

**CITY OF CEDARBURG
MEETING OF COMMON COUNCIL
JANUARY 28, 2019 – 7:00 P.M.**

A meeting of the Common Council of the City of Cedarburg, Wisconsin, will be held on **Monday, January 28, 2019 at 7:00 p.m.** at City Hall, W63 N645 Washington Avenue, Cedarburg, WI, in the second floor Council Chambers.

AGENDA

1. CALL TO ORDER - Mayor Mike O'Keefe
2. MOMENT OF SILENCE
3. PLEDGE OF ALLEGIANCE
4. ROLL CALL: Present – Common Council – Mayor Mike O'Keefe, Council Members Dan von Barga, Jack Arnett, Kristin Burkart, Rick Verhaalen, Garan Chivinski, Patricia Thome, and Rod Galbraith
5. STATEMENT OF PUBLIC NOTICE
6. APPROVAL OF MINUTES* - January 14, 2019
7. COMMENTS AND SUGGESTIONS FROM CITIZENS** Comments from citizens on a listed agenda item will be taken when the item is addressed by the Council. At this time individuals can speak on any topic not on the agenda for up to 5 minutes, time extensions at the discretion of the Mayor. No action can be taken on items not listed except as a possible referral to committees, individuals or a future Council agenda item.
8. NEW BUSINESS
 - * A. Consider Resolution No. 2019-02 commending retiring Canine Officer Jake; and action thereon
 - * B. Consider Ordinance No. 2019-01 updating Sec. 15-5 of the Municipal Code pertaining the standards for illumination and design of signs; and action thereon (Plan Comm. 01/07/19)
 - * C. Consider Ordinance No. 2019-02 updating Sec. 6-2-3(g) of the Municipal Code pertaining to fees for excavations of streets, alleys, public ways and grounds; and action thereon (Public Works and Sewerage Comm. 01/10/19)
 - * D. Consider Ordinance No. 2019-03 amending Title 14 Chapter 2 of the Municipal Code – Stormwater Management; and action thereon
 - * E. Consider Ordinance No. 2019-04 amending Title 15 Chapter 2 of the Municipal Code – Construction Site Erosion Control; and action thereon
 - * F. Consider the appointment of Jordan Z. Cole as agent for North 48, Inc. at W62 N599 Washington Avenue; and action thereon

- * G. Consider request to replace Senior Center Director; and action thereon
- * H. Consider implementation of a Health Reimbursement Account (HRA) and changes to the Personnel Manual as necessary; and action thereon (Personnel Committee 10/10/18)
- * I. Consider payment of bills dated 01/07/19 through 01/18/19, transfers for the period 01/10/19 through 01/23/19; and payroll for the period 01/05/19 through 01/18/19; and action thereon
- *** J. Consider License/Permit Applications; and action thereon
 - 1. Consider approval of new Operator License applications for the period ending June 30, 2019 for Antionette L. Dunst and Lena Kazansky
 - 2. Authorize issuance of a Festival Celebration Permit to Festivals of Cedarburg, Inc., for Winter Festival to be held on Saturday, February 16, 2019 from 8:30 a.m. to 10:00 p.m. and on Sunday, February 17, 2019 from 8:30 a.m. to 4:00 p.m.

9. REPORTS OF CITY OFFICERS AND DEPARTMENT HEADS

- * A. Administrator's Report

10. COMMUNICATIONS

- ** A. Comments and suggestions from citizens
- B. Comments and announcements by Council Members
- C. Mayor's Report

11. ADJOURNMENT

Individual members of various boards, committees, or commissions may attend the above meeting. It is possible that such attendance may constitute a meeting of a City board, committee or commission pursuant to State ex. rel. Badke v. Greendale Village Board, 173 Wis. 2d 553, 494 NW 2d 408 (1993). This notice does not authorize attendance at either the above meeting or the Badke Meeting, but is given solely to comply with the notice requirements of the open meeting law.

* *Information attached for Council; available through City Clerk's Office.*

** *Citizen comments should be primarily one-way, from citizen to the Council. Each citizen who wishes to speak shall be accorded one opportunity at the beginning of the meeting and one opportunity at the end of the meeting. Comments should be kept brief. If the comment expressed concerns a matter of public policy, response from the Council will be limited to seeking information or acknowledging that the citizen has been understood. It is out of order for anyone to debate with a citizen addressing the Council or for the Council to take action on a matter of public policy. The Council may direct that the concern be placed on a future agenda. Citizens will be asked to state their name and address for the record and to speak from the lectern for the purposes of recording their comments.*

*** *Information available through the Clerk's Office.*

UPON REASONABLE NOTICE, EFFORTS WILL BE MADE TO ACCOMMODATE THE NEEDS OF INDIVIDUALS WITH DISABILITIES. PLEASE CONTACT THE CITY CLERK'S OFFICE AT (262) 375-7606

E-MAIL: cityhall@ci.cedarburg.wi.us

**CITY OF CEDARBURG
COMMON COUNCIL
January 14, 2019**

**CC20190114-1
UNAPPROVED**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, was held on Monday, January 14, 2019, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers. Acting Mayor Thome called the meeting to order at 7:00 p.m.

Roll Call: Present - Common Council – Council Members Dan von Bargen, Jack Arnett, Rick Verhaalen, Garan Chivinski, Patricia Thome, Rod Galbraith

Excused - Mayor Michael O’Keefe, Council Member Kristin Burkart

Also Present - City Administrator/Treasurer Christy Mertes, City Attorney Michael Herbrand, Deputy City Clerk Amy Kletzien, Director of Engineering and Public Works Tom Wiza, Police Chief Tom Frank, interested citizens and news media

STATEMENT OF PUBLIC NOTICE

At Acting Mayor Thome’s request, Deputy City Clerk Kletzien verified that notice of this meeting was provided to the public by forwarding the agenda to the City’s official newspaper, the *News Graphic*, to all news media and citizens who requested copies, and by posting in accordance with the Wisconsin Open Meetings law. Citizens present were welcomed and encouraged to provide their input during the citizen comment portion of the meeting.

Council Member Thome stated that as Acting Mayor, she will retain her right to vote as Council Member of the 6th Aldermanic District.

APPROVAL OF MINUTES

Motion made by Council Member Galbraith, seconded by Council Member Chivinski, to approve the minutes of the December 10, 2018 meeting as presented.

Acting Mayor Thome asked that the following statement be added after the comments by Amber Psket: Council Member Thome explained that the minutes reflect the taped minutes from a presentation. Her concern is that someone only reading the minutes could assume they are a final conclusion of facts. In reality the presentation was an individual’s interpretation of articles she read.

Motion carried without a negative vote with Council Member Burkart excused.

COMMENTS AND SUGGESTIONS FROM CITIZENS

James Schmit, 1941 Ulao Pkwy, Grafton asked if the Common Council would consider changing the bow fishing ordinance to mirror the Village of Grafton and various surrounding communities’ ordinances eliminating the requirement to ask permission of homeowners within 100 yards if the following criteria is met:

1. The person is engaged in bow fishing from a boat freely floating on a navigable body of water;
2. The arrow or bolt is specific to the task of bow fishing;
3. The arrow or bolt is attached to the bow or crossbow by an appropriate cord or line not more than 100 feet in length;
4. The person discharges the arrow or bolt on a downward trajectory;
5. Any auxiliary lighting used is angled at least 45 degrees towards the water.

He added that bow fishing is beneficial in removing carp which can eradicate the fish supply. It is also beneficial to add some type of fish habitat and he provided some examples.

In answer to Council Member Galbraith's question, City Attorney Herbrand explained that staff can forward this item to a committee for further review and discussion.

Council Member Verhaalen will forward this item to the Parks, Recreation & Forestry Board for discussion at a future meeting.

NEW BUSINESS

CONSIDER AWARD OF CONTRACT TO COMPLETE THE PHASE 2 TRAFFIC IMPACT ANALYSIS FOR THE FUTURE HIGHWAY 60 BUSINESS PARK DEVELOPMENT; AND ACTION THEREON

Director Wiza explained that the engineering firm Traffic Analysis and Design, Inc. recently completed the phase 1 Traffic Impact Analysis information for the Highway 60 business park. This was submitted to the State Department of Transportation and they have provided a written response to the City. The next step would be to complete the phase 2 Traffic Impact Analysis per their parameters.

In answer to Acting Mayor Thome's question, Director Wiza explained that the Department of Transportation will tell the City where the entrance needs to be to the Business Park and may also impose further parameters.

In answer to Council Member Arnett's question, Director Wiza confirmed that the fee for the Traffic Impact Analysis is in the 2019 budget.

In answer to Council Member Verhaalen's questions, Director Wiza stated that a new analysis might have to be done if the zoning changes for the property. This traffic impact analysis should be relevant for five or six years.

Motion made by Council Member Arnett, seconded by Council Member Galbraith, to award the contract to complete the phase 2 Traffic Impact Analysis for the future Highway 60 business park development to Traffic Analysis and Design, Inc. in the amount of \$12,156. Motion carried without a negative vote with Council Member Burkart excused.

CONSIDER PAYMENT OF BILLS DATED 12/07/18 THROUGH 01/04/19, TRANSFERS FOR THE PERIOD 12/08/18 THROUGH 01/09/19; AND PAYROLL FOR THE PERIOD 12/21/18 THROUGH 01/04/19; AND ACTION THEREON

Motion made by Council Member Verhaalen, seconded by Council Member von Bargaen, to approve payment of the bills dated 12/07/18 through 01/04/19, transfers for the period 12/08/18 through 01/09/19; and payroll for the period 12/21/18 through 01/04/19. Motion carried without a negative vote with Council Member Burkart excused.

CONSIDER LICENSE APPLICATIONS; AND ACTION THEREON

Motion made by Council Member Galbraith, seconded by Council Member Arnett, to approve new Operator License applications for the period ending June 30, 2019 for Susan M. Durst, Kelly J. Langerman and David E. Taylor. Motion carried without a negative vote with Council Member Burkart excused.

ADMINISTRATOR'S REPORT - None

COMMENTS AND SUGGESTIONS FROM CITIZENS - None

COMMENTS & ANNOUNCEMENTS BY COUNCIL MEMBERS

Council Member Arnett requested that all City personnel use the new branding material when ordering any new Cedarburg identifiable items.

MAYOR'S REPORT - None

ADJOURNMENT – CLOSED SESSION

Motion made by Council Member Arnett, seconded by Council Member von Bargaen, to adjourn to closed session at 7:25 p.m. pursuant to State Statutes 19.85(1)(e) to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business whenever competitive or bargaining reasons require a closed session, more specifically, to discuss negotiations with the Cedarburg Police Officers' Association, Local 223 and consider cellular tower leases for location on the monopole constructed on Western Avenue. Approval of December 10, 2018 closed session minutes. Motion carried on a roll call vote with Council Members von Bargaen, Arnett, Verhaalen, Chivinski, Thome, and Galbraith voting aye and Council Member Burkart excused.

RECONVENE TO OPEN SESSION

Motion made by Council Member Arnett, seconded by Council Member Galbraith, to reconvene to open session at 7:51 p.m. Motion carried on a roll call vote with Council Members von Bargaen, Arnett, Verhaalen, Chivinski, Thome, and Galbraith voting aye and Council Member Burkart excused.

DISCUSSION REGARDING AN AGREEMENT BETWEEN THE CITY OF CEDARBURG AND THE CEDARBURG POLICE OFFICERS' ASSOCIATION, LOCAL 223, AND CONSIDERATION OF RESOLUTION NO. 2019-01 RATIFYING THE AGREEMENT; AND ACTION THEREON

Motion made by Council Member Galbraith, seconded by Council Member Chivinski, to approve the Agreement between the City of Cedarburg and the Cedarburg Police Officers' Association, Local 223, and to adopt Resolution No. 2019-01 ratifying the Agreement. Motion carried without a negative vote with Council Member Burkart excused.

CONSIDER CELLULAR TOWER LEASES WITH MAGNUM COMMUNICATIONS, INC. AND VERIZON WIRELESS FOR LOCATION ON THE MONOPOLE CONSTRUCTED ON WESTERN AVENUE; AND ACTION THEREON

Motion made by Council Member Arnett, seconded by Council Member Chivinski, to approve the cellular tower lease with Verizon Wireless for location on the monopole constructed on Western Avenue subject to the review of the engineering and exhibits by staff, SEH and City Attorney Herbrand. Motion carried without a negative vote with Council Member Burkart excused.

Motion made by Council Member von Bargaen, seconded by Council Member Chivinski, to approve the cellular tower lease with Magnum Communications, Inc. for location on the monopole constructed on Western Avenue subject to the review of the engineering and exhibits by staff, SEH, and City Attorney Herbrand. Motion carried without a negative vote with Council Member Burkart excused.

ADJOURNMENT

Motion made by Council Member Arnett, seconded by Council Member von Bargaen, to adjourn the meeting at 7:53 p.m. Motion carried without a negative vote and Council Member Burkart excused.

Amy D. Kletzien, MMC/WCPC
Deputy City Clerk

RESOLUTION NO. 2019-02

A Resolution Commending Retiring Canine Officer Jake

WHEREAS, Jake became the first Canine member of the Cedarburg Police Department in January 2009; and

WHEREAS, over his ten-year career, Canine Jake was deployed 358 times resulting in the following arrests/contacts: 189 Marijuana, 13 Cocaine/Crack, 16 Heroin, 5 Ecstasy/MDMA, 2 LSD/Acid, 27 Oxycodone/other pill, and 145 Drug Paraphernalia; and

WHEREAS, Jake was involved in 109 school searches for the Cedarburg and surrounding School Districts; and

WHEREAS, Jake recovered numerous firearms and handguns from vehicles and took them off of the streets; and

WHEREAS, Jake used his considerable tracking abilities in locating numerous suspects or lost and missing individuals; and

WHEREAS, Jake has proven to be popular with the public, having demonstrated his abilities in over 50 presentations to civic groups, church groups, Boy Scouts, Girl Scouts, Shop with a Cop, Kids to Kids Christmas, Cedarburg Fire Department Safety Days, and Cedarburg Police Academy; and

WHEREAS, Jake has given uncompromising dedication to his handler, Sergeant Brian Emmrich; and

WHEREAS, Jake retired from the Cedarburg Police Department on January 24, 2019.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Cedarburg, members of the Cedarburg Police and Fire Commission, the men and women of the Cedarburg Police Department, and the citizens of the City of Cedarburg join in expressing their sincere appreciation to Jake for his dedicated service as a Police Canine and wish him a long and happy retirement with Sergeant Emmrich.

Passed and adopted this 28th day of January 2019.

Michael O'Keefe, Mayor

Attest:

Constance K. McHugh, City Clerk

CITY OF CEDARBURG

MEETING DATE: January 28, 2019

ITEM NO: 8. B.

TITLE: Consider Ordinance No. 2019-01 updating Sec. 15-5 of the Municipal Code pertaining the standards for illumination and design of signs; and action thereon (Plan Comm. 01/07/19)

ISSUE SUMMARY: At a recent meeting of the Plan Commission, when considering an interior lit sign for a business along Pioneer Road, Commissioners questioned whether the City had standards regarding internal illumination and design. When advised that the only standard for internal illumination is vague as it simply states that “light shall only illuminate the immediate area of the sign” and did not address color, style or intensity, and that there were no standards regarding design, Commissioners asked staff to draft standards that would address these issues and provide for more attractive signs that better fit Cedarburg.

Accordingly, the attached ordinance will serve to require internally illuminated signs be constructed with an opaque and/or dark background where light shines only through the lettering and logos. It also encourages dark colored backgrounds on the sign face and discourages bright colors such as red, oranges and yellows. If one asks for a white sign with black letters the white background must be of opaque material where the background does not glow at night but is dark. With respect to design, new signs will be designed to reflect the look and use of material of the principal structure on the site.

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION: At their January 7, 2019 meeting, the Plan Commission recommended approval by unanimous vote.

