/>		
- review appeals—process	7.4(2)(a-c)	<input type="checkbox"/>		
- review appeals-increases	7.4(3)(a-b)	<input type="checkbox"/>		
<b>Floodproofing</b>	7.5	<input type="checkbox"/>		
- floodproofing-dry	7.5(1)	<input type="checkbox"/>		
- floodproofing-wet	7.5(2)(a-b3)	<input type="checkbox"/>		
- floodproofing-measures	7.5(3)(a-g4)	<input type="checkbox"/>		
<b>Public Information</b>	7.6(1-3)	<input type="checkbox"/>		
<b>Amendments</b>	8.0(1-2)	<input type="checkbox"/>		
<b>General</b>	8.1(1-7)	<input type="checkbox"/>		
<b>Procedures</b>	8.2(1-3)	<input type="checkbox"/>		
<b>Enforcement/Penalty</b>	9.0	<input type="checkbox"/>		
<b>Definitions (1-89)</b>	10.0	<input type="checkbox"/>		

**ORDINANCE TO AMEND CHAPTER 20.46 FLOODPLAINS OF THE MUNICIPAL CODE CITY OF RIPON,  
WISCONSIN**

**WHEREAS**, the Common Council for the City of Ripon is desirous to recreate Chapter 20.46 of the Municipal Code; and

**NOW THEREFORE IT BE ORDAINED BY THE COUNCIL OF THE CITY OF RIPON, WISCONSIN AS  
FOLLOWS:**

**Chapter 20.46 FLOODPLAINS**

**ARTICLE I. STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND  
GENERAL PROVISIONS**

**20.46.011 STATUTORY AUTHORIZATION**

This ordinance is adopted pursuant to the authorization in s. 61.35 and 62.23; and the requirements in s. 87.30, Stats.

**20.46.012 FINDING OF FACT**

Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare, and tax base.

**20.46.013 STATEMENT OF PURPOSE**

This ordinance is intended to regulate floodplain development to:

- A. Protect life, health and property;
- B. Minimize expenditures of public funds for flood control projects;
- C. Minimize rescue and relief efforts undertaken at the expense of the taxpayers;
- D. Minimize business interruptions and other economic disruptions;
- E. Minimize damage to public facilities in the floodplain;
- F. Minimize the occurrence of future flood blight areas in the floodplain;
- G. Discourage the victimization of unwary land and homebuyers;
- H. Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- I. Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

**20.46.014 TITLE**

This ordinance shall be known as the Floodplain Zoning Ordinance for the City of Ripon, Wisconsin.

**20.46.015 GENERAL PROVISIONS**

(1) AREAS TO BE REGULATED

This ordinance regulates all areas of special flood hazard identified as zones A, AO, AH, A1-30, or AE on the Flood Insurance Rate Map. Additional areas identified on maps approved by the Department of Natural Resources (DNR) and local community may also be regulated under the provisions of this ordinance, where applicable.

(2) OFFICIAL MAPS & REVISIONS

Special Flood Hazard Areas (SFHA) are designated as zones A, A1-30, AE, AH, or AO on the Flood Insurance Rate Maps (FIRMs) based on flood hazard analyses summarized in the Flood Insurance Study (FIS) listed in subd. (a) below. Additional flood hazard areas subject to regulation under this ordinance are identified on maps based on studies approved by the DNR and listed in subd. (b) below. These maps and revisions are on file in the office of the Zoning Administrator, City Hall.

OFFICIAL MAPS: Based on the Flood Insurance Study (FIS):

(a) Flood Insurance Rate Map (FIRM), panel numbers , 55039C0201F, 55039C0202F, 55039C0203F, 55039C0204F, and 55039C0208Fdated 11/04/2009.

(b) Flood Insurance Study (FIS) for Fond Du Lac County, dated 12/20/2024 .

Approved by: The DNR and FEMA

(c) OFFICIAL MAPS: Based on other studies. Any maps referenced in this section must be approved by the DNR and be more restrictive than those based on the FIS at the site of the proposed development.

(1) Ripon Dam Failure analysis approved by the Department of Natural Resources on January 11, 2013, including:

(a)Map dated October 16, 2012 and titled "Flood Boundary Map Dam Breach Scenario".

(b)Floodway data table dated October 16, 2012 and titled "Table 6: Flow and Maximum Water Surface Elevation (WSEL) Summary", Dam Failure column.

(c)Flood profiles dated October 16, 2012 and titled "Ripon Dam Failure Profile".

(3) ESTABLISHMENT OF FLOODPLAIN ZONING DISTRICTS

The flood hazard areas regulated by this ordinance are divided into districts as follows:

(a) The Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters, within AE Zones as shown on the FIRM, or within A Zones shown on the FIRM when determined according to s. 20.46.052(5).

(b) The Floodfringe District (FF) is that portion of a riverine special flood hazard area outside the floodway within AE Zones on the FIRM, or, when floodway limits have been determined according to s. 20.46.052(5), within A Zones shown on the FIRM.

(c) The General Floodplain District (GFP) is those riverine areas that may be covered by floodwater during the regional flood in which a floodway boundary has not been delineated on the FIRM and includes shallow flooding areas identified as AH and AO zones on the FIRM.

(4) LOCATING FLOODPLAIN BOUNDARIES

Discrepancies between the exterior boundaries of zones A1-30, AE, AH, or A on the official floodplain zoning map and actual field conditions may be resolved using the criteria in subd (a) or (b) below. If a significant difference exists, the map shall be amended according to s. 20.46.081 *Amendments*. The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to s. 20.46.074(3) and the criteria in (a) and (b) below. Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must approve any map amendment or revision pursuant to s. 20.46.081 *Amendments*.

- (a) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
- (b) Where flood profiles do not exist for projects, including any boundary of zone A or AO, the location of the boundary shall be determined by the map scale.

(5) REMOVAL OF LANDS FROM FLOODPLAIN

(a) Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to s. 20.46.081 *Amendments*.

(b) The delineation of any of the Floodplain Districts may be revised by the community where natural or man-made changes have occurred and/or where more detailed studies have been conducted. However, prior to any such change, approval must be obtained from the Wisconsin Department of Natural Resources and Federal Emergency Management Agency. A completed Letter of Map Revision is a record of this approval. The floodplain administrator shall not sign a community acknowledgement form unless all criteria set forth in the following paragraphs are met:

1. The land and/or land around the structure must be filled at least two feet above the regional or base flood elevation;
2. The fill must be contiguous to land outside the floodplain; Applicant shall obtain floodplain development permit before applying for a LOMR or LOMR-F;

(c) Removal of lands from the floodplain may also occur by operation of §87.30(1)(e), Wis. Stat. if a property owner has obtained a letter of map amendment from the federal emergency management agency under 44 C.F.R. 70.

(6) COMPLIANCE

(a) No structure or use within areas regulated by this ordinance shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged, or altered without full compliance with the terms of these regulations and all other applicable regulations that apply to uses within the jurisdiction of these regulations.

(b) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with s. 20.46.091.

(c) Floodplain development permits issued based on plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications, or amendments thereto if approved by the Floodplain Administrator. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with s. 20.46.091.

(7) MUNICIPALITIES AND STATE AGENCIES REGULATED

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if s. 13.48(13), Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when s. 30.2022, Stats., applies. Although exempt from a local zoning permit and permit fees, DOT must provide sufficient project documentation and analysis to ensure that the community is in compliance with Federal, State, and local floodplain standards. If a local transportation project is located within a Zone A floodplain and is not a WisDOT project under s. 30.2022, then the road project design documents (including appropriate detailed plans and profiles) may be sufficient to meet the requirements for issuance of a local floodplain permit if the following apply: The applicant provides documentation to the Floodplain Administrator that the proposed project is a culvert replacement or bridge replacement under 20' span at the same location, the project is exempt from a DNR permit under s. 30.123(6)(d), the capacity is not decreased, the top road grade is not raised, and no floodway data is available from a federal, state, or other source. If floodway data is available in the impacted area from a federal, state, or other source that existing data must be utilized by the applicant in the analysis of the project site.

(8) ABROGATION AND GREATER RESTRICTIONS

- (a) This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under s. 62.23 and s. 87.30, Stats., which relate to floodplains. A more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (b) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

(9) INTERPRETATION

In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(10) WARNING AND DISCLAIMER OF LIABILITY

The flood protection standards in this ordinance are based on engineering experience and research. Larger floods may occur, or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. This ordinance does not create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(11) SEVERABILITY

Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.



(12) **ANNEXED AREAS FOR CITIES AND VILLAGES**

The Fond du Lac County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code and 44 CFR 59-72, *National Flood Insurance Program* (NFIP). These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the municipal zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the floodway location.

**ARTICLE II. GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS**

**20.46.021 GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS**

The community shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding and assure that all necessary permits have been received from those governmental agencies whose approval is required by federal or state law.

- (1) If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall:
  - (a) be designed and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (b) be constructed with flood-resistant materials;
  - (c) be constructed by methods and practices that minimize flood damages; and
  - (d) Mechanical and utility equipment must be elevated to or above the flood protection elevation.
- (2) If a subdivision or other proposed new development is in a flood-prone area, the community shall assure that:
  - (a) such proposed subdivision or other proposed new development is consistent with the need to minimize flood damage within the flood-prone area;
  - (b) public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
  - (c) adequate drainage is provided to reduce exposure to flood hazards.

All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this ordinance and all other requirements in s. 20.46.072(2).

**20.46.022 HYDRAULIC AND HYDROLOGIC ANALYSES**

- (1) No floodplain development shall:
  - (a) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, causing any increase in the regional flood height; or
  - (b) Cause any increase in the regional flood height due to floodplain storage area lost.

- (2) The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of s. 20.46.081 *Amendments* are met.

#### **20.46.023 WATERCOURSE ALTERATIONS**

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices, and required the applicant to secure all necessary state and federal permits. The standards of s. 20.46.072 must be met and the flood carrying capacity of any altered or relocated watercourse shall be maintained.

As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation and pursuant to s. 20.46.081 *Amendments*, the community shall apply for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.

#### **20.46.024 CHAPTER 30, 31, WIS. STATS., DEVELOPMENT**

Development which requires a permit from the Department, under chs. 30 and 31, Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodplain zoning ordinance are made according to s. 20.46.081 *Amendments*.