BUDGETARY IMPACT: n/a

ATTACHMENTS:

- January 7, 2019 Plan Commission Minutes
- Ordinance No. 2019-01

INITIATED/REQUESTED BY: Plan Commission

FOR MORE INFORMATION CONTACT: Jonathan P. Censky, City Planner, 262-375-7610

ORDINANCE NO. 2019-01

An Ordinance Amending the Standards for Illumination and Design of Signs

The Common Council of the City of Cedarburg, Wisconsin, hereby ordains as follows:

SECTION 1. Sections 15-5-7(k) & (o), 15-5-14(d)(2)m, 15-5-14(d)(4)k, 15-5-14(d)(5)e and 15-5-14(d)(7)g of the Sign Code of the City of Cedarburg are hereby amended as follows:

SEC. 15-5-7 GENERAL PHYSICAL REQUIREMENTS

(k) **Illuminated Signs.**

- (1) Externally illuminated signs, including flood lighting and internally illuminated signs, shall illuminate only the immediate area of the sign, concentrating light upon the sign without radiating light upon adjacent public or private property.
- (2) The Building Inspector or his authorized agent shall have the power to alter or readjust the illumination intensity of any sign lighting after installation. For internally illuminated signs, the sign face shall be constructed with an opaque surface to allow internal light to only project through the cutout or white lettering and/or logo. Dark colored backgrounds on signs are encouraged. Stark white or extremely bright colors such as bright red, orange or yellows are discouraged.
- (3) Where signs face a residential zone, the illumination should cease at 11:00 p.m. or after business closing, whichever comes first.
- (4) The use of unshielded lighting, including exposed ~~incandescent~~ light bulbs hung or strung on poles, wires or any other type of support intended to illuminate a sign or other advertising device is expressly prohibited. All sign lighting shall be so designed located, shielded or hooded so as to prevent the casting of glare or direct light upon adjacent roadways, surrounding properties or into the sky.
- (5) Neon-like window signs or other exterior neon displays may be permitted in cases where they are custom designed to be compatible with the building's architectural character and where their color has been selected to harmonize with the building's exterior colors. Such lighting shall be subject to review and approval of the Building Inspector, or the Landmarks Commission if the sign is located in the Historic Preservation District.

(o) **Design and Placement.** Signs shall not resemble, imitate or approximate the shape, size, form or color of railroad or traffic signs, signals or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals or devices. No sign shall be erected, relocated or maintained so as to prevent free ingress to and egress from any door, window or fire escape, and no sign shall be attached to a standpipe or fire escape. Signs shall be designed in accordance with the following:

1. The base of the sign shall be constructed with the use of the primary building materials of the principal structure.
2. The color scheme of the sign shall follow the color scheme of the principal building.

3. Architectural features (e.g. sills, piers, reveals, capstones, medallions, etc.) which are part of the architectural style of the principal building shall be incorporated into the design of the sign.

SEC. 15-5-14 SIGNS REQUIRING A PERMANENT PERMIT

(d) **Zoning District Requirements.**

(2) Neighborhood Business and Professional Business District (B-1 and B-4).

All general restrictions for signs provided within this Code apply to these districts. All permanent signs require permits. Multi-tenant/Use Buildings in this district must comply with Section 15-5-15.

- a. Total square footage of all signs per building to be determined pursuant to Section 15-5-14(b). Multi-tenant/Use Buildings Section 15-5-14(c) shall apply.
- b. Projecting signs shall not exceed thirty-two (32) square feet per surface. The minimum height above grade shall be eight (8) feet.
- c. Pylon signs shall not exceed more than thirty-two (32) square feet per surface area and shall be no higher than twenty (20) feet, set back one (1) foot for each foot of height.
- d. Signs which face a residential district shall not be illuminated after 11:00 p.m. or after the business closing time, whichever comes first.
- e. Wall signs shall not exceed thirty-two (32) square feet in area.
- f. Permanent window signs shall not exceed twenty-five percent (25%) of the total window area in which the sign(s) is placed.
- g. Ground/freestanding signs less than eight (8) feet high shall not exceed thirty-two (32) square feet.
- h. Changeable copy and electronic message signs are not allowed in this district.
- i. Awnings with imagery or lettering shall be considered as signs. The area of the imagery or lettering shall not exceed one-fourth (1/4) of the total surface area of the awning.
- j. Illumination shall be external only.
- k. Directory signs shall be a maximum of ten (10) square feet limited to one (1) per building side facing a public right-of-way with a maximum of two (2) per building.
- l. Signs can be displayed only in windows in which the business operates. Signs are not allowed in apartment, attic or basement windows.
- m. Appearance. Signs shall be designed in accordance with Sec. 15-5-7 (o) Design and Placement.

(4) Business Districts (B-2, B-5 and B-6).

- a. **All permanent signs require permits.** Total square footage of all signs shall be determined per Section 15-5-14(b). Multi-tenant/Use Buildings Section 15-5-14(c) shall apply.
- b. **Projecting signs** shall not exceed thirty-two (32) square feet per surface area and shall be no closer than twenty-five (25) feet from another projecting sign. Such sign shall not project into the public right-of-way and shall have its lowest point not less than eight (8) feet above the ground level.

- c. **Group Directory Signs** shall be a maximum of ten (10) square feet limited to one per building side facing a public right-of-way with a maximum of two (2) per building.
 - d. **External and internal illumination** is permitted provided the restrictions described in Sections 15-5-7(k)(2) and 15-5-9 are adhered to.
 - e. **Ground/freestanding signs** shall not exceed thirty-two (32) square feet in area. One (1) ground/freestanding or pylon sign is allowed per building.
 - f. **Pylon signs** shall not exceed thirty-two (32) square feet per sign face, shall have a twenty (20) foot maximum height, and be set back one (1) foot from the property line for each foot of height.
 - g. **Awnings with lettering** shall be considered as signs. The size of the lettering shall not exceed one-fourth (1/4) of the total surface area of the awning. With this type of awning identifying the business, no other type of sign for business identification shall be allowed.
 - h. **Wall Signs.** Wall signs shall not exceed thirty-two (32) square feet per building facade.
 - i. **Sandwich Board.** One sandwich board sign is permitted, placed on the business premise standing no more than four (4) feet high and with each sign surface not exceeding eight (8) square feet. The dimensions of the sandwich board shall be included on the total calculation form. Sandwich signs shall not be placed so as to block building entrances, exits, or public-right-of-ways and shall be located entirely on private property. These signs can only be displayed during business hours.
 - j. **Memo Boards.** One allowed per business; address or main entry; maximum size 18" x 24". The memo board's area shall be included in the total calculation form if over two (2) square feet. The boards must match design of building and/or any signage. Erasable, blackboards, or glass enclosed cases are acceptable.
 - k.. Appearance Signs shall be designed in accordance with Sec. 15-5-7 (o) Design and Placement.
- (5) Manufacturing Districts (M-1, M-2 and M-3).
- a. **All permanent signs require a permit.** Total square footage of all signs shall be determined by Section 15-5-14(b). Multi-tenant/Use Buildings Section 15-5-14(c) shall apply.
 - b. **Projecting signs** shall not exceed thirty-two (32) square feet per surface area, be not less than eight (8) feet above the ground level and shall not project into public right-of-way or over the property line.
 - c. **Ground/freestanding signs**, or wall signs shall not exceed thirty-six (36) square feet per surface area.
 - d. **Illumination shall be external only.**
 - e. **Appearance.** Signs shall be designed in accordance with Sec. 15-5-7 (o) Design and Placement.
- (7) Institutional and Public Service Districts (I-1).
- a. **All permanent signs require a permit.**

- b. **Projecting signs** shall not exceed twenty-four (24) square feet per surface area.
- c. **Ground/freestanding signs**, or wall signs shall not exceed thirty two (32) square feet per surface area or eight (8) feet in height.
- d. **Illumination shall be external only**
- e. **Historical signs, plaques and monuments** less than eight (8) square feet do not require a permit, but their designs should be reviewed by the Building Inspector, or the Landmarks Commission if the sign is located in sign, plaque or monument is located in the Historic Preservation District.
- f. **The changeable copy signs** for churches and other nonprofit organizations not to exceed twenty (20) square feet and shall be permissible in this district, subject to Section 15-5-11(c).
- g. **Appearance. Signs shall be designed in accordance with Sec. 15-5-7 (o) Design and Placement.**

SECTION 2. This ordinance shall take effect upon its passage and publication as provided by law.

Passed and adopted this 28th day of January, 2019.

Michael O'Keefe, Mayor

Countersigned:

Constance K. McHugh, City Clerk

Approved as to form:

Michael P. Herbrand, City Attorney

9. Single water service from the main shall be split at property line with individual lines going into each unit.
10. The intersection with Evergreen Boulevard should be shifted to the north to better line up with Pheasant Court.
11. More attention should be given to architectural style.

Plan Commissioners discussed recommending the LUP amendment to grant the developer the High-Medium Density residential use, but due to concerns with the details of the development plan felt they could not make a recommendation for rezoning. The property owner, James Dornek, requested that both the LUP amendment and rezoning be acted upon at the same time.

The Commissioners took no action on the requests so that Mr. James' proposal could be modified to address the following concerns:

1. Sidewalks be constructed along the parcels entire Evergreen Boulevard frontage.
2. The intersection be moved to match the access to Pheasant Court.
3. The entry to the development be enhanced to make it more interesting.
4. The private roadway be widened by eight (8) feet to allow for parking on one side of the street.
5. Emergency access the width of a driveway be provided from the cul-de-sac south to Pioneer Road. This access must be maintained and clear for emergency equipment only.
6. Consideration of a hammerhead design instead of the circular cul-de-sac at the east end this roadway.
7. Exceptional and diverse architecture and materials be proposed to mitigate concerns about the density of the project.
8. Garages be set back, and front entryways be emphasized.

CONSIDER MODIFICATION OF REGULATION OF SIGNS - TITLE 15, CHAPTER 5

Planner Censky noted that at a recent meeting, when considering an interior lit sign for a business along Pioneer Road, Commissioners questioned whether the City had standards regarding internal illumination and design. When advised that the only standard for internal illumination is vague in that it just states that "light shall only illuminate the immediate area of the sign" and did not address color, style or intensity, and that there were no standards regarding design, Commissioners asked staff to draft standards that would address illumination and provide for a more attractive sign that better fits Cedarburg.

Commissioners reviewed a draft ordinance that, from this point forward, will require that internally illuminated signs be constructed with an opaque and/or dark background where light shines only through the lettering and logos. It also encourages dark colored backgrounds on the sign face and discourages bright colors such as red, oranges and yellows. With respect to design, new signs will be designed to reflect the look and use of

material of the principal structure on the site.

If recommended, the ordinance will be scheduled for action at an upcoming Common Council meeting.

Commissioners discussed whether the ordinance would preclude businesses from using their usual logos. It was noted that white backgrounds would still be allowed, but with an opaque shield to reduce the intensity of the light.

Action:

A motion was made by Commissioner Strautmanis, seconded by Commissioner Voltz, to recommend the proposed ordinance modifying Title 15, Chapter 5 Regulation of Signs, with the deletion of the word “incandescent” in Section 15-5-7(k)(4) and adding the phrase “-like” after the word “neon” in Section 15-5-7(5) where it appears. The motion carried without a negative vote.

COMMENTS AND ANNOUNCEMENTS BY PLAN COMMISSIONERS

Commissioner Cain pointed out how fabulous the new Kettle Moraine Appliance building at the northwest corner of Pioneer Road and Cardinal Avenue looks. Commissioners concurred with her assessment.

MAYOR’S ANNOUNCEMENTS

Mayor O’Keefe had no announcements.

ADJOURNMENT

Council Member Thome moved to adjourn the meeting at 8:26 p.m. The motion was seconded by Commissioner Cain and carried without a negative vote.

Darla Drumel,
Administrative Secretary

CITY OF CEDARBURG

MEETING DATE: January 28, 2019

ITEM NO: 8. C.

TITLE: Consider Ordinance No. 2019-02 updating Sec. 6-2-3(g) of the Municipal Code pertaining to fees for excavations of streets, alleys, public ways and grounds; and action thereon (Public Works and Sewerage Comm. 01/10/19)

ISSUE SUMMARY: Our present ordinance for excavations in the street right-of-way is focused on work occurring at a single address, such as a new gas service, or replacing sewer and water laterals. It works OK in these instances, but we recently received a request from a telecommunications provider to install nearly 2 miles of fiber optic cable in the right-of-way, and our permitting system does not address this.

Therefore, staff is proposing to revise the permit fee structure to charge by the lineal foot for large projects, while keeping permit fees about the same for single property projects

We are also proposing to eliminate the \$100 deposit provision for excavations in the pavement. We find that the amount of the deposit does not create much of an incentive for contractors to comply with standards, but it does create significant clerical work to issue deposit refund checks. We believe the \$10,000 road bond fully addresses the guarantee function.

STAFF RECOMMENDATION: Staff recommends adoption of Ordinance No. 2019-02

BOARD, COMMISSION, OR COMMITTEE RECOMMENDATION: N/A

BUDGETARY IMPACT: Slight increase in permit fee revenue for the City.

ATTACHMENTS: Copy of proposed Ordinance No. 2019-02

INITIATED/REQUESTED BY: Staff

FOR MORE INFORMATION CONTACT: Tom Wiza – Director of Engineering and Public Works
(262)375-7610

ORDINANCE NO. 2019-02

**An Ordinance Pertaining to Fees for
Excavations of Streets, Alleys, Public Ways and Grounds**

The Common Council of the City of Cedarburg, Wisconsin, hereby ordains as follows:

SECTION 1. Section 6-2-3(g) of the Municipal Code of the City of Cedarburg is hereby amended as follows:

SEC. 6-2-3 EXCAVATIONS OF STREETS, ALLEYS, PUBLIC WAYS AND GROUNDS.

(g) Permit Fee and Deposit.

(1) The following fees shall be submitted with applications for permits under this Section:

- a. Opening street pavement or curb
(not-to-exceed 100 square feet) \$250 per street opening
- b. Opening sidewalk or driveway
(not-to-exceed 100 square feet) \$100 per sidewalk opening
- c. Opening grass parkway
(not-to-exceed 50 square feet) \$50
- d. Boring or trenching in excess of 100 lineal
feet within the street right-of-way \$0.30 per lineal foot plus
excavation fees per a., b., and c. above

- ~~a. Opening street~~ ~~\$250.00~~
- ~~b. Opening curb, alleyway, walkway or parkway~~ ~~\$150.00~~
- ~~c. Perform work or labor or deposit excavation
—or construction materials within a public
—right of way~~ ~~\$ 50.00~~

~~(2) The sum of One Hundred Dollars (\$100.00) of the fees deposited under a. and b. hereof shall be refunded upon completion of the restoration of the disturbed surface to the satisfaction of the City Engineer.~~

SECTION 2. This ordinance shall take effect upon its passage and publication as provided by law.

Passed and adopted this 28th day of January 2019.

Michael O’Keefe

Countersigned:

Constance K. McHugh, City Clerk

Approved as to form:

Michael P. Herbrand, City Attorney

CITY OF CEDARBURG

MEETING DATE: January 28, 2019

ITEM NO: 8. D.

TITLE: Consider Ordinance No. 2019-03 amending Title 14 Chapter 2 of the Municipal Code - Stormwater Management; and action thereon

ISSUE SUMMARY: The DNR requires municipalities to update their stormwater ordinances to be consistent with current state laws. As part of a 50% matching state grant program, the City retained AECOM to redraft the Ordinance. This ordinance was recreated and adopted in December 2017, but DNR did a final review prior to closing out the grant, and is now asking that the City delete Sec. 14-02-07 (4)(b)(2c).

STAFF RECOMMENDATION: Staff recommends adoption of Ordinance 2019-03.

BOARD, COMMISSION, OR COMMITTEE RECOMMENDATION: N/A

BUDGETARY IMPACT: Minimal impact for the City.

ATTACHMENTS: Copy of proposed Ordinance No. 2019-03

INITIATED/REQUESTED BY: DNR

FOR MORE INFORMATION CONTACT: Tom Wiza – Director of Engineering and Public Works
(262)375-7610

ORDINANCE NO. 2019-03

An Ordinance Repealing and Recreating Title 14 Chapter 2 of the City of Code of Ordinances

STORMWATER MANAGEMENT

The Common Council of the City of Cedarburg does hereby ordain as follows:

SECTION 1. Title 14 Chapter 2 of the Municipal Code of the City of Cedarburg is hereby amended as follows:

- S. 14-2-01 Authority**
- S. 14-2-02 Purpose and Intent**
 - (1) Purpose
 - (2) Intent
- S. 14-2-03 Applicability and Jurisdiction**
 - (1) Applicability
 - (2) Jurisdiction
 - (3) Exclusions
- S. 14-2-04 Definitions**
- S. 14-2-05 Applicability of Maximum Extent Practicable**
- S. 14-2-06 Technical Standards**
- S. 14-2-07 Performance Standards**
 - (1) Responsible Party
 - (2) Storm Water Management Plan
 - (3) Maintenance of Effort
 - (4) Requirements
 - (a) Total Suspended Solids
 - (b) Peak Discharge
 - (c) Infiltration
 - (d) Protective Areas
 - (e) Fueling and Maintenance Areas
 - (5) General Consideration for Storm Water Management Measures
 - (6) BMP Location
 - (7) Additional Requirements
- S. 14-2-08 Permitting Requirements, Procedures and Fees**
 - (1) Permit Required
 - (2) Permit Application and Fees
 - (3) Permit Application Review and Approval
 - (4) Permit Requirements
 - (5) Permit Conditions
 - (6) Permit Duration
- S. 14-2-09 Storm Water Management Plan**
 - (1) Storm Water Management Plan Requirements
 - (2) Alternate Requirements
- S. 14-2-10 Maintenance Agreement**
 - (1) Maintenance Agreement Required

- (2) Agreement Provisions
- S. 14-2-11 Financial Guarantee**
 - (1) Establishment of the Guarantee
 - (2) Conditions for Release
- S. 14-2-12 Illicit Discharge Prohibition and Disconnection**
 - (1) Intent
 - (2) Applicability
 - (3) Responsibility for Administration
 - (4) Illicit Discharge Properties
 - (5) Illicit Connection Prohibitions
 - (6) Suspension of MS4 Access
 - (7) Monitoring of Discharges
 - (8) Requirements
 - (9) Watercourse Protection
 - (10) Notification of Spills
 - (11) Enforcement
- S. 14-2-13 Fee Schedule**
- S. 14-2-14 Enforcement**
- S. 14-2-15 Appeals**
 - (1) Department of Public Works and Sewerage Commission
 - (2) Who May Appeal
- S. 14-2-16 Severability**
- S. 14-2-17 Effective Date**

POST-CONSTRUCTION STORMWATER MANAGEMENT

S. 14-2-01 AUTHORITY.

- (1) This ordinance is adopted by the City of Cedarburg under the authority granted by s. 62.234 Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 62.23, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in s. 62.234 Wis. Stats., s. 62.23, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The City of Cedarburg hereby designates the City of Cedarburg Department of Engineering and Public Works to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent storm water management requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

S. 14-2-02 PURPOSE AND INTENT.

- (1) **PURPOSE.** The purpose of this ordinance is to establish long-term, post-construction runoff management requirements and criteria that will prevent and control water pollution, diminish the threats to public health, safety, welfare and the aquatic environment due to runoff of stormwater from development and redevelopment. Specific purposes are to:
- (a) Further the maintenance of safe and healthful conditions.
 - (b) Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
 - (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; and control increases in the scouring and transportation of particulate matter.
 - (d) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the state.
- (2) **INTENT.** It is the intent of the City of Cedarburg that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The City of Cedarburg recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the City of Cedarburg, it is the intent of this ordinance that the approved storm water management plan be used to identify post-construction management measures acceptable for the community.

S. 14-2-03 APPLICABILITY AND JURISDICTION.

- (1) **APPLICABILITY.**
- (a) Except as provided under par. (b), this ordinance applies to a post-construction site whereupon one acre or more of land disturbing construction activity occurs during construction. The ordinance also applies to land development activities that are smaller than the minimum applicability criteria if such activities are part of a larger common plan of development or sale that meets the following applicability criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules.
 - 1. Residential land development with a gross aggregate area of 1 acre or more;
 - 2. Residential land development with a gross aggregate area less than 1 acre, if there are at least 0.5 acres of impervious surfaces;
 - 3. Land development, other than a residential land development, with a gross aggregate area of 0.5 acres or more;

4. Any land development, which in the opinion of the City of Cedarburg Department of Engineering and Public Works, is likely to result in stormwater runoff that exceeds the safe capacity of existing drainage facilities or receiving body of water, that causes undue channel erosion, increases water pollution or which endangers downstream property or public safety.
- (b) A site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance:
 1. A post-construction site with less than ten percent connected imperviousness, based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. However, the exemption of this paragraph does not include exemption from the protective area standard of this ordinance.
 2. Agricultural facilities and practices.
 3. Underground utility construction, but not including the construction of any above ground structures associated with utility construction.
 - (c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to post-construction sites of any size that, as determined by the City of Cedarburg Department of Engineering and Public Works, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, causes undue channel erosion, or increases water pollution by scouring or the transportation of particulate matter.
- (2) **JURISDICTION.**
This ordinance applies to post construction sites within the boundaries and jurisdiction of the City of Cedarburg, as well as all lands located within the extraterritorial plat approval jurisdiction of the City of Cedarburg, even if plat approval is not involved.
 - (3) **EXCLUSIONS.**
This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats.

S. 14-2-04 DEFINITIONS.

- (1) “Adequate sod, or self-sustaining vegetative cover” means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.
- (2) “Administering authority” means a governmental employee, or a regional planning commission empowered under s. 62.234, Wis. Stats., that is designated by the Common Council to administer this ordinance.
- (3) “Agricultural facilities and practices” has the meaning given in s. 281.16 (1), Wis. Stats.
- (4) “Atlas 14” means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.
- (5) “Average annual rainfall” means a typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as

- WinSLAMM, P8 or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality.
- (6) “Best management practice” or “BMP” means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.
 - (7) “Business day” means a day the office of the City of Cedarburg Department of Engineering and Public Works is routinely and customarily open for business.
 - (8) “Cease and desist order” means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the City of Cedarburg Department of Engineering and Public Works.
 - (9) “Combined sewer system” means a system for conveying both sanitary sewage and storm water runoff.
 - (10) “Connected imperviousness” means an impervious surface connected to the waters of the state via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.
 - (11) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.
 - (12) “Development” means residential, commercial, industrial or institutional land uses and associated roads.
 - (13) “Direct conduits to groundwater” means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.
 - (14)* “Division of land” means the creation from one parcel of four or more parcels or building sites of **one and one-half (1.5)** or fewer acres each in area where such creation occurs at one time or through the successive partition within a 5-year period.
 - (15) “Effective infiltration area” means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.
 - (16) “Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.
 - (17) "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.
 - (18)* “Extraterritorial” means the unincorporated area within three miles of the corporate limits of a first, second, or third class city, or within one and a half miles of a fourth class city or village.
 - (19) "Filtering layer" means soil that has at least a 3-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the regulatory authority for the site.
 - (20) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70 percent of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
 - (21) “Financial guarantee” means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the City of Cedarburg Department of Engineering and Public Works by the responsible party to assure that

requirements of the ordinance are carried out in compliance with the storm water management plan.

- (22) “Governing body” means the City of Cedarburg Common Council.
- (23) “Impervious surface” means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, gravel or paved parking lots and streets are examples of areas that typically are impervious.
- (24) “In-fill” means an undeveloped area of land located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur.
- (25) “Infiltration” means the entry of precipitation or runoff into or through the soil.
- (26) “Infiltration system” means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.
- (27) “Karst feature” means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.
- (28) “Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- (29) “Landowner” means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property.
- (30) “Maintenance agreement” means a legal document that provides for long-term maintenance of storm water management practices.
- (31) “Maximum extent practicable” means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with S. 14-2-05 of this ordinance.
- (32) “New development” means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (33) “NRCS MSE3 or MSE4 distribution” means a specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.
- (34) “Off-site” means located outside the property boundary described in the permit application.
- (35) “On-site” means located within the property boundary described in the permit application.
- (36) “Ordinary high-water mark” has the meaning given in s. NR 115.03 (6), Wis. Adm. Code.
- (37) “Outstanding resource waters” means waters listed in s. NR 102.10, Wis. Adm. Code.

- (38) "Percent fines" means the percentage of a given sample of soil, which passes through a # 200 sieve.
- (39) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (40) "Permit" means a written authorization made by the City of Cedarburg Department of Engineering and Public Works to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (41) "Permit administration fee" means a sum of money paid to the City of Cedarburg Department of Engineering and Public Works by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (42) "Pervious surface" means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.
- (43) "Pollutant" has the meaning given in s. 283.01 (13), Wis. Stats.
- (44) "Pollution" has the meaning given in s. 281.01 (10), Wis. Stats.
- (45) "Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.
- (46) "Pre-development condition" means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.
- (47) "Preventive action limit" has the meaning given in s. NR 140.05 (17), Wis. Adm. Code.
- (48) "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.
- (49) "Redevelopment" means areas where development is replacing older development.
- (50) "Responsible party" means the landowner or any other entity performing services to meet the requirements of this ordinance through a contract or other agreement. "Runoff" means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (51) "Separate storm sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:
- (a) Is designed or used for collecting water or conveying runoff.
 - (b) Is not part of a combined sewer system.
 - (c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
 - (d) Discharges directly or indirectly to waters of the state.
- (52) "Silviculture activity" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
- (53) "Site" means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.

- (54) “Stop work order” means an order issued by the City of Cedarburg Department of Engineering and Public Works which requires that all construction activity on the site be stopped.
- (55) “Storm water management plan” means a comprehensive plan designed to reduce the discharge of pollutants from storm water, after the site has undergone final stabilization, following completion of the construction activity.
- (56) “Storm water management system plan” is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
- (57) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (58) “Top of the channel” means an edge, or point on the landscape landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12 percent continually for at least 50 feet. If the slope of the land is 12 percent or less continually for the initial 50 feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.
- (59) "Total maximum daily load" or "TMDL" means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.
- (60) “TP-40“ means Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.
- (61) "TR-55" means the United States department of agriculture, natural resources conservation service (previously soil conservation service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, which is incorporated by reference for this chapter.
- (62) “Transportation facility” means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under s. 85.095 (1)(b), Wis. Stats. “Transportation facility” does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to s. 281.33, Wis. Stats.
- (63) “TSS” means total suspended solids.
- (64) “Type II distribution” means a rainfall type curve as established in the “United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published in 1973”.
- (65) “Waters of the state” includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

S. 14-2-05 APPLICABILITY OF MAXIMUM EXTENT PRACTICABLE.

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the City of Cedarburg Department of Engineering and Public Works’s satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable

and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, protection of wetlands, and preservation of historic properties.

S. 14-2-06 TECHNICAL STANDARDS.

The following methods shall be used in designing the water quality, peak discharge, and infiltration components of storm water practices needed to meet the water quality standards of this ordinance:

- (1) Consistent with the technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- (2) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the City of Cedarburg Department of Engineering and Public Works.

S. 14-2-07 PERFORMANCE STANDARDS.

- (1) RESPONSIBLE PARTY. The responsible party shall comply with this section.
- (2) STORM WATER MANAGEMENT PLAN. A written storm water management plan in accordance with S. 14-2-09 shall be developed and implemented for each post-construction site.
- (3) MAINTENANCE OF EFFORT. For redevelopment sites where the redevelopment will be replacing older development that was subject to post-construction performance standards of NR 151 in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration, and protective areas standards applicable to the older development or meet the redevelopment standards of this ordinance, whichever is more stringent.
- (4) REQUIREMENTS. The storm water management plan required under sub. (2) shall include the following:
 - (a) TOTAL SUSPENDED SOLIDS. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:
 1. BMPs shall be designed in accordance with Table 1. or to the maximum extent practicable as provided in subd. 2. The design shall be based on an average annual rainfall, as compared to no runoff management controls.

| Table 1. TSS Reduction Standards | |
|---|---|
| Development Type | TSS Reduction |
| New Development | 80 percent |
| In-fill development | 80 percent |
| Redevelopment | 40 percent of load from parking areas and roads |

2. Maximum Extent Practicable. If the design cannot meet a total suspended solids reduction performance standard of Table 1., the storm water management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable.
 3. Off-Site Drainage. When designing BMPs, runoff draining to the BMP from off-site shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.
- (b) **PEAK DISCHARGE.**
1. By design, BMPs shall be employed to:
 - a. For the 1-year, 24-hour; and the 2-year, 24-hour design storms, BMPs shall be designed so that post-construction peak runoff discharge rates are maintained or reduced compared to the 1-year, 24-hour; and the 2-year, 24-hour pre-development peak runoff discharge rates respectively, or to the maximum extent practicable.
 - b. The post-development storm water runoff rate associated with the 100-year, 24-hour design storm, shall not exceed the pre-development 10-year 24-hour design storm runoff rate, for new development sites.

The runoff curve numbers in Table 2. shall be used to represent the actual pre-development conditions. Peak discharges shall be calculated using TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the appropriate NRCS Wisconsin MSE3 or MSE4 precipitation distribution. On a case-by-case basis, City of Cedarburg Department of Engineering and Public Works may allow the use of TP-40 precipitation depths and the Type II distribution.

| Runoff Curve Number | Hydrologic Soil Group | | | |
|---------------------|-----------------------|----|----|----|
| | A | B | C | D |
| Woodland | 30 | 55 | 70 | 77 |
| Grassland | 39 | 61 | 71 | 78 |
| Cropland | 55 | 69 | 78 | 83 |

2. This subsection of the ordinance does not apply to any of the following:
 - a. Except as provided under S. 14-2-07 (3), a redevelopment post-construction site.
 - b. An in-fill development area less than 5 acres.
 - ~~c. Sites that directly discharge to the Cedar Creek without flowing over or through a municipally owned separate storm sewer as approved by the City Inspector.~~
3. All stormwater conveyance systems within the proposed development, and receiving surface runoff from the proposed development, shall be designed to completely contain the following peak storm flows:
 - a. For open channel conveyance systems, the peak flow from the 100-year, 24-hour storm shall be completely contained within the channel bottom and banks.
 - b. For storm sewer pipes the peak flow from the 10-year, 24-hour storm shall be completely contained within the pipes with no surcharging or pressurized flow.

(c) **INFILTRATION.**

1. Best Management Practices. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following or to the maximum extent practicable:
 - a. *Low imperviousness.* For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than one percent of the post-construction site is required as an effective infiltration area.
 - b. *Moderate imperviousness.* For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent of the pre-development infiltration volume, based on an average annual rainfall. However,

when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

- c. *High imperviousness.* For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.
2. Pre-development. The pre-development condition shall be the same as specified in Table 2 of the Peak Discharge section of this ordinance.
3. Source Areas.
 - a. *Prohibitions.* Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of this section unless demonstrated to meet the conditions identified in S. 14-2-07 (4)(c)6.:
 - i. Areas associated with a tier 1 industrial facility identified in s. NR 216.21 (2)(a), including storage, loading and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.
 - ii. Storage and loading areas of a tier 2 industrial facility identified in s. NR 216.21 (2)(b).
 - iii. Fueling and vehicle maintenance areas. Runoff from rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.
 - b. *Exemptions.* Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:
 - i. Parking areas and access roads less than 5,000 square feet for commercial development.
 - ii. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the Prohibitions under par a.
 - iii. Except as provided under S. 14-2-07 (3), redevelopment post-construction sites.
 - iv. In-fill development areas less than 5 acres.
 - v. Roads on commercial, industrial and institutional land uses, and arterial residential roads.
4. Location of Practices.
 - a. *Prohibitions.* Infiltration practices may not be located in the following areas:
 - i. Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.

- ii. Areas within 400 feet of a community water system well as specified in s. NR 811.16 (4) or within the separation distances listed in s. NR 812.08 for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial and institutional land uses or regional devices for one- and two-family residential development.
 - iii. Areas where contaminants of concern, as defined in s. NR 720.03 (2), are present in the soil through which infiltration will occur.
- b. *Separation distances.*
- i. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with Table 3:

| Table 3. Separation Distances and Soil Characteristics | | |
|---|----------------------------|---|
| Source Area | Separation Distance | Soil Characteristics |
| Industrial, Commercial, Institutional Parking Lots and Roads | 5 feet or more | Filtering Layer |
| Residential Arterial Roads | 5 feet or more | Filtering Layer |
| Roofs Draining to Subsurface Infiltration Practices | 1 foot or more | Native or Engineered Soil with Particles Finer than Coarse Sand |
| Roofs Draining to Surface Infiltration Practices | Not Applicable | Not Applicable |
| All Other Impervious Source Areas | 3 feet or more | Filtering Layer |

- ii. Notwithstanding par. b., applicable requirements for injection wells classified under ch. NR 815 shall be followed.
- c. *Infiltration rate exemptions.* Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under these conditions is optional:
- i. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.
 - ii. Where the least permeable soil horizon to 5 feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.

5. Alternate Use. Where alternate uses of runoff are employed, such as for toilet flushing, laundry, or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.
6. Groundwater Standards.
 - a. Infiltration systems designed in accordance with this section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with Ch. NR 140. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
 - b. Notwithstanding par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
7. Pretreatment. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 6. Pretreatment options may include, but are not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales or filter strips.
8. Maximum Extent Practicable. Where the conditions of subd. 3. and 4. limit or restrict the use of infiltration practices, the performance standard of S. 14-2-07 (4)(c) shall be met to the maximum extent practicable.

(d) **PROTECTIVE AREAS.**

1. Definition. In this section, “protective area” means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section, “protective area” does not include any area of land adjacent to any stream enclosed within a pipe or culvert, so that runoff cannot enter the enclosure at this location.
 - a. For outstanding resource waters and exceptional resource waters, 75 feet.
 - b. For perennial and intermittent streams identified on a U.S. Geological Survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
 - c. For lakes, 50 feet.
 - d. For wetlands not subject to par. e. or f., 50 feet.