#### **20.46.025 PUBLIC OR PRIVATE CAMPGROUNDS**

Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

- (1) The campground is approved by the Department of Agriculture, Trade and Consumer Protection;
- (2) A land use permit for the campground is issued by the zoning administrator;
- (3) The character of the river system and the campground elevation are such that a 72-hour warning of an impending flood can be given to all campground occupants;
- (4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the floodplain zoning agency or zoning administrator, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation;
- (5) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. (4) - to remain in compliance with all applicable regulations, including those of the state Department of Agriculture, Trade and Consumer Protection and all other applicable regulations;
- (6) All mobile recreational vehicles placed on site must meet one of the following:
  - (a) Be fully licensed, if required, and ready for highway use; or

- (b) Not occupy any site in the campground for more than 180 consecutive days, at which time the recreational vehicle must be removed from the floodplain for a minimum of 24 hours; or
- (c) Meet the requirements in either s. 20.46.031, 20.46.041, 20.46.052, or for any other floodplain district in which the structure is located;

A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

- (7) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit consistent with 20.46.025(6) and shall ensure compliance with all the provisions of this section;
- (8) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section;
- (9) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued; and
- (8) All service facilities, including but not limited to refuse collection, electrical service, gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation; and
- (9) Standards for structures in a campground:
  - (a) All structures must comply with section 20.46.025 or meet the applicable requirements in ss. 20.46.031, 20.46.041, 20.46.052, or for any other floodplain district in which the structure is located;
  - (b) Deck / landing-a portable landing may be allowed for a camping unit for each entry provided that the landing is not permanently attached to the ground or camping unit, is no more than 200 square feet in size, shall be portable, contain no walls or roof, and can be removed from the campground by a truck and/or trailer. Sections of such portable landings may be placed together to form a single deck not greater than 200 square feet at one entry point. Provisions for the removal of these temporary landings during flood events must be addressed within the written agreement with the municipality compliant with section 20.46.025(4). Any such deck/landing structure may be constructed at elevations lower than the flood protection elevation but must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.
  - (c) Decks/patios that are constructed completely at grade may be allowed, but must also comply with applicable shoreland zoning standards.
  - (d) Camping equipment and appurtenant equipment in the campground may be allowed provided that the equipment is not permanently attached to the ground or camping unit, is not used as a habitable structure, and must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood. Provisions for the removal of this equipment during flooding events shall be addressed within the written agreement with the municipality compliant with section 20.46.025(4).

- (e) Once a flood warning in the written agreement has been issued for the campground, the campground owner or the designated operator shall ensure that all persons, camping units, decks, camping equipment and appurtenant equipment in the campground shall be evacuated within the timelines specified within the written agreement with the municipality compliant with section 20.46.025(4).
- (10) A land use permit shall be obtained as provided under 20.46.072(2) before any development; repair, modification, or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated.

### **ARTICLE III. FLOODPLAIN DISTRICTS**

#### **20.46.031 FLOODWAY DISTRICT (FW)**

#### **20.46.032 APPLICABILITY**

This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to s. 20.46.052(5).

#### **20.46.033 PERMITTED USES**

The following open space uses are allowed in the Floodway District and the floodway areas of the General Floodplain District, if:

- they are not prohibited by any other ordinance;
  - they meet the standards in s. 20.46.034 and 20.46.035; and
  - all permits or certificates have been issued according to s. 20.46.072.
- (1) Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture and wild crop harvesting.
- (2) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
- (3) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of s. 20.46.034(4).
- (4) Uses or structures accessory to open space uses or classified as historic structures that comply with s. 20.46.034 and 20.46.035.
- (5) Extraction of sand, gravel or other materials that comply with s. 20.46.034(4).
- (6) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with chs. 30 and 31, Stats.
- (7) Public utilities, streets and bridges that comply with s. 20.46.034(3).
- (8) Portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch. SPS 383, Wis. Adm. Code.
- (9) Public or private wells used to obtain potable water for recreational areas that meet the

requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code.

(10) Wastewater treatment ponds or facilities permitted under s. NR 110.15(3)(b), Wis. Adm. Code.

(11) Sanitary sewer or water supply lines to service existing or proposed development located outside the floodway that complies with the regulations for the floodplain area occupied.

## **20.46.034 STANDARDS FOR DEVELOPMENTS IN THE FLOODWAY**

### **(1) GENERAL**

- (a) Any development in the floodway shall comply with s. 20.46.021 and have a low flood damage potential.
- (b) Applicants shall provide an analysis calculating the effects of this proposal on the regional flood height to determine the effects of the proposal according to s. 20.46.072 and 20.46.072(2)(c). The analysis must be completed by a registered professional engineer in the state of Wisconsin.
- (c) Any encroachment in the regulatory floodway is prohibited unless the data submitted for subd. 20.46.034(1)(b) above demonstrates that the encroachment will cause no increase in flood elevations in flood events up to the base flood at any location or removes the encroached area from the regulatory floodway as provided in s. 20.46.015(5).

### **(2) STRUCTURES**

Structures accessory to permanent open space uses, including utility and sanitary facilities, or functionally dependent on a waterfront location may be allowed by permit if the structures comply with the following criteria:

- (a) Not designed for human habitation, does not have a high flood damage potential and is constructed to minimize flood damage;
- (b) Shall either have the lowest floor elevated to or above the flood protection elevation or shall meet all the following standards:
  - 1. Have the lowest floor elevated to or above the regional flood elevation and be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and completely dry to the flood protection elevation without human intervention during flooding;
  - 2. Have structural components capable of meeting all provisions of Section 20.46.034(2)(g) and;
  - 3. Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with Section 20.46.034(2)(g).
- (c) Must be anchored to resist flotation, collapse, and lateral movement;
- (d) Mechanical and utility equipment must be elevated to or above the flood protection elevation; and

- (e) Must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.
- (f) For a structure designed to allow the automatic entry of floodwaters below the Regional Flood Elevation, the applicant shall submit a plan that meets s. 20.46.034(2)(a) through 20.46.034(2)(e) and meets or exceeds the following standards:
  - 1. The lowest floor must be elevated to or above the regional flood elevation;
  - 2. a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  - 3. the bottom of all openings shall be no higher than one foot above the lowest adjacent grade; openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters, otherwise must remain open.
  - 4. The use must be limited to parking, building access or limited storage.
- (g) Certification: Whenever floodproofing measures are required, a registered professional engineer or architect shall certify that the following floodproofing measures will be utilized, where appropriate, and are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood:
  - 1. Reinforcement of floors and walls to resist rupture, collapse, or lateral movement caused by water pressures or debris buildup;
  - 2. Construction of wells, water supply systems and waste treatment systems so as to prevent the entrance of flood waters in such systems and must be in accordance with provisions in Sections 20.46.035(4) and 20.46.035(5);
  - 3. Subsurface drainage systems to relieve external pressures on foundation walls and basement floors;
  - 4. Cutoff valves on sewer lines or the elimination of gravity flow basement drains; and
  - 5. Placement of utilities to or above the flood protection elevation.

(3) PUBLIC UTILITIES, STREETS AND BRIDGES

Public utilities, streets and bridges may be allowed by permit, if:

- (a) Adequate floodproofing measures are provided to the flood protection elevation; and
- (b) Construction meets the development standards of s. 20.46.072.

(4) **FILLS OR DEPOSITION OF MATERIALS**

Fills or deposition of materials may be allowed by permit, if:

- (a) The requirements of s. 20.46.072 are met;
- (b) No material is deposited in navigable waters unless a permit is issued by the Department pursuant to ch. 30, Stats., and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and all other requirements have been met;
- (c) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and
- (d) The fill is not classified as a solid or hazardous material.

**20.46.035 PROHIBITED USES**

All uses not listed as permitted uses in s. 20.46.033 are prohibited, including the following uses:

- (1) Habitable structures, structures with high flood damage potential, or those not associated with permanent open-space uses;
- (2) Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- (3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- (4) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and ch. SPS 383, Wis. Adm. Code;
- (5) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and chs. NR 811 and NR 812, Wis. Adm. Code;
- (6) Any solid or hazardous waste disposal sites;
- (7) Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code; and
- (8) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

**ARTICLE IV. FLOODFRINGE DISTRICT (FF)**

**20.46.041 FLOODFRINGE DISTRICT (FF)**

**20.46.042 APPLICABILITY**

This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to s. 20.46.052(5).

**20.46.043 PERMITTED USES**

Any structure, land use, or development is allowed in the Floodfringe District if the standards in s. 20.46.044 are met, the use is not prohibited by this or any other ordinance or regulation and all permits

or certificates specified in s. 20.46.072 have been issued.

#### **20.46.044 STANDARDS FOR DEVELOPMENT IN THE FLOODFRINGE**

Section 20.46.021 shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of s. 20.46.061 *Nonconforming Uses*;

##### **(1) RESIDENTIAL USES**

Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe, shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of s. 20.46.061 *Nonconforming Uses*;

- (a) All new construction, including placement of manufactured homes, and substantial improvement of residential structures, shall have the lowest floor elevated to or above the flood protection elevation on fill. The fill around the structure shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. No area may be removed from the floodfringe district unless it can be shown to meet s. 20.46.015(5).
- (b) Notwithstanding s. 20.46.044 (1)(a), a basement or crawlspace floor may be placed at the regional flood elevation if the basement or crawlspace is designed to make all portions of the structure below the flood protection elevation watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. No floor of any kind is allowed below the regional flood elevation;
- (c) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in subd. (d).
- (d) In developments where existing street or sewer line elevations make compliance with subd. (c) impractical, the municipality may permit new development and substantial improvements where roads are below the regional flood elevation, if:
  1. The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
  2. The municipality has a DNR-approved emergency evacuation plan that follows acceptable hazard mitigation planning guidelines.

##### **(2) ACCESSORY STRUCTURES OR USES**

In addition to s. 20.46.021, new construction and substantial improvements of Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.

##### **(3) COMMERCIAL USES**

In addition to s. 20.46.021, any commercial structure which is erected, altered or moved into the floodfringe shall meet the requirements of s. 20.46.044(1). Subject to the requirements of s. 20.46.044(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

##### **(4) MANUFACTURING AND INDUSTRIAL USES**

In addition to s. 20.46.021, any manufacturing or industrial structure which is erected, altered or moved into the floodfringe shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in s 20.46.076. Subject to the requirements of s.



20.46.044(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.

(5) STORAGE OF MATERIALS

Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with s. 20.46.076. Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.