- e. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
 - f. For less susceptible wetlands, 25 feet. Less susceptible wetlands include: degraded wetland dominated by invasive species such as reed canary grass; cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.
 - g. In pars. d. to f., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.
 - h. Wetland boundary delineation shall be made in accordance with s. NR 103.08 (1m). This paragraph does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after a fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
 - i. For concentrated flow channels with drainage areas greater than 130 acres, 25 feet.
 - j. Notwithstanding pars. a. to i., the greatest protective area width shall apply where rivers, streams, lakes and wetlands are contiguous.
2. Applicability. This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.
3. Requirements. The following requirements shall be met:
- a. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the protective area, the storm water management plan shall contain a written, site-specific explanation.
 - b. Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat, and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.

- c. BMPs such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.
 - 4. Exemptions. This section does not apply to any of the following:
 - a. Except as provided under S. 14-2-07 (3), redevelopment post-construction sites.
 - b. In-fill development areas less than 5 acres.
 - c. Structures that cross or access surface water such as boat landings, bridges, and culverts.
 - d. Structures constructed in accordance with s. 59.692 (1v), Stats.
 - e. Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the local ordinance requirements for total suspended solids and peak flow reduction, except to the extent that vegetative ground cover is necessary to maintain bank stability.
 - (e) FUELING AND MAINTENANCE AREAS. Fueling and vehicle maintenance areas shall have BMPs designed, installed, and maintained to reduce petroleum within runoff, so that the runoff that enters waters of the state contains no visible petroleum sheen, or to the maximum extent practicable.
- (5) GENERAL CONSIDERATIONS FOR STORM WATER MANAGEMENT MEASURES. The following considerations shall be observed in on-site and off-site runoff management:
 - (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
 - (b) Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- (6) BMP LOCATION.
 - (a) To comply with the performance standards required under S. 14-2-07 of this ordinance, BMPs may be located on-site or off-site as part of a regional storm water device, practice or system, but shall be installed in accordance with s. NR 151.003, Wis. Adm. Code.
 - (b) The City of Cedarburg Department of Engineering and Public Works may approve off-site management measures provided that all of the following conditions are met:
 - 1. The City of Cedarburg Department of Engineering and Public Works determines that the post-construction runoff is covered by a storm water management system plan that is approved by the City of Cedarburg and that contains management requirements consistent with the purpose and intent of this ordinance.
 - 2. The off-site facility meets all of the following conditions:
 - a. The facility is in place.

- b. The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.
 - c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
- (c) Where a regional treatment option exists such that the City of Cedarburg Department of Engineering and Public Works exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the City of Cedarburg Department of Engineering and Public Works. In determining the fee for post-construction runoff, the City of Cedarburg Department of Engineering and Public Works shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option. Fee in Lieu of Costs in effect at the time of publishing this ordinance are as shown in the following table and subject to modification pursuant to section 14-2-13 herein.

| Fee in Lieu of Costs – City of Cedarburg Stormwater Ordinance | |
|--|-----------------------------------|
| Land Use | Fee/Acre of Land Developed |
| Residential (1&2 Family) | \$4,000 |
| Commercial, Industrial and Multi-Family | \$10,000 |

- (7) **ADDITIONAL REQUIREMENTS.** The City of Cedarburg Department of Engineering and Public Works may establish storm water management requirements more stringent than those set forth in this ordinance if the City of Cedarburg Department of Engineering and Public Works determines that the requirements are needed to control storm water quantity or control flooding, comply with federally approved total maximum daily load requirements, or control pollutants associated with existing development or redevelopment.

S. 14-2-08 PERMITTING REQUIREMENTS, PROCEDURES AND FEES.

- (1) **PERMIT REQUIRED.** No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the City of Cedarburg Department of Engineering and Public Works prior to commencing the proposed activity.
- (2) **PERMIT APPLICATION AND FEES.** Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the City of Cedarburg Department of Engineering and Public Works a permit application on a form provided by the City of Cedarburg Department of Engineering and Public Works for that purpose.

- (a) Unless otherwise excluded by this ordinance, a permit application must be accompanied by a storm water management plan, a maintenance agreement and a non-refundable permit administration fee.
 - (b) The storm water management plan shall be prepared to meet the requirements of S. 14-2-07 and S. 14-2-09, the maintenance agreement shall be prepared to meet the requirements of S. 14-2-10, the financial guarantee shall meet the requirements of S. 14-2-11, and fees shall be those established by the City of Cedarburg as set forth in S. 14-2-13.
- (3) **PERMIT APPLICATION REVIEW AND APPROVAL.** The City of Cedarburg Department of Engineering and Public Works shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
- (a) Within 30 business days of the receipt of a complete permit application, including all items as required by sub. (2), the City of Cedarburg Department of Engineering and Public Works shall inform the applicant whether the application, storm water management plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.
 - (b) If the storm water permit application, storm water management plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made, the City of Cedarburg Department of Engineering and Public Works shall issue the permit.
 - (c) If the storm water permit application, storm water management plan or maintenance agreement is disapproved, the City of Cedarburg Department of Engineering and Public Works shall detail in writing the reasons for disapproval.
 - (d) The City of Cedarburg Department of Engineering and Public Works may request additional information from the applicant. If additional information is submitted, the City of Cedarburg Department of Engineering and Public Works shall have 30 business days from the date the additional information is received to inform the applicant that the storm water management plan and maintenance agreement are either approved or disapproved.
 - (e) Failure by the City of Cedarburg Department of Engineering and Public Works to inform the permit applicant of a decision within 30 business days of a required submittal shall be deemed an approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) **PERMIT REQUIREMENTS.** All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The City of Cedarburg Department of Engineering and Public Works may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the City of Cedarburg Department of Engineering and Public Works to suspend or revoke this permit may be appealed in accordance with S. 14-2-15.
- (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.

- (b) The responsible party shall design and install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.
- (c) The responsible party shall notify the City of Cedarburg Department of Engineering and Public Works at least 10 business days before commencing any work in conjunction with the storm water management plan, and within 10 business days upon completion of the storm water management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the City of Cedarburg Department of Engineering and Public Works so that practice installations can be inspected during construction.
- (d) Practice installations required as part of this ordinance shall be certified "as built" or "record" drawings by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the City of Cedarburg Department of Engineering and Public Works or its designee to determine if they are in accordance with the approved storm water management plan and ordinance. The City of Cedarburg Department of Engineering and Public Works or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
- (e) The responsible party shall notify the City of Cedarburg Department of Engineering and Public Works of any significant modifications it intends to make to an approved storm water management plan. The City of Cedarburg Department of Engineering and Public Works may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.
- (f) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the City of Cedarburg, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
- (g) The responsible party authorizes the City of Cedarburg Department of Engineering and Public Works, or its designee, to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan, and consents to a special assessment or charge against the property as authorized under subch. VII of Ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under S. 14-2-11.
- (h) If so directed by the City of Cedarburg Department of Engineering and Public Works, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved storm water management plan.
- (i) The responsible party shall permit property access to the City of Cedarburg Department of Engineering and Public Works or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit or for work performed pursuant to subsection 14-2-08(4)(g) above.

- (j) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the City of Cedarburg Department of Engineering and Public Works may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
 - (k) The responsible party is subject to the enforcement actions and penalties detailed in S. 14-2-14, if the responsible party fails to comply with the terms of this permit.
- (5) **PERMIT CONDITIONS.** Permits issued under this subsection may include conditions established by City of Cedarburg Department of Engineering and Public Works in addition to the requirements needed to meet the performance standards in S. 14-2-07 or a financial guarantee as provided for in S. 14-2-11.
 - (6) **PERMIT DURATION.** Permits issued under this section shall be valid from the date of issuance through the date the City of Cedarburg Department of Engineering and Public Works notifies the responsible party that all storm water management practices have passed the final inspection required under sub. (4)(d).

S. 14-2-09 STORM WATER MANAGEMENT PLAN.

- (1) **STORM WATER MANAGEMENT PLAN REQUIREMENTS.** The storm water management plan required under S. 14-2-07 (2) shall contain at a minimum the following information:
 - (a) Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of storm water management practices; and person(s) responsible for maintenance of storm water management practices prior to the transfer, if any, of maintenance responsibility to another party.
 - (b) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.
 - (c) Pre-development site conditions, including:
 - 1. One or more site maps at a scale of not less than 1 inch equals 50 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed 1 foot; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all storm water conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to s. NR 811.16, Wis. Adm. Code.

2. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
- (d) Post-development site conditions, including:
1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
 2. Explanation of any restrictions on storm water management measures in the development area imposed by wellhead protection plans and ordinances.
 3. One or more site maps at a scale of not less than 1 inch equals 50 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed 1 foot; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all storm water conveyance sections; location and type of all storm water management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
 4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
 5. Results of investigations of soils and groundwater required for the placement and design of storm water management measures. Detailed drawings including cross-sections and profiles of all permanent storm water conveyance and treatment practices.
- (e) A description and installation schedule for the storm water management practices needed to meet the performance standards in S. 14-2-07.
- (f) A maintenance plan developed for the life of each storm water management practice including the required maintenance activities and maintenance activity schedule.
- (g) Cost estimates for the construction, operation, and maintenance of each storm water management practice.

- (h) Other information requested in writing by the [administering authority] to determine compliance of the proposed storm water management measures with the provisions of this ordinance.
 - (i) All site investigations, plans, designs, computations, and drawings shall be certified by a [licensed professional engineer] to be prepared in accordance with accepted engineering practice and requirements of this ordinance.
- (2) ALTERNATE REQUIREMENTS. The City of Cedarburg Department of Engineering and Public Works may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under S. 14-2-07 (5).

S. 14-2-10 MAINTENANCE AGREEMENT.

- (1) MAINTENANCE AGREEMENT REQUIRED. The maintenance agreement required under S. 14-2-08 (2) for storm water management practices shall be an agreement between the City of Cedarburg Department of Engineering and Public Works and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be recorded with the County Register of Deeds as a property deed restriction and shall be binding upon all subsequent owners of the land served by the storm water management practices.
- (2) AGREEMENT PROVISIONS. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by S. 14-2-09 (1)(f):
- (a) Identification of the storm water facilities and designation of the drainage area served by the facilities.
 - (b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under S. 14-2-08 (2).
 - (c) Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under S. 14-2-08 (2).
 - (d) Requirement that the responsible party(s), organization, or city, county, town or village shall maintain storm water management practices in accordance with the schedule included in par. (b).
 - (e) Authorization for the City of Cedarburg Department of Engineering and Public Works to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement and perform corrective actions pursuant to subsection 14-2-10(2)(h), below.
 - (f) A requirement of the City of Cedarburg Department of Engineering and Public Works to maintain public records of the results of the site inspections for the period specified in the Maintenance Agreement, but in no event longer than 7 years, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.

- (g) Agreement that the party designated under par. (c), as responsible for long term maintenance of the storm water management practices, shall be notified by the City of Cedarburg Department of Engineering and Public Works of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the City of Cedarburg Department of Engineering and Public Works.
- (h) Authorization of the City of Cedarburg Department of Engineering and Public Works to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. If the costs of the corrective actions are not timely paid, the City of Cedarburg shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to subch. VII of Ch. 66, Wis. Stats.
- (i) The maintenance agreement shall be terminated at such time that responsibility for maintenance of the stormwater management practice is legally transferred to the City of Cedarburg Department of Engineering and Public Works or agency acceptable to the City of Cedarburg Department of Engineering and Public Works, through a written, binding agreement. The termination date of the maintenance agreement required under Sec. 8(a) shall be the date upon which the legal transfer of maintenance responsibility to the City of Cedarburg Department of Engineering and Public Works or agency is made effective.

S. 14-2-11 FINANCIAL GUARANTEE.

- (1) ESTABLISHMENT OF THE GUARANTEE. The City of Cedarburg Department of Engineering and Public Works may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the City of Cedarburg Department of Engineering and Public Works. The financial guarantee shall be in an amount determined by the City of Cedarburg Department of Engineering and Public Works to be the estimated cost of construction and the estimated cost of maintenance of the storm water management practices during the period which the designated party in the maintenance agreement has maintenance responsibility, but not to exceed the estimated construction cost plus 25%. The financial guarantee shall give the City of Cedarburg Department of Engineering and Public Works the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the City of Cedarburg Department of Engineering and Public Works that the requirements of this ordinance have not been met.
- (2) CONDITIONS FOR RELEASE. Conditions for the release of the financial guarantee are as follows:
 - (a) The City of Cedarburg Department of Engineering and Public Works shall release the portion of the financial guarantee established under this section to assure installation of the storm water management practices, less any costs incurred by the City of Cedarburg Department of Engineering and Public Works to complete installation of practices, upon submission of "as built plans" or "record" drawings by a licensed professional engineer and confirmation that the practices comply

fully with the Permit. The City of Cedarburg Department of Engineering and Public Works may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.

- (b) The City of Cedarburg Department of Engineering and Public Works shall release the portion of the financial guarantee established under this section to assure maintenance of storm water practices, less any costs incurred by the City of Cedarburg Department of Engineering and Public Works, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

S. 14-2-12 ILLICIT DISCHARGE PROHIBITION AND DISCONNECTION.

- (1) **INTENT.** This section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.
- (2) **APPLICABILITY.** This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.
- (3) **RESPONSIBILITY FOR ADMINISTRATION.** The City of Cedarburg Department of Engineering and Public Works shall be deemed the authorized enforcement agency, as that term is used herein, for purposes of administering, implementing, and enforcing the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated by that agency to persons or entities acting in the beneficial interest of or in the employ of the City.
- (4) **ILLICIT DISCHARGE PROHIBITIONS**
 - (a) No person shall discharge or cause to be discharged into the municipal storm sewer system or watercourses any materials, including but not limited, to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.
 - (b) Exemptions. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
 - 1. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), firefighting activities, and any other water source not containing Pollutants.
 - 2. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
 - 3. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

4. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
- (5) **ILLICIT CONNECTION PROHIBITIONS.** The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (6) **SUSPENSION OF MS4 ACCESS**
 - (a) **Suspension due to Illicit Discharges in Emergency Situations.** The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.
 - (b) **Suspension due to the Detection of Illicit Discharge.** Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.
- (7) **MONITORING OF DISCHARGES**
 - (a) The authorized enforcement agency shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.
 - (b) Facility operators shall allow the authorized enforcement agency ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
 - (c) Unreasonable delays in allowing the authorized enforcement agency access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
 - (d) If the authorized enforcement agency has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate

probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant or special inspection warrant from any court of competent jurisdiction.

- (8) **REQUIREMENTS. Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices.** The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- (9) **WATERCOURSE PROTECTION.** Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use function, or physical integrity of the watercourse.
- (10) **NOTIFICATION OF SPILLS.** Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S. said person, shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

S. 14-2-13 FEE SCHEDULE.

The fees referred to in other sections of this ordinance shall be established by the City of Cedarburg Department of Engineering and Public Works and may from time to time be modified by resolution of the Common Council of the City of Cedarburg. A schedule of the fees established by the City of Cedarburg Department of Engineering and Public Works shall be available for review in City Hall.

S. 14-2-14 ENFORCEMENT.

- (1) Any land disturbing construction activity or post-construction runoff initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.
- (2) The City of Cedarburg Department of Engineering and Public Works shall notify the responsible party by certified mail of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.
- (3) Upon receipt of written notification from the City of Cedarburg Department of Engineering and Public Works under sub. (2), the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit within 30 days. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the City of Cedarburg Department of Engineering and Public Works in the notice.
- (4) If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the City of Cedarburg Department of Engineering and Public Works may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City of Cedarburg Department of Engineering and Public Works plus interest and legal costs shall be billed to the responsible party.
- (5) The City of Cedarburg Department of Engineering and Public Works is authorized to post a stop work order on all land disturbing construction activity that is in violation of this ordinance, or to request the City of Cedarburg Attorney to obtain a cease and desist order in any court with jurisdiction.
- (6) The City of Cedarburg Department of Engineering and Public Works may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.
- (7) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the City of Cedarburg Department of Engineering and Public Works or by a court with jurisdiction.
- (8) The City of Cedarburg Department of Engineering and Public Works is authorized to refer any violation of this ordinance, or a stop work order or cease and desist order issued pursuant to this ordinance, to the City of Cedarburg Attorney for the commencement of further legal proceedings in any court with jurisdiction.
- (9) Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture of not less than 100 dollars or more than 500 dollars per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- (10) Every violation of this ordinance is a public nuisance. Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- (11) When the City of Cedarburg Department of Engineering and Public Works determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices

set forth in the storm water management plan, or has failed to comply with any other terms of said storm water management plan, the City of Cedarburg Department of Engineering and Public Works or a party designated by the City of Cedarburg Department of Engineering and Public Works may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved storm water management plan. The City of Cedarburg Department of Engineering and Public Works shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to S. 14-2-11 of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

S. 14-2-15 APPEALS.

- (1) **PUBLIC WORKS AND SEWERAGE COMMISSION.** The Public Works and Sewerage Commission, created pursuant to section 2-4-2 of the City of Cedarburg zoning ordinances pursuant to s. 62.23 (7)(e), Wis. Stats., shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City of Cedarburg Department of Engineering and Public Works in administering this ordinance. The Public Works and Sewerage Commission shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the Public Works and Sewerage Commission may authorize variances from the provisions of this ordinance that are not contrary to the public interest, and where owing to special conditions a literal enforcement of the ordinance will result in unnecessary hardship.
- (2) **WHO MAY APPEAL.** Appeals to the Public Works and Sewerage Commission may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Cedarburg affected by any decision of the City of Cedarburg Department of Engineering and Public Works.

S. 14-2-16 SEVERABILITY.

If any section, clause, provision or portion of this ordinance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall remain in force and not be affected by such judgment.

S. 14-2-17 EFFECTIVE DATE.

This ordinance shall be in force and effect from and after its adoption and publication.

SECTION 2. This ordinance shall take effect upon its passage and publication as provided by law.

Passed and adopted this 28th day of January, 2019.

Michael O'Keefe, Mayor

Countersigned:

Constance K. McHugh, City Clerk

Approved as to form:

Michael P. Herbrand, City Attorney

CITY OF CEDARBURG

MEETING DATE: January 28, 2019

ITEM NO: 8. E.

TITLE: Consider Ordinance No. 2019-04 amending Title 15 Chapter 2 of the Municipal Code – Construction Site Erosion Control; and action thereon.

ISSUE SUMMARY: The DNR requires municipalities to update their erosion control ordinances to be consistent with current state laws. As part of a 50% matching state grant program, the City retained AECOM to redraft the Ordinance. Before we can apply for final grant reimbursement, however, DNR is requiring a few minor edits to the revised ordinance.

STAFF RECOMMENDATION: Staff recommends adoption of Ordinance 2019-04.

BOARD, COMMISSION, OR COMMITTEE RECOMMENDATION: N/A

BUDGETARY IMPACT: Minimal impact for the City.

ATTACHMENTS: Copy of proposed Ordinance No. 2019-04

INITIATED/REQUESTED BY: DNR

FOR MORE INFORMATION CONTACT: Tom Wiza – Director of Engineering and Public Works
(262)375-7610

ORDINANCE NO. 2019-04

An Ordinance Repealing and Recreating Title 15 Chapter 2 of the City of Code of Ordinances

EROSION CONTROL

The Common Council of the City of Cedarburg does hereby ordain as follows:

SECTION 1. Sec. 15-2 of the Municipal Code of the City of Cedarburg is hereby amended as follows:

- S. 15-2-01 Authority**
- S. 15-2-02 Findings of Fact**
- S. 15-2-03 Purpose**
- S. 15-2-04 Applicability and Jurisdiction**
 - (1) Applicability
 - (2) Jurisdiction
 - (3) Exclusions
- S. 15-2-05 Definitions**
- S. 15-2-06 Applicability of Maximum Extent Practicable**
- S. 15-2-07 Technical Standards**
- S. 15-2-08 Performance Standards for Construction Sites Under One Acre**
 - (1) Responsible Party
 - (2) Erosion and Sediment Control Practices
 - (3) Location
 - (4) Implementation
- S. 15-2-09 Performance Standards for Construction Sites of One Acre or More**
 - (1) Responsible Party
 - (2) Erosion and Sediment Control Plan
 - (3) Erosion and Other Pollutant Control Requirements
 - (4) Implementation
- S. 15-2-10 Permitting Requirements, Procedures and Fees**
 - (1) Permit Required
 - (2) Permit Application and Fees
 - (3) Permit Application Review and Approval
 - (4) Surety Bond
 - (5) Permit Requirements
 - (6) Permit Conditions
 - (7) Permit Duration
 - (8) Maintenance
- S. 15-2-11 Erosion and Sediment Control Plan, Statement and Amendments**
 - (1) Erosion and Sediment Control Plan Statement
 - (2) Erosion and Sediment Control Plan Requirements
 - (3) Erosion and Sediment Control Plan Amendments
- S. 15-2-12 Fee Schedule**
- S. 15-2-13 Inspection**
- S. 15-2-14 Enforcement**

- S. 15-2-15 Appeals**
 (1) ~~Department of Engineering and~~ Public Works and Sewerage Commission
 (2) Who May Appeal
- S. 15-2-16 Severability**
- S. 15-2-17 Effective Date**

CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

Use of this ordinance will foster consistent, statewide application of the construction site performance standards for new development and redevelopment contained in subchapters III and IV of ch. NR 151, Wis. Adm. Code.

S. 15-2-01 AUTHORITY.

- (1) This ordinance is adopted under the authority granted by s. 62.234, Wis. Stats, as amended. This ordinance supersedes all provisions of an ordinance previously enacted under s. 62.23, Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in s. 62.234, Wis. Stats., s. 62.23, Wis. Stats., as amended, applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Common Council hereby designates the City Inspector to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under ss. 281.16 and 283.33, Wis. Stats.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

S. 15-2-02 FINDINGS OF FACT.

The Common Council acknowledges that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in City of Cedarburg.

S. 15-2-03 PURPOSE.

It is the purpose of this ordinance to maintain safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the City of Cedarburg.

S. 15-2-04 APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

- (a) Except as provided under par. (b), this ordinance applies to any construction site as defined under S. 15-2-05 (8).
- (b) This ordinance does not apply to the following:
 - 1. Transportation facilities, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development.
 - 2. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.
 - 3. Nonpoint discharges from agricultural facilities and practices.
 - 4. Nonpoint discharges from silviculture activities.
 - 5. Routine maintenance for project sites that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
- (c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to construction sites of any size that, as determined by the City Inspector, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, or that increases water pollution by scouring or transporting of particulate.

(2) JURISDICTION.

This ordinance applies to land disturbing construction activities on lands within the boundaries and jurisdiction of the City of Cedarburg, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to s. 236.45 (2) and (3), Wis. Stats..

(3) EXCLUSIONS.

This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats.

S. 15-2-05 DEFINITIONS.

- (1) “Administering authority” means a governmental employee, or a regional planning commission empowered under s. 62.234, Wis. Stats., that is designated by the Common Council to administer this ordinance.
- (2) “Agricultural facilities and practices” has the meaning in s. 281.16 (1), Wis. Stats, as amended.
- (3) "Best management practice” or “BMP” means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
- (4) “Business day” means a day the office of the City Inspector is routinely and customarily open for business.
- (5) “Cease and desist order” means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit

- issued by the City Inspector.
- (6) “City Inspector” means the City Engineer, City Inspector, or their designees.
 - (7) “Common Council” means the City of Cedarburg Common Council.
 - (8) “Construction site” means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.
 - (9) “Design Storm” means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.
 - (10) “Division of land” means the creation from one parcel of 4 or more parcels or building sites of one and one-half (1.5) or fewer acres each in area where such creation occurs at one time or through the successive partition within a 5-year period.
 - (11) “Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.
 - (12) “Erosion and sediment control plan” means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
 - (13) “Extraterritorial” means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.
 - (14) “Final stabilization” means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70 percent of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
 - (15) “Governing body” means City of Cedarburg Common Council.
 - (16) “Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
 - (17) "Landowner" means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property.
 - (18) “Maximum extent practicable” means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with S. 15-2-06 of this ordinance.
 - (19) “Performance standard” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
 - (20) “Permit” means a written authorization made by the City Inspector to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
 - (21) “Pollutant” has the meaning given in s. 283.01 (13), Wis. Stats.

- (22) “Pollution” has the meaning given in s. 281.01 (10), Wis. Stats.
- (23) “Responsible party” means the landowner or any other entity performing services to meet the requirements of this ordinance through a contract or other agreement.
- (24) “Runoff” means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (25) “Sediment” means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
- (26) "Silviculture activity" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
- (27) “Site” means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.
- (28) “Stop work order” means an order issued by the City Inspector which requires that all construction activity on the site be stopped.
- (29) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (30) “Transportation facility” means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under s. 85.095 (1)(b), Wis. Stats, as amended. “Transportation facility” does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to s. 101.1206, Wis. Stats, as amended.
- (31) “Waters of the state” includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

S. 15-2-06 APPLICABILITY OF MAXIMUM EXTENT PRACTICABLE.

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the City Inspector’s satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

S. 15-2-07 TECHNICAL STANDARDS.

All BMPs required for compliance with this ordinance shall meet design criteria, standards and specifications based on any of the following:

- (1) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.

- (2) Soil loss prediction tools (such as the Universal Soil Loss Equation (USLE)) when using an appropriate rainfall or runoff factor (also referred to as the R factor) or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.
- (3) Technical standards and methods approved by the City Inspector.

S. 15-2-08 PERFORMANCE STANDARDS FOR CONSTRUCTION SITES UNDER ONE ACRE.

- (1) RESPONSIBLE PARTY. The responsible party shall comply with this section.
- (2) EROSION AND SEDIMENT CONTROL PRACTICES. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:
 - (a) The deposition of soil from being tracked onto streets by vehicles.
 - (b) The discharge of sediment from disturbed areas into on-site storm water inlets.
 - (c) The discharge of sediment from disturbed areas into adjacent waters of the state.
 - (d) The discharge of sediment from drainage ways that flow off the site.
 - (e) The discharge of sediment by dewatering activities.
 - (f) The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
 - (g) The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.
- (3) LOCATION. The BMPs shall be located so that treatment occurs before runoff enters waters of the state.
- (4) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:
 - (a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
 - (b) Erosion and sediment control practices shall be maintained until final stabilization.
 - (c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
 - (d) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
 - (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

S. 15-2-09 PERFORMANCE STANDARDS FOR CONSTRUCTION SITES OF ONE ACRE OR MORE.

- (1) RESPONSIBLE PARTY. The responsible party shall comply with this section and implement the erosion and sediment control plan developed in accordance with S. 15-2-11.
- (2) EROSION AND SEDIMENT CONTROL PLAN. A written site-specific erosion and sediment control plan shall be developed in accordance with S. 15-2-11 of this ordinance and implemented for each construction site.
- (3) EROSION AND OTHER POLLUTANT CONTROL REQUIREMENTS. The erosion and sediment control plan required under sub. (2) shall include the following:
 - (a) EROSION AND SEDIMENT CONTROL PRACTICES. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:
 1. The deposition of soil from being tracked onto streets by vehicles.
 2. The discharge of sediment from disturbed areas into on-site storm water inlets.
 3. The discharge of sediment from disturbed areas into adjacent waters of the state.
 4. The discharge of sediment from drainage ways that flow off the site.
 5. The discharge of sediment by dewatering activities.
 6. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
 7. The discharge of sediment from erosive flows at outlets and in downstream channels.
 8. The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.
 9. The transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.
 - (b) SEDIMENT PERFORMANCE STANDARDS. In addition to the erosion and sediment control practices under par. (a), the following erosion and sediment control practices shall be employed:
 1. BMPs that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
 2. No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. Credit may be given toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.

3. Notwithstanding subd. 1., if BMPs cannot be designed and implemented to meet the sediment performance standard, the erosion and sediment control plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.
 - (c) PREVENTIVE MEASURES. The erosion and sediment control plan shall incorporate all of the following:
 1. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
 2. Minimization of soil compaction and preservation of topsoil.
 3. Minimization of land disturbing construction activity on slopes of 20 percent or more.
 4. Development of spill prevention and response procedures.
 - (d) LOCATION. The BMPs used to comply with this section shall be located so that treatment occurs before runoff enters waters of the state. Note to Users: While regional treatment facilities are appropriate for control of post-construction pollutants, they should not be used for construction site sediment removal.
 - (4) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:
 - (a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with the erosion and sediment control plan developed in S. 15-2-09 (2).
 - (b) Erosion and sediment control practices shall be maintained until final stabilization.
 - (c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
 - (d) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
 - (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

S. 15-2-10 PERMITTING REQUIREMENTS, PROCEDURES AND FEES.

- (1) PERMIT REQUIRED. No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the City Inspector.
- (2) PERMIT APPLICATION AND FEES. The responsible party that will undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of S. 15-2-11, and shall pay an application fee to the City Inspector in the amount specified in S. 15-2-12. By submitting an application, the applicant is authorizing the City Inspector to enter the site to obtain information required for the review of the erosion and sediment control plan.

- (3) **PERMIT APPLICATION REVIEW AND APPROVAL.** The City Inspector shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
- (a) Within 30 business days of the receipt of a complete permit application, as required by sub. (2), the City Inspector shall inform the applicant whether the application and erosion and sediment control plan are approved or disapproved based on the requirements of this ordinance.
 - (b) If the permit application and erosion and sediment control plan are approved, the City Inspector shall issue the permit.
 - (c) If the permit application or erosion and sediment control plan is disapproved, the City Inspector shall state in writing the reasons for disapproval.
 - (d) The City Inspector may request additional information from the applicant. If additional information is submitted, the City Inspector shall have 30 business days from the date the additional information is received to inform the applicant that the erosion and sediment control plan is either approved or disapproved.
 - (e) Failure by the City Inspector to inform the permit applicant of a decision within 30 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) **SURETY BOND.** As a condition of approval and issuance of the permit, the City Inspector may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.
- (5) **PERMIT REQUIREMENTS.** All permits shall require the responsible party to:
- (a) Notify the City Inspector within 48 hours of commencing any land disturbing construction activity.
 - (b) Notify the City Inspector of completion of any BMPs within 14 days after their installation.
 - (c) Obtain permission in writing from the City Inspector prior to any modification pursuant to S. 15-2-11 (3) of the erosion and sediment control plan.
 - (d) Install all BMPs as identified in the approved erosion and sediment control plan.
 - (e) Maintain all road drainage systems, storm water drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.
 - (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site inspection log.
 - (g) Inspect the BMPs within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week. Make needed repairs and install additional BMPs as necessary, and document these activities in an inspection log that also includes the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
 - (h) Allow the City Inspector to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the erosion and sediment control plan. Keep a copy of the erosion and sediment control plan at the construction site.
 - (i) Keep a copy of the erosion and sediment control plan at the construction site.

- (6) PERMIT CONDITIONS. Permits issued under this section may include conditions established by City Inspector in addition to the requirements set forth in sub. (5), where needed to assure compliance with the performance standards in S. 15-2-08 or S. 15-2-09.
- (7) PERMIT DURATION. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The City Inspector may grant one or more extensions not to exceed 180 days cumulatively. The City Inspector may require additional BMPs as a condition of an extension if they are necessary to meet the requirements of this ordinance.
- (8) MAINTENANCE. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

S. 15-2-11 EROSION AND SEDIMENT CONTROL PLAN, STATEMENT AND AMENDMENTS.

- (1) EROSION AND SEDIMENT CONTROL PLAN STATEMENT. An erosion and sediment control plan statement shall be prepared as required under S. 15-2-04(1) and S. 15-2-05(8). This statement shall be submitted to the City Inspector. The erosion and sediment control plan statement shall briefly describe the site, the development schedule, and the BMPs that will be used to meet the requirements of the ordinance. A site map shall also accompany the erosion and sediment control plan statement.
- (2) EROSION AND SEDIMENT CONTROL PLAN REQUIREMENTS.
 - (a) An erosion and sediment control plan shall be prepared and submitted to the City Inspector.
 - (b) The erosion and sediment control plan shall be designed to meet the performance standards in S. 15-2-08, S. 15-2-09 and other requirements of this ordinance.
 - (c) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
 - 1. Name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.
 - 2. Description of the construction site and the nature of the land disturbing construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.
 - 3. Description of the intended sequence of major land disturbing construction activities for major portions of the construction site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary

- erosion and sediment control measures, and establishment of permanent vegetation.
4. Estimates of the total area of the construction site and the total area of the construction site that is expected to be disturbed by land disturbing construction activities.
 5. Calculations to show the compliance with the performance standard in S. 15-2-09 (3)(b)1.
 6. Existing data describing the surface soil as well as subsoils.
 7. Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.
 8. Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps.
- (d) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five feet.
1. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year flood plains, flood fringes and floodways shall also be shown.
 2. Boundaries of the construction site.
 3. Drainage patterns and approximate slopes anticipated after major grading activities.
 4. Areas of soil disturbance.
 5. Location of major structural and non-structural controls identified in the erosion and sediment control plan.
 6. Location of areas where stabilization BMPs will be employed.
 7. Areas which will be vegetated following land disturbing construction activities.
 8. Area(s) and location(s) of wetland on the construction site, and locations where storm water is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.
 9. Areas(s) used for infiltration of post-construction storm water runoff.
 10. An alphanumeric or equivalent grid overlying the entire construction site map.
- (e) Each erosion and sediment control plan shall include a description of appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control BMPs will be implemented. The description of erosion and sediment control BMPs shall include, when appropriate, the following minimum requirements:
1. Description of interim and permanent stabilization practices, including a BMP implementation schedule. The erosion and sediment control plan

- shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
2. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the City Inspector, structural measures shall be installed on upland soils.
 3. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
 4. Trapping of sediment in channelized flow.
 5. Staging land disturbing construction activities to limit exposed soil areas subject to erosion.
 6. Protection of downslope drainage inlets where they occur.
 7. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
 8. Clean up of off-site sediment deposits.
 9. Proper disposal of building and waste material.
 10. Stabilization of drainage ways.
 11. Installation of permanent stabilization practices as soon as possible after final grading.
 12. Minimization of dust to the maximum extent practicable.
- (f) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- (3) **EROSION AND SEDIMENT CONTROL PLAN AMENDMENTS.** The applicant shall amend the erosion and sediment control plan if any of the following occur:
- (a) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the erosion and sediment control plan.
 - (b) The actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.
 - (c) The City Inspector notifies the applicant in writing of changes needed in the erosion and sediment control plan.