(6) PUBLIC UTILITIES, STREETS AND BRIDGES

All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and

(a) When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction or repair of such facilities shall only be permitted if they are designed to comply with s. 20.46.076.

(b) Minor roads or non-essential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.

(7) SEWAGE SYSTEMS

All sewage disposal systems shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to s. 20.46.076(3), to the flood protection elevation and meet the provisions of all local ordinances and ch. SPS 383, Wis. Adm. Code.

(8) WELLS

All wells shall be designed to minimize or eliminate infiltration of flood waters into the system, pursuant to s. 20.46.076(3), to the flood protection elevation and shall meet the provisions of chs. NR 811 and NR 812, Wis. Adm. Code.

(9) SOLID WASTE DISPOSAL SITES

Disposal of solid or hazardous waste is prohibited in floodfringe areas.

(10) DEPOSITION OF MATERIALS

Any deposited material must meet all the provisions of this ordinance.

(11) MANUFACTURED HOMES

(a) Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.

(b) In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:

1. have the lowest floor elevated to the flood protection elevation; and

2. be anchored so they do not float, collapse, or move laterally during a flood

(c) Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in s.

20.46.044(1).

**(12) MOBILE RECREATIONAL VEHICLES**

All mobile recreational vehicles must be on site for less than 180 consecutive days and be either:

(a) fully licensed and ready for highway use; or

(b) shall meet the elevation and anchoring requirements in s. 20.46.044 (11)(b) and (c).

A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

**ARTICLE V. OTHER FLOODPLAIN DISTRICTS**

**20.46.051 OTHER FLOODPLAIN DISTRICTS**

**20.46.052 GENERAL FLOODPLAIN DISTRICT (GFP)**

**(1) APPLICABILITY**

The provisions for the General Floodplain District shall apply to development in all floodplains mapped as A, AO, AH, and in AE zones within which a floodway is not delineated on the Flood Insurance Rate Maps identified in s. 20.46.015(2)(a).

**(2) FLOODWAY BOUNDARIES**

For proposed development in zone A, or in zone AE within which a floodway is not delineated on the Flood Insurance Rate Map identified in s. 20.46.015(2)(a), the boundaries of the regulatory floodway shall be determined pursuant to s. 20.46.052(5). If the development is proposed to encroach upon the regulatory floodway, the development is subject to the standards of s. 20.46.031. If the development is located entirely within the floodfringe, the development is subject to the standards of s. 20.46.041.

**(3) PERMITTED USES**

Pursuant to s. 20.46.052(5) it shall be determined whether the proposed use is located within the floodway or floodfringe. Those uses permitted in the Floodway (s. 20.46.031) and Floodfringe (s. 20.46.041) Districts are allowed within the General Floodplain District, according to the standards of s. 20.46.052(4) provided that all permits or certificates required under s. 20.46.072 have been issued.

**(4) STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT**

Section 20.46.031 applies to floodway areas, determined to pursuant to 20.46.052(5); Section 20.46.041 applies to floodfringe areas, determined to pursuant to 20.46.052(5).

(a) New construction and substantial improvement of structures in zone AO shall have the lowest floor, including basement, elevated:

1. To or above the depth, in feet, as shown on the FIRM above the highest adjacent natural grade; or
2. If the depth is not specified on the FIRM, to or above two (2) feet above the highest adjacent natural grade.

(b) New Construction and substantial improvement of structures in zone AH shall have the lowest floor, including basement, elevated to or above the flood protection elevation.

(c) In AO/AH zones, provide adequate drainage paths to guide floodwaters around structures.

(d) All development in zones AO and zone AH shall meet the requirements of s. 20.46.041 applicable to flood fringe areas.

**(5) DETERMINING FLOODWAY AND FLOODFRINGE LIMITS**

Upon receiving an application for development within zone A, or within zone AE where a floodway has not been delineated on the Flood Insurance Rate Maps, the zoning administrator shall:

(a) Require the applicant to submit two copies of an aerial photograph or a plan which shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures; and the flood zone as shown on the FIRM.

(b) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries.

1. A Hydrologic and Hydraulic Study as specified in s. 20.46.072(2)(c).
2. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
3. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.

**ARTICLE VI. NONCONFORMING USES**

**20.46.061 NONCONFORMING USES**

**20.46.062 GENERAL**

**(1) APPLICABILITY**

(a) The standards in this section shall apply to all uses and buildings that do not conform to the provisions contained within a floodplain zoning ordinance or with s. 87.30, Stats. and §§ NR 116.12-14, Wis. Adm. Code and 44 CFR 59-72., these standards shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto. A party asserting the existence of a lawfully established nonconforming use or structure has the burden of proving that the use or structure was compliant with the floodplain zoning ordinance in effect at the time the use or structure was created.

(b) As permit applications are received for additions, modifications, or substantial improvements to nonconforming buildings in the floodplain, municipalities shall develop a list of those nonconforming buildings, their present equalized assessed value, and a list of the costs of those activities associated with changes to those buildings.

(2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:

- (a) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding, or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.

The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification, or addition. The roof of the structure may extend over a portion of the deck to provide safe ingress and egress to the principal structure.

- (b) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;
- (c) The municipality shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
- (d) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 20.46.044(1). The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;
- (e) No maintenance on a per event basis to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 20.46.044(1). Maintenance to any nonconforming structure, which does not exceed 50% of its present equalized assessed value on a per event basis, does not count against the cumulative calculations over the life of the structure for substantial improvement calculations.
- (f) If on a per event basis the total value of the work being done under (d) and (e) equals or exceeds 50% of the present equalized assessed value the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with s. 20.46.044(1).
- (g) Except as provided in subd. (h), if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed, or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.

(h) For nonconforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the following minimum requirements are met and all required permits have been granted prior to the start of construction:

1. Residential Structures

- a. Shall have the lowest floor, including basement, elevated to or above the base elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of s. 20.46.076(2).
- b. Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with methods and materials resistant to flood damage.
- c. Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
- d. In A Zones, obtain, review and utilize any flood data available from a federal, state or other source.
- e. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in s. 20.46.052(4).
- f. in AO Zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.

2. Nonresidential Structures

- a. Shall meet the requirements of s. 20.46.062(2)(h)1a-f.
- b. Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in s. 20.46.076 (1) or (2).
- c. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in s. 20.46.052(4).

(3) A nonconforming historic structure may be altered if the alteration will not preclude the structure's continued designation as a historic structure, the alteration will comply with s. 20.46.034 (1), flood resistant materials are used, and construction practices and floodproofing methods that comply with s. 20.46.076 are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of s. 20.46.062 (2)(h)1 if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.

(4) Notwithstanding anything in this chapter to the contrary, modifications, additions, maintenance, and repairs to a nonconforming building shall not be prohibited based on cost and the building's nonconforming use shall be permitted to continue if:

- (a) Any living quarters in the nonconforming building are elevated to be at or above the flood

protection elevation;

- (b) The lowest floor of the nonconforming building, including the basement, is elevated to or above the regional flood elevation;
- (c) The nonconforming building is permanently changed to conform to the applicable requirements of 20.46.021;
- (d) If the nonconforming building is in the floodway, the building is permanently changed to conform to the applicable requirements of 20.46.034(1), 20.46.034(2)(b) through (e), 20.46.034(3), 20.46.034(4), and 20.46.063. Any development that adds additional fill or creates an encroachment in the floodplain from beyond the original nonconforming structure's 3-D building envelope must determine the floodway in accordance with section 20.46.052(5). If the encroachment is in the floodway it must meet the standards in section 20.46.034(4);
- (e) If the nonconforming building is in the floodfringe, the building is permanently changed to conform to the applicable requirements of 20.46.044 and 20.46.064;
- (f) Repair or reconstruction of nonconforming structures and substantial improvements of residential buildings in zones A1-30, AE, and AH must have the lowest floor (including basement) elevated to or above the base flood elevation;
- (g) Repair or reconstruction of nonconforming structures and substantial improvements of non-residential buildings in zones A1-30, AE, and AH must have the lowest floor (including basement) elevated to or above the base flood elevation, or (together with attendant utility and sanitary facilities) be designed so that below the base flood elevation the building is watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy:
  - i. Where a non-residential structure is intended to be made watertight below the base flood elevation, a registered professional engineer or architect must develop and/or review structural design, specifications, and plans for the construction, and must certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of s. 20.46.062(4)(g) above.
  - ii. The community must maintain a record of such certification including the specific elevation to which each such structure is floodproofed;
- (h) Fully enclosed areas below the lowest floor of repair or reconstruction of nonconforming structures and substantial improvements in zones A1-30, AE, and AH that are usable solely for parking of vehicles, building access, or storage, must be designed to adequately equalize hydrostatic forces on exterior walls by allowing for the entry and exit of floodwaters. Subsequent improvements to repaired or reconstructed nonconforming structures must not increase the degree of their nonconformity. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet the following criteria:
  - i. A minimum of two openings into each enclosed area must be located below the base flood elevation and provide a total net area of not less than one square inch for every square foot of enclosed area.
  - ii. The bottom of all openings must be no higher than one foot above the adjacent grade.

- iii. Openings may be equipped with screens, louvers, valves, or other coverings if they permit the automatic entry and exit of floodwaters;
- (i) Manufactured homes that are placed or substantially improved within zones A1-30, AE, and AH outside of a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement;
- (j) Manufactured homes that are placed or substantially improved within zones A1-30, AE, and AH on existing sites in an existing manufactured home park that is not undergoing expansion and on which a manufactured home has not incurred substantial damage as a result of flood must be elevated so that either the lowest floor of the manufactured home is at or above the base flood elevation, or the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement;
- (k) Recreational vehicles placed on sites within zones A1-30, AH, and AE must either:
  - i. Be on site for fewer than 180 consecutive days; or
  - ii. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
  - iii. Meet the elevation and anchoring requirements for manufactured homes in s. 20.46.062(4)(i) above;
- (l) In a regulatory floodway that has been delineated on the FIRM in zone A1-30 or AE, encroachments, including repair or reconstruction of nonconforming structures, substantial improvement, or other development (including fill) must be prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity;
- (m) In zone A, the community must obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source as criteria for requiring repair or reconstruction of nonconforming structures, substantial improvement, and other development to meet ss. 20.46.062(4)(f) through (l) (inclusive) above. Any development that adds additional fill or creates an encroachment in the floodplain from beyond the original nonconforming structure's 3-D building envelope must determine the floodway in accordance with section 20.46.052(5). If the encroachment is in the floodway it must meet the standards in section 20.46.034(4). Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity;
- (n) In zones A1-30 or AE where a regulatory floodway has not been delineated on the FIRM, repair or reconstruction of nonconforming structures, substantial improvement, or any development

that adds additional fill or creates an encroachment in the floodplain from beyond the original nonconforming structure's 3-D building envelope must determine the floodway in accordance with section 20.46.052(5). If the encroachment is in the floodway it must meet the standards in section 20.46.034(4). Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity;

- (o) In zone AO, repair or reconstruction of nonconforming structures and substantial improvements of residential structures must have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet if no depth number is specified). Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity; or
- (p) In zone AO, repair or reconstruction of nonconforming structures and substantial improvements of nonresidential structures must have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet if no depth number is specified), or (together with attendant utility and sanitary facilities) be structurally dry-floodproofed to that level according to the standard specified in s. 20.46.062(4)(g) above. Subsequent improvements to repair or reconstructed nonconforming structures must not increase the degree of their nonconformity.

#### **20.46.063 FLOODWAY DISTRICT**

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the Floodway District, unless such modification or addition:
  - (a) Has been granted a permit or variance which meets all ordinance requirements;
  - (b) Meets the requirements of s. 20.46.062;
  - (c) Shall not increase the obstruction to flood flows or regional flood height;
  - (d) Any addition to the existing structure shall be floodproofed, pursuant to s. 20.46.076, by means other than the use of fill, to the flood protection elevation; and
  - (e) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
    - 1. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
    - 2. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
    - 3. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
    - 4. The use must be limited to parking, building access or limited storage.
- (2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in the Floodway District. Any replacement, repair or maintenance of an



existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances, s. 20.46.076(3) and ch. SPS 383, Wis. Adm. Code.

- (3) No new well or modification to an existing well used to obtain potable water shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing well in the Floodway District shall meet the applicable requirements of all municipal ordinances, s. 20.46.076(3) and chs. NR 811 and NR 812, Wis. Adm. Code.

#### **20.46.064 FLOODFRINGE DISTRICT**

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality and meets the requirements of s. 20.46.044 except where s. 20.46.064(2) is applicable.
- (2) Where compliance with the provisions of subd. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Adjustment/Appeals, using the procedures established in s. 20.46.074, may grant a variance from those provisions of subd. (1) for modifications or additions using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
  - (a) No floor is allowed below the regional flood elevation for residential or commercial structures;
  - (b) Human lives are not endangered;
  - (c) Public facilities, such as water or sewer, shall not be installed;
  - (d) Flood depths shall not exceed two feet;
  - (e) Flood velocities shall not exceed two feet per second; and
  - (f) The structure shall not be used for storage of materials as described in s. 20.46.044(5).
- (3) All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances, s. 20.46.076 (3) and ch. SPS 383, Wis. Adm. Code.
- (4) All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this ordinance, s. 20.46.076 (3) and ch. NR 811 and NR 812, Wis. Adm. Code.

### **ARTICLE VII. ADMINISTRATION**

#### **20.46.071 ADMINISTRATION**

Where a zoning administrator, planning agency or a board of appeals has already been appointed to administer a zoning ordinance adopted under ss. 59.69, 59.692 or 62.23(7), Stats., these officials shall also administer this ordinance.

## **20.46.072 ZONING ADMINISTRATOR**

### **(1) DUTIES AND POWERS**

The zoning administrator is authorized to administer this ordinance and shall have the following duties and powers:

- (a) Advise applicants of the ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
- (b) Issue permits and inspect properties for compliance with provisions of this ordinance and issue certificates of compliance where appropriate.
- (c) Inspect and assess all damaged floodplain structures to determine if substantial damage to the structures has occurred.
- (d) Keep records of all official actions such as:
  - 1. All permits issued, inspections made, and work approved;
  - 2. Documentation of certified lowest floor and regional flood elevations;
  - 3. Floodproofing certificates.
  - 4. Water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
  - 5. All substantial damage assessment reports for floodplain structures.
  - 6. List of nonconforming structures and uses.
- (e) Submit copies of the following items to the Department Regional office:
  - 1. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
  - 2. Copies of case-by-case analyses and other required information.
  - 3. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.
- (f) Investigate, prepare reports, and report violations of this ordinance to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.
- (g) Submit copies of amendments to the FEMA Regional office.

### **(2) LAND USE PERMIT**

A land use permit shall be obtained before any development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated. Application to the zoning administrator shall include:

#### **(a) GENERAL INFORMATION**

- 1. Name and address of the applicant, property owner and contractor;
- 2. Legal description, proposed use, and whether it is new construction or a modification;

(b) SITE DEVELOPMENT PLAN

A site plan drawn to scale shall be submitted with the permit application form and shall contain:

1. Location, dimensions, area and elevation of the lot;
2. Location of the ordinary highwater mark of any abutting navigable waterways;
3. Location of any structures with distances measured from the lot lines and street center lines;
4. Location of any existing or proposed on-site sewage systems or private water supply systems;
5. Location and elevation of existing or future access roads;
6. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
7. The elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study – either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
8. Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of s. 20.46.031 or 20.46.041 are met; and
9. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to s. 20.46.072. This may include any of the information noted in s. 20.46.034(1).

(c) HYDRAULIC AND HYDROLOGIC STUDIES TO ANALYZE DEVELOPMENT

All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the State. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the Department.

1. Zone A floodplains and in AE zones within which a floodway is not delineated:
  - a. Hydrology
    - i. The appropriate method shall be based on the standards in ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.
  - b. Hydraulic modeling

The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:

    - i. determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.
    - ii. channel sections must be surveyed.
    - iii. minimum four-foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.

- iv. a maximum distance of 500 feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.
- v. the most current version of HEC-RAS shall be used.
- vi. a survey of bridge and culvert openings and the top of road is required at each structure.
- vii. additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.
- viii. standard accepted engineering practices shall be used when assigning parameters for the base model such as flow, Manning's N values, expansion and contraction coefficients or effective flow limits. The base model shall be calibrated to past flooding data such as high water marks to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.
- ix. the model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.

c. Mapping

A work map of the reach studied shall be provided, showing all cross-section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development and whether the proposed development is located in the floodway.

- i. If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.
- ii. If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.

2. Zone AE Floodplains

a. Hydrology

If the proposed hydrology will change the existing study, the appropriate method to be used shall be based on ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.

b. Hydraulic model

The regional flood elevation shall be based on the standards in ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:

i. Duplicate Effective Model

The effective model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the effective model is

available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.

ii. Corrected Effective Model.

The Corrected Effective Model shall not include any man-made physical changes since the effective model date but shall import the model into the most current version of HEC-RAS for Department review.

iii. Existing (Pre-Project Conditions) Model.

The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.

iv. Revised (Post-Project Conditions) Model.

The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.

v. All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.

vi. Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the effective model and result in water surface elevations and topwidths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.

c. Mapping

Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:

i. Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.

ii. Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.

iii. Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.

iv. If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plane Coordinate System in accordance with FEMA mapping specifications.

v. The revised floodplain boundaries shall tie into the effective floodplain boundaries.

vi. All cross sections from the effective model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.

vii. Both the current and proposed floodways shall be shown on the map.

viii. The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.

(d) **EXPIRATION**

All permits issued under the authority of this ordinance shall expire no more than 180 days after issuance. The permit may be extended for a maximum of 180 days for good and sufficient cause.

If the permitted work has not started within 180 days of the permit date, the development must comply with any regulation, including any revision to the FIRM or FIS, that took effect after the permit date.

(3) **CERTIFICATE OF COMPLIANCE**

No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:

- (a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;
- (b) Application for such certificate shall be concurrent with the application for a permit;
- (c) If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
- (d) The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that the requirements of s. 20.46.076 are met.
- (e) Where applicable pursuant to s. 20.46.052(4), the applicant must submit a certification by a registered professional engineer or surveyor of the elevation of the bottom of the lowest horizontal structural member supporting the lowest floor (excluding pilings or columns), and an indication of whether the structure contains a basement.
- (f) Where applicable pursuant to s. 20.46.052(4), the applicant must submit certifications by a registered professional engineer or architect that the structural design and methods of construction meet accepted standards of practice as required by s. 20.46.052(4).

(4) **OTHER PERMITS**

Prior to obtaining a floodplain development permit the applicant must secure all necessary permits from federal, state, and local agencies, including but not limited to those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.

**20.46.073 ZONING AGENCY**

(1) The Board of Zoning appeals shall:

- (a) oversee the functions of the office of the zoning administrator; and
- (b) review and advise the governing body on all proposed amendments to this ordinance, maps and text.

(c) publish adequate notice pursuant to Ch. 985, Stats., specifying the date, time, place, and subject of the public hearing.

(2) The Board of Zoning appeals shall not:

(a) grant variances to the terms of the ordinance in place of action by the Board of Adjustment/Appeals; or

(b) amend the text or zoning maps in place of official action by the governing body.

## **20.46.074 BOARD OF APPEALS**

The Board of Appeals, created under s. 62.23(7)(e), Stats., is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The zoning administrator shall not be the secretary of the Board.

### **(1) POWERS AND DUTIES**

The Board of Appeals shall:

(a) Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance;

(b) Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map; and

(c) Variances - Hear and decide, upon appeal, variances from the ordinance standards.

### **(2) APPEALS TO THE BOARD**

(a) Appeals to the board may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all records regarding the matter appealed.

### **(b) NOTICE AND HEARING FOR APPEALS INCLUDING VARIANCES**

1. Notice - The board shall:

a. Fix a reasonable time for the hearing;

b. Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing; and

c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.

2. Hearing - Any party may appear in person or by agent. The board shall:

a. Resolve boundary disputes according to s. 20.46.074(3);

b. Decide variance applications according to s. 20.46.074(4); and

c. Decide appeals of permit denials according to s. 20.46.075.

(c) DECISION: The final decision regarding the appeal or variance application shall:

1. Be made within a reasonable time;
2. Be sent to the Department Regional office within 10 days of the decision;
3. Be a written determination signed by the chairman or secretary of the Board;
4. State the specific facts which are the basis for the Board's decision;
5. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance application; and
6. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.