S. 15-2-12 FEE SCHEDULE.

A schedule of the permit fees established by the City Inspector shall be available for review in City Hall. The permit fees may be modified by resolution of the Common Council for the City of Cedarburg.

S. 15-2-13 INSPECTION.

If land disturbing construction activities are occurring without a permit required by this ordinance, the City Inspector may enter the land pursuant to the provisions of ss. 66.0119 (1), (2), and (3), Wis. Stats.

S. 15-2-14 ENFORCEMENT.

- (1) The City Inspector may post a stop work order if any of the following occurs:
 - (a) Land disturbing construction activity regulated under this ordinance is occurring without a permit.
 - (b) The erosion and sediment control plan is not being timely implemented or implemented pursuant to its terms.
 - (c) The conditions of the permit are not being met.
 - (d) The City Inspector has notified the applicant in writing of a change to the erosion and sediment control plan, pursuant to section 15-2-11(3)(c), herein, and the applicant has not timely implemented the changes to the plan.
- (2) If the responsible party does not cease activity as required in a stop work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the City Inspector may revoke the permit.
- (3) If the responsible party, where no permit has been issued or the permit has been revoked, does not cease the activity after being notified by the City Inspector, or if a responsible party violates a stop work order posted under sub. (1), the City Inspector may request the City of Cedarburg Attorney to obtain a cease and desist order in any court with jurisdiction.
- (4) The City Inspector or the **Department of Public Works and Sewerage Commission** may retract the stop work order issued under sub. (1) or the permit revocation under sub. (2).
- (5) After posting a stop work order under sub. (1), the City Inspector may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The City Inspector or its designee may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the City Inspector, plus interest at the rate of twelve percent (12%) per annum shall be billed to the responsible party. In the event a responsible party fails to timely pay the amount due, the City Clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to subch. VII of ch. 66, Wis. Stats.
- (6) Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$100 nor more than \$500 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
- (7) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

S. 15-2-15 APPEALS.

- (1) **PUBLIC WORKS AND SEWERAGE COMMISSION.** The Public Works and Sewerage Commission created pursuant to the City's zoning ordinance pursuant to s. 62.23 (7)(e), Wis. Stats.:
 - (a) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City Inspector in administering this ordinance except for cease and desist orders obtained under S. 15-2-14 (3).

- (b) May authorize, upon appeal, variances from the provisions of this ordinance which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; and
 - (c) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (2) **WHO MAY APPEAL.** Appeals to the Public Works and Sewerage Commission may be taken by the Responsible party, any aggrieved person, or by any office, department, board, or bureau of the City of Cedarburg affected by any decision of the City Inspector.

S. 15-2-16 SEVERABILITY.

If a court of competent jurisdiction judges any section, clause, provision or portion of this ordinance unconstitutional or invalid, the remainder of the ordinance shall remain in force and not be affected by such judgment.

S. 15-2-17 EFFECTIVE DATE.

This ordinance shall be in force and effect from and after its adoption and publication.

SECTION 2. This ordinance shall take effect upon its passage and publication as provided by law.

Passed and adopted this 28th day of January, 2019.

Michael O’Keefe, Mayor

Countersigned:

Constance K. McHugh, City Clerk

Approved as to form:

Michael P. Herbrand, City Attorney

CITY OF CEDARBURG

MEETING DATE: January 28, 2019

ITEM NO: 8. F.

TITLE: Consider the appointment of Jordan Z. Cole as agent for North 48, Inc. at W62 N599 Washington Avenue; and action thereon

ISSUE SUMMARY: All corporations holding an alcohol beverage license must appoint an agent who is given full authority and control over the licensed premises and over all commercial activities on the premises relating to alcohol beverages. North 48, Inc. has appointed Jordan Cole as agent to replace Peter Olds. This change must be approved by the Common Council per State Statutes. The agent must, with respect to character, record and reputation, be satisfactory to the Council.

The Police Department has completed a background check and Chief Frank has no objection to the agent appointment.

STAFF RECOMMENDATION: Approve the appointment of Jordan Z. Cole as agent for North 48, Inc. at W62 N599 Washington Avenue.

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION: N/A

BUDGETARY IMPACT: \$10 fee for change in appointment.

ATTACHMENTS: None

INITIATED/REQUESTED BY: North 48, Inc.

FOR MORE INFORMATION CONTACT: Connie McHugh, City Clerk 376-3919

CITY OF CEDARBURG

MEETING DATE: January 28, 2019

ITEM NO: 8. G.

TITLE: Consider request to replace Senior Center Director; and action thereon

ISSUE SUMMARY: The Senior Center Director is retiring and we would like her help in hiring and training her replacement. I would like to post the position for about four weeks, interview and allow time for training. This would take us through March, possibly April. Carol is willing to stay on until her replacement is selected, so no exact date has been set.

STAFF RECOMMENDATION: Approve replacing Senior Center Director

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION: N/A

BUDGETARY IMPACT: None, position is included in 2019 budget

ATTACHMENTS: Job description

INITIATED/REQUESTED BY: Christy Mertes

FOR MORE INFORMATION CONTACT: City Administrator/Treasurer Christy Mertes, 375-7606

Job Description

| Human Resource Use Only |
|----------------------------|
| Position Number: |
| Contract Step/Grade |
| Effective Date: |

POSITION IDENTIFICATION

Position Title: Senior Center Director

Department: Senior Center

Division: Senior Center

Work Week:

SUPERVISORY RELATIONSHIPS

Reports to: City Administrator and receives policy direction from the Parks, Recreation & Forestry Board

Directly Supervises: Supervision exercised over Senior Center Supervisor and part time Senior Center staff, special interest instructors, seasonal employees, van drivers and other volunteers.

POSITION PURPOSE

Performs a variety of complex administrative duties in the operation of the Cedarburg Senior Center, a program for senior adults, which includes cultural arts, physical activities, health activities, human services, special interest classes and programs, tours and leisure services, and transportation service.

ESSENTIAL DUTIES

- Surveys leisure interests and needs of senior adults; plans, administers and coordinates activities and programs for them in such areas as informal education, creative arts, recreation, advocacy, health, social services and others according to need and interest; recruits and supervises volunteers as needed.
- Supervises the scheduling, operation and maintenance of the transportation vehicle available to handicapped and senior citizens; recruits and assigns volunteer drivers, develops recognition program.
- Establishes effective communication and community sensitivity to the problems of older adults; offers assistance and/or assists older adults in obtaining information and resources regarding taxes, insurance, property upkeep, health and other individual matters; serves as a resource person to other community groups and agencies.
- Advertises and promotes resources and programs available through the Cedarburg Senior Center; designs, compiles and distributes a bi-monthly newsletter; prepares weekly news releases regarding programs and activities at the Center.
- Coordinates activities of the Senior Center with the Ozaukee County meal site manager, the Cedarburg Parks and Recreation Director, and various community groups using the Senior Center.
- Prepares and presents budget proposal to City Administrator, and Common Council for the Senior Center; administers the approved budget; coordinates with the Building Maintenance Engineer regarding maintenance and improvements to the center.
- Attends meetings, workshops and conferences applicable to serving the older adult; attends monthly meetings of the Parks, Recreation & Forestry Board as an ex officio member; provides staff support to Board functions; performs other duties as may be requested.

OTHER DUTIES

MINIMUM POSITION QUALIFICATIONS

Education and Experience:

- Graduation from a four year college or university with a degree in the field of human services, therapeutic recreation, recreation, geriatrics, social work or a closely related field and three years of experience working with older adults; or Associate's Degree in the above fields and five years of experience working with members of the aging population.
-

Other Requirements:

KNOWLEDGE, SKILLS, & ABILITIES

- Working knowledge of community resources and agencies geared to the needs and interests of older adults; working knowledge of the equipment, facilities, operations and techniques used in a comprehensive community recreation program;
 - Ability to develop, coordinate, and execute varied activities involved in an older adult community recreation program; ability to establish and maintain effective working relationships with employees, supervisors, other agencies, participants, instructors, community leaders, the general public, and especially older adults; ability to communicate effectively orally and in writing; ability to hire, train and supervise the work of paid staff and volunteers.
 - Skill in generating publicity for Senior Center programs.
 - Knowledge of the principles and practices of office management, work organization and supervision. Computer skills using current programs such as Microsoft Office
-

BACKGROUND CHECKS and DRUG TEST—Condition of Employment

PHYSICAL DEMANDS

Manual Dexterity:

Physical Effort: Work requires handling average weight materials or equipment, but not for sustained periods.

Working Conditions: Normal office conditions.

The above statements are intended to describe the general nature and level of work being performed by most people assigned to this job. They are not intended to be an exhaustive list of all responsibilities, duties, and requirements. Scheduling flexibility is required to accommodate changing business needs.

CITY OF CEDARBURG

MEETING DATE: January 28, 2019

ITEM NO: 8. H.

TITLE: Consider implementation of a Health Reimbursement Account (HRA) and changes to the Personnel Manual as necessary; and action thereon (Personnel Committee 10/10/18)

ISSUE SUMMARY: At retirement employees are paid out their accrued sick and vacation time. This plan is a new benefit for employees. It will help with health care expenses after retirement and save on federal taxes.

The consensus of the Personnel Committee was to increase the sick payout to 57.65% of an employee's accrued balance. The cost to the City will remain the same as it is currently paid out.

The Police Officers' union has also agreed to participate in an HRA but their plan only includes the payout for sick leave. They would like to continue to receive their vacation payout. This was approved at the last Council meeting with their contract.

There is a plan document and an agreement for each group. Veterans with full healthcare benefits are exempt from the benefit. They will continue to receive the payout directly.

The Personnel Manual changes need to be made to reflect this new benefit.

Becky Reinhardt from North Shore Bank will be at the meeting for any questions you may have.

STAFF RECOMMENDATION: Approve plan and agreement

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION: N/A

BUDGETARY IMPACT: None

ATTACHMENTS: Personnel Manual, 2 Retiree Health Reimbursement Arrangement Plans and 2 Retiree Healthcare Trust and Trust Agreements. Personnel Minutes of October 10, 2018.

INITIATED/REQUESTED BY: Christy Mertes

FOR MORE INFORMATION CONTACT: City Administrator/Treasurer Christy Mertes, 375-7606

**CITY OF CEDARBURG
PERSONNEL COMMITTEE
OCTOBER 10, 2018**

PER20181010-1

A meeting of the Personnel Committee of the City of Cedarburg, Wisconsin, was held on Tuesday, October 10, 2018 at City Hall, W63 N645 Washington Avenue, lower level, room 2. The meeting was called to order at 7:00 p.m. by Council President Patricia Thome.

Roll Call: Present - Council Members Patricia Thome (Chair), Garan Chivinski (arrived 7:13 p.m.), Rod Galbraith

Also Present - City Administrator/Treasurer Christy Mertes, City Clerk Constance McHugh, Water Recycling Center Superintendent Eric Hackert, Library Director Linda Pierschalla, Deputy Treasurer Kelly Livingston, Water Recycling Center employee Mike Kelley, Becky Reinhardt from North Shore Bank

STATEMENT OF PUBLIC NOTICE

Council President Thome verified that notice of this meeting was provided to the public by forwarding the agenda to the City's official newspaper, the *News Graphic*, to all news media and citizens who had requested copies, and by posting in accordance with the Wisconsin Open Meetings law.

APPROVAL OF MINUTES

Motion made by Council Member Galbraith, seconded by Council Member Thome, to approve the minutes of the September 18, 2018 Personnel Committee meeting. Motion carried with Council Member Chivinski excused.

CONSIDER IMPLEMENTATION OF A HEALTH REIMBURSEMENT ACCOUNT

City Administrator/Treasurer Mertes and Becky Reinhardt of North Shore Bank explained Health Reimbursement Accounts (HRAs). A HRA plan is one that takes the unused sick pay and vacation pay of an employee and contributes it to a HRA account in the employee's name to use for qualified medical expenses after retirement. The employer does not pay any FICA taxes on these funds and the employee does not pay FICA, federal and state taxes. There is no cost to the City but an \$18 fee per year per employee, but this fee is waived if the employee has a 457(b) plan with North Shore Bank or opens a free checking account with the bank. An employee survey showed an overwhelming support of such a plan.

Council Member Chivinski arrived at this time.

Motion made by Council Member Galbraith, seconded by Council Member Chivinski, to recommend to the Council that an HRA plan be established for employees using both unused sick pay and accrued vacation pay. Motion carried unanimously.

October 10, 2018

City Administrator/Treasurer Mertes reminded the Committee that City employees are currently paid out 50% of unused time at the time of retirement. Light and Water employees are paid out 100%. She said the Committee may want to consider increasing the payout for City employees. It was the consensus of the Committee that the sick leave payout for employees at retirement remain at 50% plus the City savings from FICA taxes.

DISCUSS COMPENSATION AND BENEFITS STUDY PREPARED BY CEDARBURG LIGHT AND WATER

City Administrator/Treasurer Mertes said employees at Light and Water surveyed wages and benefits of employees in surrounding communities and prepared a study based on the results. The results showed certain positions to be above the average and others below the average in terms of wages. Benefits seemed to be comparable to other communities. She said the intent is to continue to do the survey in the future and collect more data.

Council Member Thome said this is the first step to comparing salaries and benefits and the goal is to get more detailed information going forward.

Council Member Galbraith said he is concerned about the comparables used. He said up until 2007, public sector employees had lower wages but better benefits. Since 2007 this has changed with employees in the private sector seeing both reduced benefits and wages. He said the problem with the survey is that the comparisons are made to other public entities. The general public does not see it this way. Comparisons should be made to those people who are paying taxes. When he was a County employee, contributions to health insurance by employees steadily increased over the years. He said the City needs to look at a number of options in terms of health insurance, such as high deductible plans, higher premium plans, and health savings accounts. He said graduated increases in premium contributions are needed with incentives for employees to keep the premiums lower.

Superintendent Hackert reminded Committee members that the City has a high deductible health insurance plan with a health saving account.

Council Member Chivinski said he views things in terms of attracting and retaining quality employees and being competitive in terms of salaries and benefits. He said his benefits in the private sector are not very good, and benefits in private sector generally are brutal. He said he does not want to see the City go down this path. He thanked employees for the work that went into the study.

Council Member Thome said she is not ready to dig a hole in the City's health insurance plan at this time. Monday night the Council tentatively decided to continue with the current health insurance plan for another year given there is not an increase in the premium costs for 2019. She said staff needs to continue to gather information.

REVIEW OF PROPOSED WELLNESS PROGRAM

City Administrator/Treasurer Mertes said the Employee Health Insurance Committee has developed a wellness program for 2019. The City's current health insurance provider will provide a grant for prizes

October 10, 2018

and a point system has been developed that will allow a paid ½ day or full day off if a certain number of points are received.

It was the consensus of the Committee to implement the 2019 wellness program as proposed.

DISCUSS JOINING OZAUKEE COUNTY'S QUADMED CLINIC

City Administrator/Treasurer Mertes said she, Library Director Pierschalla, and Superintendent Hackert toured the Ozaukee County employee health clinic and discussed a possible joint venture where City employees could use the clinic for certain health services. She has not yet received information regarding the costs for this.

It was later discovered in a newspaper article that Ozaukee County plans to close this clinic. She will be talking to the City's insurance consultant and provider about possibly using an Aurora clinic for such services.