(3) BOUNDARY DISPUTES

The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:

- (a) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary.
- (b) The person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board; and
- (c) If the boundary is incorrectly mapped, the Board should inform the zoning committee or the person contesting the boundary location to petition the governing body for a map amendment according to s. 20.46.081 *Amendments*.

(4) VARIANCE

(a) The Board may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:

1. Literal enforcement of the ordinance will cause unnecessary hardship;
2. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
3. The variance is not contrary to the public interest; and
4. The variance is consistent with the purpose of this ordinance in s. 20.46.013.

(b) In addition to the criteria in subd. (a), to qualify for a variance under FEMA regulations, the Board must find that the following criteria have been met:

1. The variance shall not cause any increase in the regional flood elevation;
2. The applicant has shown good and sufficient cause for issuance of the variance;
3. Failure to grant the variance would result in exceptional hardship;



4. Granting the variance will not result in additional threats to public safety, extraordinary expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
5. The variance granted is the minimum necessary, considering the flood hazard, to afford relief.

(c) A variance shall not:

1. Grant, extend or increase any use prohibited in the zoning district;
2. Be granted for a hardship based solely on an economic gain or loss;
3. Be granted for a hardship which is self-created.
4. Damage the rights or property values of other persons in the area;
5. Allow actions without the amendments to this ordinance or map(s) required in s. 20.46.081 *Amendments*; and
6. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

(d) When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to \$25.00 per \$100.00 of coverage. A copy shall be maintained with the variance record.

#### **20.46.075 TO REVIEW APPEALS OF PERMIT DENIALS**

- (1) The Zoning Agency (s. 20.46.073) or Board shall review all data related to the appeal. This may include:
  - (a) Permit application data listed in s. 20.46.072(2);
  - (b) Floodway/floodfringe determination data in s. 20.46.052(5);
  - (c) Data listed in s. 20.46.034(1)(b) where the applicant has not submitted this information to the zoning administrator; and
  - (d) Other data submitted with the application or submitted to the Board with the appeal.
- (2) For appeals of all denied permits the Board shall:
  - (a) Follow the procedures of s. 20.46.074;
  - (b) Consider zoning agency recommendations; and
  - (c) Either uphold the denial or grant the appeal.
- (3) For appeals concerning increases in regional flood elevation the Board shall:

- (a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per the requirements of s. 20.46.081 *Amendments*; and
- (b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase provided no other reasons for denial exist.

#### **20.46.076 FLOODPROOFING STANDARDS**

- (1) No permit or variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to or above the flood protection elevation and submits a FEMA Floodproofing Certificate. Floodproofing is not an alternative to the development standards in ss. 20.46.021, 20.46.031, 20.46.041, 20.46.052, or for any other regulated floodplain district.
- (2) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:
  - (a) certified by a registered professional engineer or architect; or
  - (b) meeting or exceeding the following standards:
    - 1. a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - 2. the bottom of all openings shall be no higher than one-foot above grade; and
    - 3. openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (3) Floodproofing measures shall be designed, as appropriate, to:
  - (a) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
  - (b) Protect structures to the flood protection elevation;
  - (c) Anchor structures to foundations to resist flotation and lateral movement;
  - (d) Minimize or eliminate infiltration of flood waters;
  - (e) Minimize or eliminate discharges into flood waters;
  - (f) Placement of essential utilities to or above the flood protection elevation; and
  - (g) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
    - 1. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the

adjacent grade;

2. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;

3. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and

4. The use must be limited to parking, building access or limited storage.

#### **20.46.077 PUBLIC INFORMATION**

(1) Place marks on structures to show the depth of inundation during the regional flood.

(2) All maps, engineering data and regulations shall be available and widely distributed.

(3) Real estate transfers should show what floodplain district any real property is in.

### **TITLE VIII. AMENDMENTS**

#### **20.46.081 AMENDMENTS**

Obstructions or increases may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 20.46.082.

(1) In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 20.46.082. Any such alterations must be reviewed and approved by FEMA and the DNR.

(2) In A Zones increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain maps, floodway lines, and water surface profiles, in accordance with s. 20.46.082.

#### **20.46.082 GENERAL**

The governing body shall change or supplement the floodplain zoning district boundaries and this ordinance in the manner outlined in s. 20.46.083 below. Actions which require an amendment to the ordinance and/ or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:

(1) Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height;

(2) Any change to the floodplain boundaries and/or watercourse alterations on the FIRM;

(3) Any changes to any other officially adopted floodplain maps listed in s. 20.46.015 (2)(b);

(4) Any floodplain fill which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;

(5) Correction of discrepancies between the water surface profiles and floodplain maps;

(6) Any upgrade to a floodplain zoning ordinance text required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality; and

- (7) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.

#### **20.46.083 PROCEDURES**

Ordinance amendments may be made upon petition of any party according to the provisions of s. 62.23, Stats. The petitions shall include all data required by s. 20.46.052(5) and 20.46.072(2). The Land Use Permit shall not be issued until a Letter of Map Revision is issued by FEMA for the proposed changes.

- (1) The proposed amendment shall be referred to the zoning agency for a public hearing and recommendation to the governing body. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of s. 62.23, Stats.
- (2) No amendments shall become effective until reviewed and approved by the Department.
- (3) All persons petitioning for a map amendment that obstructs flow causing any increase in the regional flood height, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.

### **ARTICLE IX. ENFORCEMENT AND PENALTIES**

#### **20.46.091 ENFORCEMENT AND PENALTIES**

Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not more than \$50.00 (fifty dollars), together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s. 87.30, Stats.

### **ARTICLE X. DEFINITIONS**

#### **20.46.101 DEFINITIONS**

Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.

1. A ZONES – Those areas shown on the Official Floodplain Zoning Map would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.
2. AH ZONE – See “AREA OF SHALLOW FLOODING”.
3. AO ZONE – See “AREA OF SHALLOW FLOODING”.
4. ACCESSORY STRUCTURE OR USE – A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building. An accessory structure shall not be used for human habitation.
5. ALTERATION – An enhancement, upgrade or substantial change or modification other than an addition or

repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.

6. AREA OF SHALLOW FLOODING – A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.
7. BASE FLOOD – Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.
8. BASEMENT – Any enclosed area of a building having its floor sub-grade on all sides.
9. BREAKAWAY WALL – A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.
10. BUILDING – See STRUCTURE.
11. BULKHEAD LINE – A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.
12. CAMPGROUND – Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.
13. CAMPING UNIT – Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, or tent that is fully licensed, if required, and ready for highway use.
14. CERTIFICATE OF COMPLIANCE – A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.
15. CHANNEL – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
16. CRAWLWAYS or CRAWL SPACE – An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.
17. DECK – An unenclosed exterior structure that has no roof or sides and has a permeable floor which allows the infiltration of precipitation.
18. DEPARTMENT – The Wisconsin Department of Natural Resources.
19. DEVELOPMENT – Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving,

excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

20. DRYLAND ACCESS – A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
21. ENCROACHMENT – Any fill, structure, equipment, use or development in the floodway.
22. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) – The federal agency that administers the National Flood Insurance Program.
23. FLOOD INSURANCE RATE MAP (FIRM) – A map of a community on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.
24. FLOOD or FLOODING – A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
  - The overflow or rise of inland waters;
  - The rapid accumulation or runoff of surface waters from any source;
  - The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
  - The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
25. FLOOD FREQUENCY – The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent (%) chance of occurring in any given year.
26. FLOODFRINGE – That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
27. FLOOD HAZARD BOUNDARY MAP – A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
28. FLOOD INSURANCE STUDY – A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.
29. FLOODPLAIN – Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe and may include other designated floodplain areas for regulatory purposes.
30. FLOODPLAIN ISLAND – A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
31. FLOODPLAIN MANAGEMENT – Policy and procedures to ensure wise use of floodplains, including

mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

32. FLOOD PROFILE – A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
33. FLOODPROOFING – Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.
34. FLOOD PROTECTION ELEVATION – An elevation of two feet of freeboard above the Regional Flood Elevation. (Also see: FREEBOARD.)
35. FLOOD STORAGE – Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
36. FLOODWAY – The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
37. FREEBOARD – A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.
38. HABITABLE STRUCTURE – Any structure or portion thereof used or designed for human habitation.
39. HEARING NOTICE – Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
40. HIGH FLOOD DAMAGE POTENTIAL – Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.
41. HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
42. HISTORIC STRUCTURE – Any structure that is either:
  - Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
  - Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.
43. INCREASE IN REGIONAL FLOOD HEIGHT – A calculated upward rise in the regional flood elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is

directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

44. LAND USE – Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
45. LOWEST ADJACENT GRADE – Elevation of the lowest ground surface that touches any of the exterior walls of a building.
46. LOWEST FLOOR – The lowest floor of the lowest enclosed area (including basement).
47. MAINTENANCE – The act or process of ordinary upkeep and repairs, including redecorating, refinishing, nonstructural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.
48. MANUFACTURED HOME – A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."
49. MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION – A parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.
50. MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING – A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.
51. MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING – The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.
52. MOBILE RECREATIONAL VEHICLE – A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."
53. MODEL, CORRECTED EFFECTIVE – A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.
54. MODEL, DUPLICATE EFFECTIVE – A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.
55. MODEL, EFFECTIVE – The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.



56. MODEL, EXISTING (PRE-PROJECT) – A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.
57. MODEL, REVISED (POST-PROJECT) – A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.
58. MUNICIPALITY or MUNICIPAL – The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.
59. NAVD or NORTH AMERICAN VERTICAL DATUM – Elevations referenced to mean sea level datum, 1988 adjustment.
60. NGVD or NATIONAL GEODETIC VERTICAL DATUM – Elevations referenced to mean sea level datum, 1929 adjustment.
61. NEW CONSTRUCTION – Structures for which the start of construction commenced on or after the effective date of a floodplain zoning regulation adopted by this community and includes any subsequent improvements to such structures.
62. NON-FLOOD DISASTER – A fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.
63. NONCONFORMING STRUCTURE – An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)
64. NONCONFORMING USE – An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
65. OBSTRUCTION TO FLOW – Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
66. OFFICIAL FLOODPLAIN ZONING MAP – That map, adopted and made part of this ordinance, as described in s. 20.46.015(2), which has been approved by the Department and FEMA.
67. OPEN SPACE USE – Those uses having a relatively low flood damage potential and not involving structures.
68. ORDINARY HIGHWATER MARK – The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
69. PERSON – An individual, or group of individuals, corporation, partnership, association, municipality or state agency.

70. PRIVATE SEWAGE SYSTEM – A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
71. PUBLIC UTILITIES – Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
72. REASONABLY SAFE FROM FLOODING – Means base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
73. REGIONAL FLOOD – A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.
74. START OF CONSTRUCTION – The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
75. STRUCTURE – Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.
76. SUBDIVISION – Has the meaning given in s. 236.02(12), Wis. Stats.
77. SUBSTANTIAL DAMAGE – Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
78. SUBSTANTIAL IMPROVEMENT – Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
79. UNNECESSARY HARDSHIP – Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.

- 80. VARIANCE – An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
- 81. VIOLATION – The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.
- 82. WATERSHED – The entire region contributing runoff or surface water to a watercourse or body of water.
- 83. WATER SURFACE PROFILE – A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.
- 84. WELL – means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

\_\_\_\_\_  
Theodore Grant, Mayor

ATTEST:

\_\_\_\_\_  
Adam Sonntag, City Administrator

AYES \_\_\_\_\_ NAYES \_\_\_\_\_  
 PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.  
 PUBLISHED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

Approved as to form:

\_\_\_\_\_  
Ludwig L. Wurtz, City Attorney



# Professional Services Agreement

MSA Project Number: 00026052

This AGREEMENT (Agreement) is made effective August 21, 2024 by and between

**MSA PROFESSIONAL SERVICES, INC (MSA)**

Address: 1500 N. Casaloma Drive, Appleton, WI 54913

Phone: (920) 545-2083

Representative: Dan Rammer

Email: [drammer@msa-ps.com](mailto:drammer@msa-ps.com)

**CITY OF RIPON (OWNER)**

Address: 100 Jackson St, Ripon, WI 54971

Phone: 920-748-4916

Representative: Adam Sonntag

Email: [asonntag@cityofripon.com](mailto:asonntag@cityofripon.com)

**Project Name:** Selfridge Park Improvements

**The scope of the work authorized is:** See Attachment A: Scope of Services

**The schedule to perform the work is:** Approximate Start Date: August 2024  
Approximate Completion Date: March 2025

**The estimated fee for the work is:** \$89,500

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a time and expense basis. Attachment B: Rate Schedule is attached and made part of this Agreement

**Approval:** Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

**CITY OF RIPON**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Theodore Grant

Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Dan Rammer

Team Leader

Date: August 21, 2024

**OWNER ATTEST:**

\_\_\_\_\_  
Naomi Miller

Clerk

Date: \_\_\_\_\_

**MSA PROFESSIONAL SERVICES, INC. (MSA)  
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC)**

1. **Scope and Fee.** The scope of Owner's Project (the "Project"), scope of MSA's services (the "Work"), and quoted fees for those services are defined in Attachment A. The scope and fee constitute a good faith estimate of the tasks and associated fees required to perform the services defined in Attachment A. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service or involve renovation of an existing building or structure, activities often cannot be fully defined during initial planning. As the Project progresses, facts uncovered may reveal a change in direction which may alter the Work. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required.

2. **Owner's Responsibilities.**

(a) Project Scope and Budget

The OWNER shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the cost of the Work. The Project budget shall include contingencies for design, development, and, when required by the scope of the Project, construction of the Project. The OWNER shall not significantly increase or decrease the overall Project scope or schedule, the portion of the budget allocated for the cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of MSA to a corresponding change in the Project scope, quality, schedule, and compensation of MSA.

(b) Designated Owner Representative

The OWNER shall identify a Designated Representative who shall be authorized to act on behalf of the OWNER with respect to the Project. OWNER's Designated Representative shall render related decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of MSA's services. MSA shall not be liable for any error or omission made by OWNER, OWNER's Designated Representative, or OWNER's consultant.

(c) Tests, Inspections, and Reports

When required by the scope of the Project, the OWNER shall furnish tests, inspections, and reports required by law or the Contract Documents, such as planning studies; preliminary designs; structural, mechanical, or chemical tests; tests for air, water, or soil pollution; and tests for hazardous materials.

(d) Additional Consultants

MSA's consultants shall be identified in Attachment A. The OWNER shall furnish the services of other consultants other than those designated in Attachment A, including such legal, financial, accounting, and insurance counseling services as may be required for the Project.

(e) OWNER Provided Services and Information

MSA shall be entitled to rely on the accuracy and completeness of services and information furnished by the OWNER, Designated OWNER Representative, or Consultant. MSA shall use reasonable efforts to provide prompt written notice to the OWNER if MSA becomes aware of any errors, omissions, or inconsistencies in such services or information.

3. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Balances due past thirty (30) days shall be subject to an interest charge at a rate of 18% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

4. **Costs and Schedules.** Costs (including MSA's fees and reimbursable expenses) and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, pandemics, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

5. **Access to Site.** Owner shall furnish right-of-entry on the Project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of

services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

6. **Location of Utilities.** Owner shall supply MSA with the location of all pre-existent utilities and MSA has the right to reasonably rely on all Owner supplied information. In those instances where the scope of services require MSA to locate any buried utilities, MSA shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend MSA in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to MSA by others.

7. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other recommendations made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not warrant or represent that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

8. **Construction.** When applicable to the scope of the Project, the OWNER shall contract with a licensed and qualified Contractor for implementation of construction work utilizing a construction contract based on an EJCDC construction contract and general conditions appropriate for the scope of the Project and for the delivery method. In the construction contract, the OWNER shall use reasonable commercial efforts to require the Contractor to (1) obtain Commercial General Liability Insurance with contractual liability coverage insuring the obligation of the Contractor, and name the OWNER, MSA and its employees and consultants as additionally insureds of that policy; (2) indemnify and hold harmless the OWNER, MSA and its employees and consultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorney's fees and economic or consequential damages arising in whole or in part out of the negligent act or omission of the contractor, and Subcontractor or anyone directly or indirectly employed by any of them. This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work, the same being the sole and exclusive responsibility of the contractors or subcontractors.

9. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, which is known as the "standard of care". The standard of care is defined as that level of skill and care ordinarily exercised by members of the same profession practicing at the same point in time and in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

10. **Municipal Advisor.** MSA Professional Services, Inc. is not acting as a 'Municipal Advisor' to the owner pursuant to Section 15B of the Exchange Act. For financial advice related to the corresponding project, the client is encouraged to discuss their finances with internal and/or external advisors and experts before making decisions incurring debt and/or supporting those obligations. MSA desires to serve each client well by providing the best information publicly available and is providing information as part of its engineering responsibilities to inform client options. The information is not intended to provide financial advice or recommendations and is not bound by the formal Municipal Advisor fiduciary duty.

11. **Conduct Expectations.** Owner and MSA understand their respective obligations to provide a safe, respectful work environment for their employees. Both parties agree that harassment on the job (unwelcome verbal, physical or other behavior that is related to sex, race, age, or protected class status) will not be tolerated and will be addressed timely and in compliance with anti-harassment laws.

**12. Electronic Documents and Transmittals.** Owner and MSA agree to transmit and accept project related correspondence, documents, text, data, drawings and the like in digital format in accordance with MSA's Electronic Data Transmittal policy. Each party is responsible for its own cybersecurity, and both parties waive the right to pursue liability against the other for any damages that occur as a direct result of electronic data sharing.

**13. Building Information Modelling (BIM).** For any projects, and not limited to building projects, utilizing BIM, OWNER and MSA shall agree on the appropriate level of modelling required by the project, as well as the degree to which the BIM files may be made available to any party using the Electronic Document Transmittal provisions of section 10 of this Agreement.

**14. Construction Site Visits.** If the scope of services includes services during the Construction Phase, MSA shall make visits to the site as specified in Attachment A– Scope of Services. MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

**15. Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

**16. Betterment.** If, due to MSA's error, any required or necessary item or component of the Project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

**17. Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in identifying, generating, treating, storing, or disposing of hazardous substances or materials which may be present at the Project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the Project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

**18. Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional

insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

**19. Reuse of Documents.** Reuse of any documents and/or services pertaining to this Project by the OWNER or extensions of this Project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

**20. Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

**21. Accrual of Claims.** To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

**22. Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters thru mediation with a mutually agreed upon mediator. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in the court having jurisdiction as specified in this Agreement.



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

24. **Limitation of Liability.** Neither MSA, its Consultants (if any), nor their employees shall be jointly, severally, or individually liable to the OWNER in excess of the amount of the insurance proceeds available.

25. **Successors and Assigns.** The successors, executors, administrators, and legal representatives of Owner and Engineer are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement. Neither party may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, which shall not be unreasonable withheld, except to the extent that any assignment, subletting, or transfer is mandated by law.

26. **Notices.** Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.

27. **Survival.** Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

28. **Severability.** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and MSA.

29. **No Waiver.** A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

30. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

31. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be Sauk County, Wisconsin.

32. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.

## ATTACHMENT A: SCOPE OF SERVICES

### A. **Project Description:**

1. The City of Ripon, Wisconsin, is looking to redevelop Selfridge Park, located by E Water St Ave (West Boundary) and the Gothic Millpond (East Boundary). Efforts of the 2022 Parks Master Plan project developed a concept plan and construction budget for the City. The park is approximately 5.2 -acres.

### 2. **Approximate Project Schedule:**

#### Timeline

- |                                     |                          |
|-------------------------------------|--------------------------|
| a. Survey                           | September 2024           |
| b. Overall Schematic Design         | September – October 2024 |
| c. Present Schematic Design to City | November 2024            |
| d. Design Development               | November – December 2024 |
| e. Construction Documents           | January – February 2025  |
| f. Bidding                          | February/March 2025      |
3. **Budget:** The estimated budget for the project is \$840,000. The City submitted Stewardship Grant funding and was awarded \$418,240 for Phase I improvements, as shown in the approximate project area on the image on the next page.
  4. **Primary Amenities Include:**
    - a. Structures:
      - i. Open-air shelters (2), fishing piers (2), kayak launch, shoreline restoration, playground coordination
    - b. Site Development:
      - i. Benches, parking lot improvements, asphalt and concrete paths, landscaping, site lighting and park signage.