ADJOURNMENT

Motion made by Council Member Chivinski, seconded by Council Member Galbraith, to adjourn the meeting at 8:20 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC
City Clerk

CITY OF CEDARBURG

Retiree Healthcare Reimbursement Arrangement (HRA) Plan

TABLE OF CONTENTS

Page

CITY OF CEDARBURG Retiree Health Reimbursement Arrangement (HRA) Plan

ARTICLE I. INTRODUCTION 1

1.1 Establishment of Plan 1

1.2 Legal Status..... 1

ARTICLE II. DEFINITIONS 1

2.1 Definitions..... 1

ARTICLE III. ELIGIBILITY AND PARTICIPATION 4

3.1 Eligibility to Participate 4

3.2 Termination of Participation..... 4

3.3 Participation Following Termination of Employment or Loss of Eligibility 4

3.4 FMLA and USERRA Leaves of Absence 4

ARTICLE IV. METHOD AND TIMING OF ENROLLMENT 5

4.1 Enrollment When First Eligible 5

ARTICLE V. BENEFITS OFFERED AND METHOD OF FUNDING 5

5.1 Benefits Offered..... 5

5.2 Employer and Participant Contributions..... 5

5.3 Funding This Plan 6

5.4 Plan Procedures for Determination of Contribution of Accumulated Unused Vacation and Sick Leave Upon Retirement. 6

5.5 Plan Procedures for Determination of Contribution of Annual Excess Vacation and Sick Leave. 6

5.6 Establishment of HRA Account..... 7

5.7 Maximum Contributions..... 8

5.8 Retirement Before Vesting; Forfeiture of HRA Account. 8

ARTICLE VI. HEALTH REIMBURSEMENT BENEFITS..... 8

6.1 Benefits 8

6.2 Eligible Qualified Medical Expenses..... 8

6.3 Carryover of Accounts 9

6.4 Reimbursement Procedure 9

TABLE OF CONTENTS

(continued)

| | Page |
|--|-------------|
| 6.5 Reimbursements After Termination; COBRA..... | 10 |
| 6.6 Named Fiduciary; Compliance With COBRA, HIPAA, etc..... | 11 |
| 6.7 Coordination of Benefits; Health FSA to Reimburse First..... | 11 |
| ARTICLE VII. HIPAA PRIVACY AND SECURITY | 11 |
| 7.1 Employer’s Certification of Compliance | 11 |
| 7.2 Permitted Disclosure of Enrollment/Disenrollment Information | 11 |
| 7.3 Permitted Uses and Disclosures of Summary Health Information | 11 |
| 7.4 Permitted and Required Uses and Disclosure of Protected Health Information for Plan Administration Purposes | 11 |
| 7.5 Restrictions on Employer’s Use and Disclosure of Protected Health Information | 12 |
| 7.6 Adequate Separation Between Employer and the Plan..... | 13 |
| 7.7 Security Measures for Electronic Protected Health Information | 13 |
| 7.8 Notification of Security Incident | 13 |
| ARTICLE VIII. APPEALS PROCEDURE..... | 14 |
| 8.1 Procedure If Benefits Are Denied Under This Plan..... | 14 |
| ARTICLE VIII. RECORDKEEPING AND ADMINISTRATION | 14 |
| 9.1 Administrator | 14 |
| 9.2 Powers of the Administrator | 14 |
| 9.3 Reliance on Participant, Tables, etc. | 15 |
| 9.4 Provision for Third-Party Plan Service Providers | 15 |
| 9.5 Fiduciary Liability | 15 |
| 9.6 Compensation of Administrator..... | 15 |
| 9.7 Insurance Contracts..... | 15 |
| 9.8 Inability to Locate Payee | 16 |
| 9.9 Effect of Mistake..... | 16 |
| ARTICLE X. GENERAL PROVISIONS..... | 16 |
| 10.1 Expenses | 16 |
| 10.2 No Contract of Employment..... | 16 |
| 10.3 Amendment and Termination | 16 |
| 10.4 Governing Law | 16 |

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 10.5 Code and PHSA Compliance..... | 17 |
| 10.6 No Guarantee of Tax Consequences..... | 17 |
| 10.7 Indemnification of Employer..... | 17 |
| 10.8 Non-Assignability of Rights..... | 17 |
| 10.9 Headings..... | 17 |
| 10.10 Plan Provisions Controlling..... | 17 |
| 10.11 Severability..... | 17 |
| 10.12 State Law Limitations..... | 18 |
| 10.13 Nondiscrimination..... | 18 |
| Appendix A..... | 19 |
| Appendix B..... | 20 |

CITY OF CEDARBURG Retiree Health Reimbursement Arrangement (HRA) Plan

ARTICLE I. INTRODUCTION

1.1 Establishment of Plan

The CITY OF CEDARBURG (the “Employer”) hereby establishes the CITY OF CEDARBURG Retiree Health Reimbursement Arrangement (HRA) Plan to be hereafter known as the CITY OF CEDARBURG Retiree Health Reimbursement Arrangement (HRA) (the “Plan”), effective _____ (the “Effective Date”). Capitalized terms used in this Plan that are not otherwise defined shall have the meanings set forth in Article II. This Plan is intended to permit an Eligible Employee to obtain reimbursement of Medical Care Expenses on a nontaxable basis from the HRA Account.

1.2 Legal Status

This Plan is intended to qualify as an employer-provided medical reimbursement plan under Code Sections 105 and 106 and regulations issued thereunder, and as a health reimbursement arrangement as defined under IRS Notice 2002-45, and shall be interpreted to accomplish that objective. The Qualified Medical Expenses reimbursed under the Plan are intended to be eligible for exclusion from participating Employees’ gross income under Code Section 105(b). The Plan is further intended to provide benefits only for former employees of the Employer, and their eligible Spouses and Dependents, and therefore exempt from the market reform provisions of the Patient Protection and Affordable Care Act.

ARTICLE II. DEFINITIONS

2.1 Definitions

“**Administrator**” means the Committee established by the **CITY OF CEDARBURG**. The contact person shall be the **[POSITION]** of the **CITY OF CEDARBURG**, who has the full authority to act on behalf of the Committee, except with respect to appeals, for which the Committee has the full authority to act on behalf of the Administrator, as described in Section 8.1.

“**Benefits**” means the reimbursement benefits for Qualified Medical Expenses described under Article VI.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Committee**” means the Benefits Committee appointed by the **CITY OF CEDARBURG**

“**Compensation**” means the wages or salary paid to an Employee by the Employer.

“**Covered Individual**” means, for purposes of Article VII, a Participant, Spouse or Dependent.

“**Dependent**” means any individual who is a tax dependent of the Participant as defined in Code

Section 105(b), with the following exception: any child to whom Code Section 152(e) applies (regarding a child of divorced parents, etc., where one or both parents have custody of the child for more than half of the calendar year and where the parents together provide more than half of the child's support for the calendar year) is treated as a dependent of both parents.

Notwithstanding the foregoing, the HRA Account will provide benefits in accordance with the applicable requirements of any QMCSO, even if the child does not meet the definition of "Dependent."

"Effective Date" of this Plan has the meaning described in Section 1.1.

"Electronic Protected Health Information" has the meaning described in 45 C.F.R. Section 160.103 and generally includes Protected Health Information that is transmitted by electronic media or maintained in electronic media. Unless otherwise specifically noted, Electronic Protected Health Information shall not include enrollment/disenrollment information and summary health information.

"Eligible Employee" means an Employee eligible to participate in this Plan, as provided in Section 3.1.

"Employee" means an individual that the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include the following: (a) any leased employee (including but not limited to those individuals defined as leased employees in Code Section 414(n)) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer's W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer; (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer; (c) any self-employed individual; (d) any partner in a partnership; and (e) any more-than-2% shareholder in a Subchapter S corporation, including those deemed to be a more-than-2% shareholder by virtue of the Code Section 318 ownership attribution rules. The term "Employee" does include "former Employees" for the limited purpose of allowing continued eligibility for benefits in accordance with Section 3.2.

"Employer" means the **CITY OF CEDARBURG**, and any Related Employer that adopts this Plan with the approval of the **CITY OF CEDARBURG**. Related Employers, if any, that have adopted this Plan are listed in Appendix A to this Plan. However, for purposes of Article IX and Section 10.3, "Employer" means only the **CITY OF CEDARBURG**.

"Employment Commencement Date" means the first regularly scheduled working day on which the Employee first performs an hour of service for the Employer for Compensation, or, for Employees employed on the effective date, the Effective Date.

"Enrollment Form" means the form provided by the Administrator for the purpose of allowing an eligible Employee to participate in this Plan.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"FMLA" means the Family and Medical Leave Act of 1993, as amended.

“Health FSA” means a health flexible spending arrangement as defined in Prop. Treas. Reg. Section 1.125-2, Q/A-7(a).

“Health Insurance Plan” means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan), providing major medical type benefits through a group insurance policy or policies.

“Highly Compensated Individual” means an individual defined under Code Section 105(h), as amended, as a “highly compensated individual” or “highly compensated employee.”

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“HRA” means a health reimbursement arrangement as defined in IRS Notice 2002-45.

“HRA Account” means the HRA Account described in Section 5.6.

“Participant” means a person who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article III.

“Period of Coverage” means any Plan Year following the Participant’s Retirement Date, except, for a Participant whose Retirement Date occurs during the Plan Year, it shall mean the portion of the Plan Year following the Participant’s Retirement Date. A different Period of Coverage (e.g., monthly) may be established by the Administrator and communicated to Participants.

“Plan” means the CITY OF CEDARBURG Retiree Health Reimbursement Arrangement (HRA) Plan as set forth herein and as amended from time to time.

“Plan Year” means the calendar year (i.e., the 12-month period commencing January 1 and ending on December 31), except in the case of a short Plan Year representing the initial Plan Year or where the Plan Year is being changed, in which case the Plan Year shall be the entire short Plan Year.

“Protected Health Information” shall have the meaning described in 45 C.F.R. Section 160.103 and generally includes individually identifiable health information held by, or on behalf of, the Plan.

“QMCSO” means a qualified medical child support order, as defined in ERISA Section 609(a).

“Qualified Medical Expenses” has the meaning defined in Section 6.2.

“Related Employer” means any employer affiliated with **CITY OF CEDARBURG**, that, under Code Section 414(b), (c), or (m), is treated as a single employer with **CITY OF CEDARBURG** for purposes of Code Section 105.

“Retirement Date” (“Retires”) means the date on which the Employee is no longer providing services for the Employer or any Related Employer and is not on a leave of absence from the Employer or any Related Employer.

“Spouse” means an individual who is legally married to a Participant as determined under applicable state law (and who is treated as a spouse under the Code).

“Trust” means **City of CEDARBURG Retiree Health Trust** established in conjunction with this Plan for the funding of benefits payable hereunder.

“USERRA” means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

“Vested” (“Vesting”) means that a Participant has been credited with sufficient service with the Employer in order to receive Benefits as described in Article VI. The manner in which service is credited to determine if a Participant is Vested, and the amount of service required for a Participant to become Vested, are described in the Employer’s employee manual, personnel policy or similar document.

ARTICLE III. ELIGIBILITY AND PARTICIPATION

3.1 Eligibility to Participate

An individual is eligible to participate in this Plan if the individual (a) is an Employee; (b) regularly works 20 hours or more per week; and (c) has been employed by the Employer for 30 consecutive calendar days, counting his or her Employment Commencement Date as the first such day. Once an Employee has met the Plan’s eligibility requirements, the Employee will be eligible to be credited with contributions on the first day of the next calendar month, and participation will continue with respect to contributions to the Plan until such participation is terminated in accordance with Sections 3.3 or 3.4. Once an Employee has met the Plan’s eligibility requirements, participation with respect to the benefits under Article VI shall continue until participation in the Plan with respect to such benefits is terminated in accordance with Section 3.2.

3.2 Termination of Participation

A Participant will cease to be a Participant in this Plan upon the earlier of: (1) the termination of this Plan; or (2) the date on which the Employee’s HRA Account is depleted, provided that eligibility may continue beyond such date for purposes of COBRA coverage, as may be permitted by the Administrator on a uniform and consistent basis under Section 6.5. Reimbursements from the HRA Account after termination of participation will be made pursuant to Section 6.5 (relating to a run-out period for submitting claims incurred prior to termination and relating to COBRA).

Notwithstanding the foregoing, a Participant will cease to be eligible for Employer Contributions under the Plan (see Section 5.2) as of the Participant’s Retirement Date (except as otherwise required under COBRA).

3.3 Participation Following Termination of Employment or Loss of Eligibility

If a Participant terminates his or her employment for any reason, including (but not limited to) disability, retirement, layoff or voluntary resignation, and then is rehired within 30 days or less of the date of a termination of employment, the Employee will be reinstated with the same HRA Account balance that such individual had before termination. If an Employee (whether or not a Participant) terminates employment and is not rehired within 30 days or ceases to be an Eligible Employee for any other reason, including (but not limited to) a reduction in hours, and then becomes an Eligible Employee again, the Employee must complete the waiting period described in Section 3.1 before again becoming eligible to participate in the Plan.

3.4 FMLA and USERRA Leaves of Absence

Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the FMLA or USERRA, then to the extent required by the FMLA or USERRA, as applicable (or as described in the Employer's employee manual, personnel policy or similar document, if such manual, policy or document grants rights broader than those required under the FMLA or USERRA), the Participant will continue to be credited with service toward Vesting and Employer contributions described in Section 5.2(a), (b) and (c) on the same terms and conditions as if the Participant were still an active Employee. Such a Participant will not be eligible for Benefits under Section VI during such leave.

ARTICLE IV. METHOD AND TIMING OF ENROLLMENT

4.1 Enrollment When First Eligible

- (a) Employees Employed before the Effective Date of the Plan. Any Employee who meets the eligibility requirements of Section 3.1 as of the Effective Date of the Plan shall commence participation on the Effective Date of the Plan. The Employer, shall, in its sole discretion, establish a contribution amount applicable to vacation and sick leave accrued prior to the Effective Date of the Plan.
- (b) Employees Employed on or after the Effective Date of the Plan. Employees first employed on or after the Effective Date of the Plan shall commence participation on the first day of the month after the eligibility requirements of Section 3.1 have been satisfied.

Once enrolled, the Employee's participation will continue from month-to-month and year-to-year until the Employee's participation ceases pursuant to Section 3.2. The Participant shall file an Enrollment Form with the Administrator which shall identify the Spouse and Dependents whose Qualified Medical Expenses may be submitted to the HRA (but the Participant's participation shall not be contingent upon filing an Enrollment Form). The Employee must promptly notify the Administrator if this information changes.

ARTICLE V. HRA ACCOUNTS AND METHOD OF FUNDING

5.1 Benefits Offered

When an Eligible Employee becomes a Participant in accordance with Articles III and IV, an HRA Account will be established for such Participant to receive Benefits in the form of reimbursements for Qualified Medical Expenses, as described in Article VI. In no event shall Benefits be provided in the form of cash or any other taxable or nontaxable benefit other than reimbursement for Qualified Medical Expenses.

5.2 Employer and Participant Contributions

- (a) *Discretionary Employer Contributions.* The Employer may fund the HRA Account of each Participant through periodic contributions over the course of the Plan Year. Such contribution amount must be established in the discretion of the Employer prior to the beginning of each Plan Year, and shall be provided in writing to the Trustee by the Administrator.
- (b) *Employer Contribution of Accumulated Unused Vacation and Sick Leave.* The Employer shall fund the HRA Account of each Participant through contributions

of the Participant's accumulated unused vacation and sick leave upon the Participant's Retirement Date. The amount of such contribution will be made shall be determined under this Plan in accordance with the procedures set forth in Section 5.4.

- (c) *Employer Contribution of Annual Excess Vacation and Sick Leave.* On a periodic basis through the course of each year, the Employer shall fund the HRA Accounts of Participants through contributions of Participant's annual excess vacation and sick leave. The amount of such contribution shall be determined annually under this Plan in accordance with the procedures set forth in Section 5.5.
- (d) *Participant Contributions.* **There are no Participant contributions for Benefits under the Plan.**
- (e) *No Funding Under Cafeteria Plan.* Under no circumstances will HRA Accounts or Benefits be funded with salary reduction contributions, employer contributions (e.g., flex credits) or otherwise under a cafeteria plan, nor will salary reduction contributions be treated as Employer contributions to the Plan.

5.3 Funding This Plan

All contributions to HRA Accounts under this Plan shall be paid from the general assets of the Employer to the Trust. Benefits under this Plan shall be paid to the Participants from the Trust in accordance with the terms of this Plan.