### B. **Scope of Services to be provided by MSA:**

- Topographic Survey
- Site/Civil Engineering
- Park Design
- Stormwater Engineering
- Structural Engineering
- Site Electrical Engineering
- Landscape Design
- Site Furnishings Design
- Stewardship Grant Administration
- Geotechnical solicitation

### **Phase I: Schematic Design and Design Development Phase**

*General Summary: MSA assisted the City in 2022 to develop a park concept plan that was utilized to generate a budget that will help guide the Schematic Design process. MSA will work with the City to phase the park project by reworking the concept plan for phasing and will begin the schematic design phase per the original concept plan shown below:*

# Selfridge Park

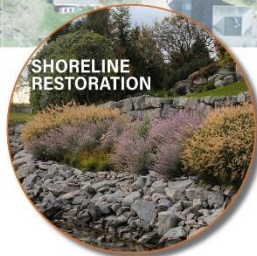
## Master Plan

Ripon, WI  
10.26.2022

**LEGEND**

- Park Boundary
- Light Pole

**SCALE**



1. Complete park topographic survey of the park area as indicated in the concept above to collect the park area and adjacent streets for utility information.
2. **Meeting #1 (In Person):** Organize and lead initial Kick-Off Meeting.
  - a. Review project goals, design, and consider:
    - i. Existing park facilities, existing parking and vehicular traffic, pedestrian and non-motorized traffic circulation, and assessment for ADA compliance within the space.
    - ii. New shelter buildings
    - iii. Park concept plan with the overall site constraints and layout.
    - iv. Floating Fishing Piers and Canoe/Kayak Launch
    - v. Other site needs: lighting, electrical services, and other utilities.
    - vi. Anticipated project budget and awarded funding
3. After the initial kick-off meeting, the Schematic Design Phase will begin. Based on the selected scheme and City comments, further development of the design will begin to develop plans to about a 15-20% level. Overall site plans will be developed to further flesh out the details of the park plan.
  - a. It is expected that the overall design will focus on the Phase I improvements and the park area north of the existing bridge. However, MSA recommends including elements of future phase in consideration of the design of Phase I to properly plan for future development.
  - b. At this point no architectural design is needed as the anticipated shelter buildings are to be prefabricated.
4. As part of Schematic Design, the project team will consider:
  - a. Use of environmentally sensitive and maintenance-friendly design and materials.
  - b. General operational and/or maintenance impact costs and requirements for proposed improvements.
  - c. Consideration to constructability throughout the conceptual stage will occur in our quality assurance/quality control (QA/QC) stages. QA/QC reviews will occur at every stage/milestone of the project.
  - d. Global project budgeting and cost estimates will be developed for Phase I improvements. At this point, the City will consider their budget and the global project cost to direct the project team on next steps as to the overall design and as the project shifts into Design Development.
5. MSA will then solicit and coordinate geotechnical firm quotes to obtain a soil boring and a geotechnical report for the project site and structures.
6. MSA will update the Masterplan for Selfridge park to properly reflect adjustments to the project plan
  - a. The master plan will be updated for the schematic design deliverable meeting and the design development meeting only. Any further changes requested outside of the Schematic Design and Development phase will be considered additional services.
7. MSA will generate character image/material boards to help guide the City in the selection of park amenities and aesthetics
8. **Meeting #2 – (Virtual)** – The project team will meet with the City Staff to review the plans and collect comments.
9. Based on City comments of the initial plans, the project team will refine the schematic design, phasing plan, and projected budget.

10. MSA will submit the approximate 15-20% schematic design, phasing plan, and global cost estimates to the City for final approval.
11. Upon review and approval from the City, MSA will move forward with design development documents for all items identified in Phase 1 construction of the park.
  - a. Design development documents will further refine the schematic design to get a more accurate design of needs, costs, and feasibility of selected features.
  - b. It is expected that feedback on design choices will be continued to be solicited of the City during this phase.
12. **Meeting #3 (In-Person)** at approximately 50% completion to review the developed design with Owner. MSA may request the owner to submit additional information about existing facilities to aid in the construction document process.

**DELIVERABLES:**

- Various Solicitations for vendors and other services
- Updated Master Plan Render
- Character image/materials board for selected park amenities
- Develop phased Cost Estimate
- Provide colored electronic copy of phased Park Master Plan
- Schematic drawings (~15-20%)
- Design development drawings (~50-60%)
- Construction Documents and specifications.
- Meeting minutes.

**Phase II: Construction Document Phase**

1. The construction drawings shall consist of the following:
  - a. Title Sheet
  - b. Existing Conditions and Removals Plan
  - c. Erosion Control Plan and Details
  - d. Site Plan
  - e. Grading Plan
    - i. It is anticipated that the grading plan is to be developed in accordance with producing a functional and accurate construction document plan. A fully refined drawing file (.dwg) is not an anticipated deliverable.
  - f. Site Utilities and Stormwater Management Plan
  - g. Site Details
  - h. Structural Plan and Details
  - i. Landscaping Plans and Details
  - j. Lighting plan
2. Conference calls and e-mail with the Owner to coordinate project development.
3. Coordinate with needed site electrical utility.
4. Complete any applicable permits. MSA anticipates the following permits will be needed.
  - a. DNR Construction Site Stormwater Permit (NOI)
  - b. DNR General Intake or Outfall Structure Permit
  - c. DNR Chapter 30 Individual Waterway Permit
    - i. Lake Shore Erosion Control
    - ii. Shoreline Protection
  - d. U.S. Army Corps of Engineers 404 General Permit – Aquatic Habitat Restoration, Enhancement and Establishment Activities
5. Develop a Project Specifications Manual.

6. Revise and further develop the construction documents as per the City's review comments.
7. **Meeting #4 (Virtual)** at approximately 90% with the Owner to review progress construction documents in person.
8. Revise and further develop the final construction documents as per the City's review comments.
9. Complete and submit the electronic Construction Documents to the City in PDF format.
10. Within all phases of the project, a QC of all the deliverables will be completed.

**DELIVERABLES:**

- Finalized estimates of probable construction cost
- Construction Documents and Bid Package
- Meeting minutes.

**Phase III: Bidding**

1. Prepare Advertisement for Bids and forward to City for publishing in local newspaper (advertising costs to be paid by the City).
2. Electronic distribution of drawings and specifications using Quest.
3. Answer bid questions and issues addendums as needed.
4. Electronic Virtual Bid Opening via Quest (**Meeting #5**).
5. Review and evaluate the bids.
6. Provide a recommendation on the award of the project bid.
7. Develop the Owner/Contractor agreement for processing.

**Phase IV: Stewardship Grant Administration** – Assist City with WisDNR Stewardship Grant Administration.

**Services Not Included:**

The basic services of this proposal do not include the services below, but can be provided by MSA upon request from Owner as an additional service.

1. Construction administration and observation
2. Attend additional meetings
3. Project developed into multiple bid packages
4. Wetland delineation
5. Applications for other permits not outlined in the scope above, including wetland and/or floodplain impacts
6. Construction staking (by Contractor)
7. Public engagement
8. Work outside of the identified construction limits
9. Archaeological Review

**Items Completed by the City:**

1. Pay for geotechnical borings and report.

**FEE SUMMARY**

The Owner will compensate MSA for the Scope of Services listed above (exclusive of Construction Observation) as follows:

Topographic Survey	\$5,500
Design Development/Construction Documents	\$63,000
Permitting	\$11,500
Bidding	\$4,500
Stewardship Grant Administration	\$5,000
<b>Total</b>	<b>\$89,500</b>

**ATTACHMENT B:  
RATE SCHEDULE**

<u>CLASSIFICATION</u>	<u>LABOR RATE</u>
Administrative .....	\$ 75 – \$150/hr.
Architects .....	\$ 75 – \$215/hr.
Community Development Specialists .....	\$135 – \$185/hr.
Digital Design.....	\$175 – \$195/hr.
Environmental Scientists/Hydrogeologists.....	\$105 – \$185/hr.
Geographic Information Systems (GIS).....	\$ 95 – \$185/hr.
Housing Administration .....	\$ 95 – \$170/hr.
HR.....	\$ 135 - \$150/hr.
Inspectors/Zoning Administrators .....	\$105 – \$130/hr.
IT Support .....	\$175 – \$195/hr.
Land Surveying.....	\$ 75 – \$185/hr.
Landscape Designers & Architects.....	\$ 75 – \$215/hr.
Planners.....	\$ 75 – \$205/hr.
Principals .....	\$210 – \$315/hr.
Professional Engineers/Designers of Engineering Systems .....	\$150 – \$200/hr.
Project Managers.....	\$150 – \$230/hr.
Real Estate Professionals .....	\$135 – \$165/hr.
Staff Engineers .....	\$ 75 – \$145/hr.
Technicians.....	\$ 95 – \$150/hr.
Wastewater Treatment Plant Operator .....	\$ 90 – \$115/hr.

REIMBURSABLE EXPENSES

Copies/Prints .....	Rate based on volume
Specs/Reports.....	\$10
Copies .....	\$0.12/page
Plots .....	\$0.006/sq.in.
Flash Drive .....	\$10
GPS Equipment .....	\$20/hour
Dini Laser Level .....	\$30/per day
Mailing/UPS .....	At cost
Mileage – Reimbursement .....	IRS Rate – IRS Rate + \$5/day
Mileage – MSA Vehicle .....	\$0.75 mile standard/ \$0.67 mile for DOT
Nuclear Density Testing .....	\$25.00/day + \$10/test
Organic Vapor Field Meter .....	\$100/day
PC/CADD Machine .....	Included in labor rates
Robotic Survey Equipment.....	\$20/hour - \$15/hour for DOT
Stakes/Lath/Rods.....	At cost
Travel Expenses, Lodging, & Meals.....	At cost
Traffic Counting Equipment & Data Processing.....	At cost
Geodimeter .....	\$30/hour
Drone Flight .....	\$375/flight

Labor rates represent an average or range for a particular job classification. These rates are in effect until December 31, 2024.



## Chapter 13.35 ALL-TERRAIN AND OFF-ROAD VEHICLES

### 13.35.010. State all-terrain vehicle laws adopted.

The provisions describing and defining regulations with respect to all-terrain vehicles in Wis. Stats. § 23.33 and any future amendments or revisions, are adopted by reference and made part of this section as if fully set forth herein. Any acts required to be performed by the following statutory subsections or which are prohibited by such statutory subsections are required to be performed by this section or are prohibited by this section.

(Ord. No. 1519, 9-26-2022)

### 13.35.020 Authorized Use of ATV/UTV in the city of Ripon.

- A. Purpose. The purpose for this ordinance section is to establish authorized use of all-terrain vehicle (ATV) and utility-terrain vehicle (UTV) in the city and to regulate the operation thereof.
- B. Intent. Following due consideration of the recreational and economic value to connect trail opportunities and weighted against possible dangers, public health, liability aspects, the terrain involved, traffic density and history of automobile traffic, this section has been created pursuant to city council authority under Wis. Stats. § 23.33(11)(am) and 23.33(8)(b), as amended.
- C. Definitions. For purposes of this section, the terms below shall be defined as follows:
  1. Golf Cart means a vehicle whose speed attainable in one mile does not exceed twenty miles per hour on a paved, level surface, and that is designed and intended to convey one or more persons and equipment to play the game of golf in an area designated as a golf course or as defined in Wis. Stats. § 23.33(fm), and any amendments thereto. A golf cart is not an ATV or UTV and this ordinance does not allow operation of golf carts.
  2. All-Terrain Vehicle or ATV means a commercially designed and manufactured motor-driven device that has a weight, without fluids, of nine hundred pounds or less, has a width of not more than fifty inches as measured laterally between the outermost wheel rim on each side of the vehicle, exclusive of tires, mirrors, and accessories that are not essential to the vehicle's basic operation, is equipped with a seat designed to be straddled by the operator, and travels on three or more tires or as defined in Wis. Stats. § 23.33(1)(b), and any amendments thereto.
  3. Utility-Terrain Vehicle or UTV means any of the following, or as defined in Wis. Stats. § 23.33(ng), and any amendments thereto:
    - a. A commercially designed and manufactured motor driven device that does not meet federal motor vehicle safety standards in effect on July 1, 2012, that is not a golf cart, low-speed vehicle, dune buggy, minitruck, or tracked vehicle, that is designed to be used primarily off of a highway, and that has, and was originally manufactured with, all of the following:
      - i. A weight, without fluids, of three thousand pounds or less.
      - ii. Four or more tires.
      - iii. A steering wheel.
      - iv. A tail light.

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- v. A brake light.
  - vi. Two headlights.
  - vii. A width of not more than sixty-five inches as measured laterally between the outermost wheel rim on each side of the vehicle, exclusive of tires, mirrors, and accessories that are not essential to the vehicle's basic operation.
  - viii. A system of seat belts, or a similar system, for restraining each occupant of the device in the event of an accident.
  - ix. A system of structural members designed to reduce the likelihood that an occupant would be crushed as the result of a rollover of the device.
- b. A commercially designed and manufactured motor driven device to which all of the following applies:
- i. It does not meet federal motor vehicle safety standards in effect on July 1, 2012; is not a golf cart, low-speed vehicle, dune buggy, mini-truck, or tracked vehicle; is designed to be used primarily off of a highway; and has, and was originally manufactured with, a weight, without fluids, of not more than three thousand pounds.
  - ii. It has a width of sixty-five inches or less as measured laterally between the outermost wheel rim on each side of the vehicle, exclusive of tires, mirrors, and accessories that are not essential to the vehicle's basic operation.
  - iii. It is equipped with a seat designed to be straddled by the operator.
  - iv. It travels on three or more tires.
  - v. It is not an all-terrain vehicle, as defined in Wis. Stats. § 340.01 (2g).
- c. Restriction on equipment. No ATV/UTV may be operated on any street within the city limits unless it conforms to all noise, registration and other equipment requirements as stated in Wis. Stats. Chapter 23, or the Municipal Code of the city.
- D. ATV/UTV Routes of Travel.
1. All city of Ripon streets and alleys are designated ATV/UTV trails and routes, not including streets that are also designated as county highways, state trunk highways, or connecting highways unless Fond du Lac County and/or the Department of Transportation approves or is required to approve the designation. Per Wis. Stats. § 23.33 (11)(am)(4), all highways that have a speed limit of thirty-five miles per hour or less and that are located within the territorial boundaries of the city of Ripon shall also be authorized ATV/UTV trails and routes.
  2. In accordance with Wis. Stat. § 23.33 (11)(am)(3), the operation of ATV's and UTV's is permitted on a highway bridge that is not part of the national system of interstate and defense highways, that is one thousand feet in length or less, and is located within the territorial boundaries of the city of Ripon, regardless of whether the city of Ripon has jurisdiction over the highway, provided that a person crossing a bridge shall do all the following:
    - a. Cross the bridge in the most direct manner practicable and at a place where no obstruction prevents a quick and safe crossing;
    - b. Stay as far to the right of the roadway or shoulder as practicable;
    - c. Stop the vehicle prior to the crossing;
    - d. Yield the right-of-way to other vehicles, pedestrians, bicycles, and electric personal assistive mobility devices using the roadway or shoulder; and

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e. Exit the highway as quickly and safely as practicable after crossing the bridge.

E. ATV/UTV Rules of Operation.

1. Operators must have attained the age of sixteen and must have a valid driver's license to operate an ATV/UTV on any ATV/UTV route designated by the city.
2. Helmets must be worn on any operator or passenger of an ATV/UTV if they are under the age of eighteen. If the driver of the vehicle is required to wear a helmet, then all vehicle occupants must wear a helmet.
3. Seatbelts must be worn on UTVs by all persons at all times.
4. Eye protection must be worn by any operator of an ATV/UTV or equipped with windshield.
5. ATVs/UTVs shall operate only on the paved portion of the roadway. Operation on the gravel shoulders, grassy in-slopes, ditches, or other rights-of-way is prohibited and illegal.
6. Sidewalk operation of ATV/UTV within the city of Ripon is prohibited.
7. Parking of ATV/UTVs allowed in municipal parking lots but not permissible in the 100, 200 or 300 block of Watson Street.
8. Operators must yield the right-of-way to other vehicles, pedestrians, bicycles, and electric personal assistive mobility devices using the roadway or shoulder.
9. No ATV/UTV operation is allowed in any portion of any public park except areas that are paved and intended for vehicular travel.
10. ATV/UTVs must be registered for public use through the Department of Natural Resources and display such registration on the vehicle.
11. ATV/UTVs must carry proof of insurance and be insured to the minimum Wisconsin Department of Transportation insurance requirements as follows:
  - a. Ten thousand dollars for property damage;
  - b. Twenty-five thousand dollars for the injury or death of one person;
  - c. Fifty thousand dollars for the injury or death of two persons.
12. Headlights must be on at all times and visible from two hundred feet and taillights must be on at all times and visible from five hundred feet in the hours of darkness.
13. Speed limit on city ATV/UTV routes shall not exceed posted limits.
14. Operators shall operate in single file on the right side of the roadway.
15. Hand signals shall be used when turning, or turn signals used if vehicle is so equipped.
16. Hours of operation are from 7:00 a.m. to 9:00 p.m.
17. Operators of UTVs/ATVs assume all the usual and normal risks of ATV/UTV operation.
18. Operators of ATVs/UTVs shall be prohibited from cruising as defined in Section 13.18.020 of the municipal code.
19. No owner or person having charge or control of an ATV/UTV shall authorize or permit any unauthorized person to operate such ATV/UTV who is not permitted under state law or city ordinance to operate such ATV/UTV or who is under the influence of an intoxicant or a dangerous narcotic drug.
20. Three or more violations in a sixteen-month period starting from date of first violation will result in revocation of privileges to operate on any city street.

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(Ord. No. 1519, 9-26-2022)

### **13.35.030 Signage for ATV/UTV.**

- A. Pursuant to Wis. Stats. § 23.33(8)(d), the following restrictions are placed on the use of ATV/UTV designated by this chapter:
1. Roadways entering the city shall be marked with uniform ATV/UTV signs in accordance with Wis. Admin. Code § NR 64.12(7). The city public works department has sole responsibility for ATV/UTV signage on city streets. No person may do any of the following, in regard to, signs marking ATV/UTV use:
    - a. Intentionally remove, damage, deface, move, or obstruct any uniform ATV/UTV route or trail sign or standard or intentionally interfere with the effective operation of any uniform all-terrain vehicle route or trail sign.
    - b. Possess any uniform ATV/UTV route or trail sign or standard of the type established by the department for the warning, instruction, or information of the public, unless obtained in a lawful manner. Possession of a uniform ATV/UTV route or trail sign or standard creates a rebuttable presumption of illegal possession.
  2. ATV/UTV operation shall be subject to all provisions of Wis. Stats. § 23.33, which is adopted by reference as a part of this chapter.
- B. Route Maintenance. Designation of segments of the city roadways as ATV/UTV routes does not impose upon the city public works department a greater duty of care or responsibility for maintenance of those segments than for any other segment of roadway.

(Ord. No. 1519, 9-26-2022)

### **13.35.040 Reserved.**

Editor's note(s)—Ord. No. 2023-1533, adopted Oct. 10, 2023, repealed § 13.35.040, which pertained to expiration clause and derived from Ord. No. 1519, adopted Sept. 26, 2022.

### **13.35.050 Enforcement.**

This article shall be enforced by any officer employed by the Ripon police department and county sheriff's department or any other law enforcement official as set forth in Wis. Stats. § 23.33(12).

(Ord. No. 1519, 9-26-2022)

### **13.35.060 Violations and penalties.**

- A. The penalty for operating any ATV/UTV off the roadway designated an ATV/UTV route (e.g., the gravel shoulder, grassy in-slope, ditch, or other right-of-way) or violating any other provision of this chapter shall result in a forfeiture of not less than twenty-five dollars nor more than five hundred dollars, plus court costs.
- B. Any person who shall violate any provision of this chapter shall be subject to a penalty as determined by the Uniform Wisconsin Schedule for Deposit or Cash Bail Traffic Offenses set forth pursuant to authority contained in Wis. Stats. § 346.26(2)(a), and any amendments thereto.
- C. Juveniles sixteen to/or seventeen years of age are treated as adults for ATV/UTV violations.

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(Supp. No. 61)

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- D. Where no bond or deposit is established by this schedule for a traffic violation, bond should be set at one-half of the maximum monetary penalty as provided by law.
  - E. In a forfeiture matter, if a penalty is not set forth, see Wis. Stats. § 939.61(1), which provides a forfeiture not to exceed two hundred dollars.

(Ord. No. 1519, 9-26-2022)

**13.35.070 Severability.**

Any section, sentence, clause, phrase or portion of this chapter is for any reason held invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect validity if the remaining portion thereof.

(Ord. No. 1519, 9-26-2022)