5.4 Plan Procedures for Determination of Contribution of Accumulated Unused Vacation and Sick Leave Upon Retirement.

The Employer shall establish prior to the beginning of each Plan Year a percentage or fixed amount of vacation and sick leave accrued under an Applicable Accrued Vacation and Sick Leave Policy that will be contributed to the Participant's HRA Account as of the Participant's Retirement Date. The Employer may change this amount or percentage during any Plan Year, but any such change shall only be applicable with respect to Retirement Dates in subsequent Plan Years. This percentage or fixed amount shall be further limited by the maximum amount limitation described in Section 5.7(a)(2). The percentage or fixed amount, the maximum amount limitation, and any subsequent changes to the percentage or fixed amount and the maximum amount limitation, shall be provided in writing to the Trustee by the Administrator.

"Applicable Accrued Vacation and Sick Leave Policy" means an Employer's vacation or sick leave policy (or portion of such policy) if the policy allows Employees to accrue vacation and sick leave over the course of the Employee's employment, and provides that the value of any such accrued amounts not used (as vacation or sick leave) or contributed to the HRA Account hereunder as of the Participant's Retirement Date will be forfeited or payable to the Participant in accordance with the terms of the policy.

5.5 Plan Procedures for Determination of Contribution of Annual Excess Vacation and Sick Leave.

An Employer shall establish prior to the beginning of each Plan Year a percentage or fixed amount of excess vacation and sick leave under an Applicable Vacation and Sick Leave Policy that will be contributed to the Participant's HRA Account as of the last day of the calendar or

fiscal year of the Applicable Vacation and Sick Leave Policy. This percentage or fixed amount shall be further limited by the maximum amount limitation described in Section 5.7(a)(3). The percentage or fixed amount, the maximum amount limitation, and any subsequent changes to the percentage or fixed amount and the maximum amount limitation, shall be provided in writing to the Trustee by the Administrator.

“Applicable Vacation and Sick Leave Policy” means an Employer’s vacation or sick leave policy (or portion of such policy) if the policy allows Employees to accumulate vacation and sick leave over the course of each calendar or fiscal year (as applicable under the policy), and provides that the value of any such accrued amounts not used (as vacation or sick leave) or contributed to the HRA Account hereunder by the end of the applicable calendar or fiscal year will be forfeited or payable to the Participant in accordance with the terms of the policy (e.g., payable as severance at a rate of fifty cents on the dollar).

5.6 Establishment of HRA Account

The Trust will establish and maintain an HRA Account with respect to each Participant. The HRA Account so established will hold on behalf of each Participant contributions and available reimbursement amounts.

- (a) *HRA Account Balance: Contributions, Carryover and Gains.* The HRA Account of each Participant shall be credited with the following amounts:
 - (1) At the beginning of each month the Employer shall transfer to the Trust and the Trust shall credit to each Participant’s HRA Account an amount equal to the Discretionary Employer Contribution amounts described in Section 5.2(a) for the Plan Year divided 12.
 - (2) As soon as practicable after the Participant’s Retirement Date, the Employer shall transfer to the Trust and the Trust shall credit to the Participant’s HRA Account the Accumulated Unused Vacation and Sick Leave amounts described in Section 5.2(b).
 - (3) As soon as practicable after the last day of the calendar or fiscal year of the Applicable Vacation and Sick Leave Policy, the Employer shall transfer to the Trust and the Trust shall credit to the Participant’s HRA Account the Annual Excess Vacation and Sick Leave amounts described in Section 5.2(c).
- (b) *HRA Account Balance: Benefit Payments, Losses and Administrative Expenses.* The amount in a Participant’s HRA Account will be reduced for any reimbursement of Qualified Medical Expenses incurred during the Period of Coverage. The Participant’s HRA Account may also be decreased for administrative expenses as described in Section 10.1 and decreased for losses as described in Section 5.6(d).
- (c) *Available Amount.* The amount available for reimbursement of Qualified Medical Expenses is the amount in the Participant’s HRA Account.
- (d) *Investments and Earnings.* A Participant may direct, in accordance with the provisions of the Trust and procedures established by the Administrator, that all or a portion of the amounts credited to his or her HRA Account be invested in such funds or investments that have been made available under the Trust. Upon

the death of the Participant, the Participant's Spouse shall have the right to direct investments under this Section 5.6(b), and following the Spouse's death (or if the Participant dies without a Spouse), the Participant's Dependents shall have the right to direct the investment of, and receive Benefit payments from, equal shares of the HRA Account under this Section 5.6(b). The amount of any gains or losses attributable the amounts held in each HRA Account shall be applied to such account under the terms of the Trust.

5.7 Maximum Contributions

- (a) *Discretionary Employer Contributions.* The maximum amount that may be credited to an HRA Account for a Participant through Discretionary Employer Contributions shall be the amount determined by the Employer for the applicable Plan Year. For subsequent Plan Years, this maximum dollar limit may be changed by the Employer and shall be communicated to Employees through the Enrollment Form or another document.
- (b) *Employer Contribution of Accumulated Unused Vacation and Sick Leave Upon Retirement.* The maximum amount that may be credited to an HRA Account for a Participant through an Employer Contribution of Accumulated Unused Vacation and Sick Leave shall be determined by the Employer for each Plan Year, and shall be communicated to Employees through the Enrollment Form or another document.
- (c) *Employer Contribution of Annual Excess Vacation and Sick Leave.* The maximum amount that may be credited to an HRA Account for a Participant through an Employer Contribution of Annual Excess Vacation and Sick Leave shall be determined by the Employer for each Plan Year, and shall be communicated to Employees through the Enrollment Form or another document.

5.8 Retirement before Vesting; Forfeiture of HRA Account

If an Employer makes contributions to the HRA Account of a Participant who is not Vested, and the Participant subsequently Retires without becoming Vested, the amounts in the Participant's HRA Account will be forfeited by the Participant. Such forfeited amounts shall remain in the Trust, and shall reduce subsequent Employer contributions to the Trust and be allocated in the same manner as Employer contributions described in Section 5.2(a), (b) and/or (c), as directed by the Administrator.

ARTICLE VI. HEALTH REIMBURSEMENT BENEFITS

6.1 Benefits

Following the Retirement Date of a Vested Participant, the Plan will reimburse Participant (or, after the Participant's death, the Participant's Spouse or Dependents) for Qualified Medical Expenses up to the unused amount in the Participant's HRA Account, as set forth and adjusted under Section 5.6.

6.2 Eligible Qualified Medical Expenses

Under the HRA Account, a Participant may receive reimbursement for Qualified Medical Expenses incurred during a Period of Coverage.

- (a) *Incurred.* A Qualified Medical Expense is incurred at the time the medical care or service giving rise to the expense is furnished, and not when the individual incurring the expense is formally billed for, is charged for, or pays for the medical care. Qualified Medical Expenses incurred before a Participant first becomes covered by the Plan are not eligible.
- (b) *Qualified Medical Expenses Generally.* “Qualified Medical Expenses” means expenses incurred by a Participant or his or her Spouse or Dependents for medical care, as defined in Code Section 213 (including, for example, amounts for certain hospital bills, doctor and dental bills and prescription drugs), but shall not include expenses that are described in subsection (c). Reimbursements due for Qualified Medical Expenses incurred by the Participant or the Participant’s Spouse or Dependents shall be charged against the Participant’s HRA Account.
- (c) *Qualified Medical Expenses Exclusions.* “Qualified Medical Expenses” shall not include the expenses listed as exclusions under Appendix B to this Plan. An HRA account may reimburse COBRA premiums that a Participant pays on an after-tax basis under any other group health plan sponsored by the Employer.
- (d) *Cannot Be Reimbursed or Reimbursable from Another Source.* Qualified Medical Expenses can only be reimbursed to the extent that the Participant or other person incurring the expense is not reimbursed for the expense (nor is the expense reimbursable) through the Health Insurance Plan, other insurance, or any other accident or health plan (but see Section 6.7 if the other health plan is a Health FSA). If only a portion of a Qualified Medical Expense has been reimbursed elsewhere (e.g., because the Health Insurance Plan imposes co-payment or deductible limitations), the HRA Account can reimburse the remaining portion of such Expense if it otherwise meets the requirements of this Article VI.

6.3 Carryover of Accounts

If any balance remains in the Participant’s HRA Account for a Period of Coverage after all reimbursements have been made for the Period of Coverage, such balance shall be carried over to reimburse the Participant for Qualified Medical Expenses incurred during a subsequent Period of Coverage. Following the Participant’s death, such amounts (if any) shall continue to Carryover for the benefit of the Participant’s Spouse and Dependents. Upon the death of the Participant, the Participant’s Spouse and the Participant’s Dependents, the amounts remaining in the HRA Account shall be forfeited. Any HRA benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Period of Coverage in which the Qualified Medical Expense was incurred shall be forfeited. Amounts forfeited under this Section 6.3 shall remain in the Trust, and shall reduce subsequent Employer contributions to the Trust and be allocated in the same manner as Employer contributions described in Section 5.2(a), (b) and/or (c), as directed by the Administrator.

6.4 Reimbursement Procedure

- (a) *Timing.* Within 45 days after receipt by the Administrator of a reimbursement claim from a Participant, the Employer will direct the Trustee to reimburse the Participant for the Participant’s Qualified Medical Expenses (if the Administrator approves the claim), or the Administrator will notify the Participant that his or her claim has been denied (see Section 8.1 regarding procedures for claim denials

and appeals procedures). This time period may be extended for an additional 15 days for matters beyond the control of the Administrator, including in cases where a reimbursement claim is incomplete. The Administrator will provide written notice of any extension, including the reasons for the extension, and will allow the Participant 45 days in which to complete an incomplete reimbursement claim.

- (b) *Claims Substantiation.* A Participant who seeks Benefits may apply for reimbursement by submitting an application in writing to the Administrator in such form as the Administrator may prescribe, by no later than March 31 following the close of the Plan Year in which the Qualified Medical Expense was incurred, setting forth:
- (1) the person or persons on whose behalf Qualified Medical Expenses have been incurred;
 - (2) the nature and date of the Qualified Medical Expenses so incurred;
 - (3) the amount of the requested reimbursement; and
 - (4) a statement that such Qualified Medical Expenses have not otherwise been reimbursed and are not reimbursable through any other source and that Health FSA coverage, if any, for such Qualified Medical Expenses has been exhausted.

The application shall be accompanied by bills, invoices, or other statements from an independent third party showing that the Qualified Medical Expenses have been incurred and the amounts of such Qualified Medical Expenses, together with any additional documentation that the Administrator may request. Except for the final reimbursement claim for a Period of Coverage, no claim for reimbursement may be made unless and until the aggregate claims for reimbursement is at least \$250.

- (c) *Claims Denied.* For reimbursement claims that are denied, see the appeals procedure in Article VIII.

6.5 Reimbursements After Termination; COBRA

When a Participant ceases to be a Participant under Section 3.2, the Participant will not be able to receive reimbursements for Qualified Medical Expenses incurred after his or her participation terminates. However, such Participant (or the Participant's estate) may claim reimbursement for any Qualified Medical Expenses incurred during the Period of Coverage prior to termination of participation, provided that the Participant (or the Participant's estate) files a claim by March 31 following the close of the Plan Year in which the Qualified Medical Expense arose.

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, the Participant and his or her Spouse and Dependents (Qualified Beneficiaries), whose coverage terminates under the HRA Account because of a COBRA qualifying event, shall be given the opportunity to continue (on a self-pay basis) the same coverage that he or she had under the HRA Account the day before the qualifying event for the periods prescribed by COBRA (subject to all conditions and limitations under COBRA). However, in the event that such coverage is modified for all similarly-situated non-COBRA Participants prior to the date continuation coverage is elected, Qualified Beneficiaries shall be eligible to continue the same coverage that is provided to similarly-situated non-COBRA Participants. At the beginning of each month in the Plan Year, Qualified Beneficiaries shall be credited with the monthly reimbursement accrual (i.e., the

maximum annual reimbursement amount, divided by the number of months in that Plan Year) that is made available to similarly situated non-COBRA beneficiaries, and any unused reimbursement amounts from the previous Coverage Period shall be carried over (provided that the applicable premium is paid). A premium for continuation coverage shall be charged to Qualified Beneficiaries in such amounts and shall be payable at such times as are established by the Administrator and permitted by COBRA.

6.6 Named Fiduciary; Compliance With COBRA, HIPAA, etc.

Benefits shall be provided in compliance with PHSAs, COBRA, HIPAA, FMLA, USERRA, and other group health plan laws to the extent required by such laws.

6.7 Coordination of Benefits; Health FSA to Reimburse First

Benefits under this Plan are intended to pay benefits solely for Qualified Medical Expenses not previously reimbursed or reimbursable elsewhere. To the extent that an otherwise eligible Qualified Medical Expense is payable or reimbursable from another source, that other source shall pay or reimburse prior to payment or reimbursement from this Plan. Without limiting the foregoing, if the Participant's Qualified Medical Expenses are covered by both this Plan and by a Health FSA, then this Plan is not available for reimbursement of such Qualified Medical Expenses until after amounts available for reimbursement under the Health FSA have been exhausted.

ARTICLE VII. HIPAA PRIVACY AND SECURITY

7.1 Employer's Certification of Compliance

The Plan shall not disclose Protected Health Information to the Employer unless the Employer certifies that the Plan document incorporates the provisions of 45 CFR Section 164.504(f)(2)(ii), and that Employer agrees to conditions of disclosure set forth in this Article VII.

7.2 Permitted Disclosure of Enrollment/Disenrollment Information

The Plan may disclose to the Employer information on whether the individual is participating in the Plan.

7.3 Permitted Uses and Disclosures of Summary Health Information

The Plan may disclose Summary Health Information to the Employer, provided that the Employer requests the Summary Health Information for the purpose of modifying, amending, or terminating the Plan. "Summary Health Information" means information (1) that summarizes the claims history, claims expenses or type of claims experienced by individuals for whom a plan sponsor had provided health benefits under a Health Plan; and (2) from which the information described at 42 CFR Section 164.514(b)(2)(i) has been deleted, except that the geographic information described in 42 CFR Section 164.514(b)(2)(i)(B) need only be aggregated to the level of a five-digit ZIP code.

7.4 Permitted and Required Uses and Disclosure of Protected Health Information for Plan Administration Purposes

Unless otherwise permitted by law, the Plan may disclose a Covered Individual's Protected Health Information to the Employer, provided that the Employer will use or disclose such

Protected Health Information only for Plan administration purposes. “Plan administration purposes” means administration functions performed by the Employer on behalf of the Plan, such as quality assurance, claims processing (including appeals), auditing, and monitoring. Plan administration functions do not include functions performed by the Employer in connection with any other benefit or benefit plan of the Employer, and they do not include any employment-related functions. Any disclosure to and use by Employer of a Covered Individual’s Protected Health Information will be subject to and consistent with the provisions of this Article VII (including, but not limited to, the restrictions on Employer’s use and disclosure described in Section 7.5) and the specifications and requirements of the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations at 45 Code of Federal Regulations (“C.F.R.”) Parts 160-64.

7.5 Restrictions on Employer’s Use and Disclosure of Protected Health Information

- (a) Employer will neither use nor further disclose a Covered Individual’s Protected Health Information, except as permitted or required by the Plan document, or as required by law.
- (b) Employer will ensure that any agent, including any subcontractor, to which it provides a Covered Individual’s Protected Health Information or Electronic Protected Health Information received from the Plan, agrees to the restrictions, conditions, and security measures of the Plan document that apply to Employer with respect to the Protected Health Information or Electronic Protected Health Information, respectively.
- (c) Employer will not use or disclose a Covered Individual’s Protected Health Information for employment-related actions or decisions, or in connection with any other benefit or employee benefit plan of Employer.
- (d) Employer will report to the Plan any use or disclosure of a Covered Individual’s Protected Health Information that is inconsistent with the uses and disclosures allowed under the Plan document of which the Employer becomes aware.
- (e) Employer will make Protected Health Information available to the Plan or to the Covered Individual who is the subject of the information in accordance with 45 C.F.R. Section 164.524.
- (f) Employer will make a Covered Individual’s Protected Health Information available for amendment, and will on notice amend a Covered Individual’s Protected Health Information, in accordance with 45 C.F.R. Section 164.526.
- (g) Employer will track disclosures it may make of a Covered Individual’s Protected Health Information that are accountable under 45 C.F.R. Section 164.528 so that it can make available the information required for the Plan to provide an accounting of disclosures in accordance with 45 C.F.R. Section 164.528.
- (h) Employer will make its internal practices, books, and records relating to its use and disclosure of a Covered Individual’s Protected Health Information received from the Plan available to the Plan and to the U.S. Department of Health and Human Services to determine compliance with the HIPAA Privacy Rule at 45 C.F.R. Part 164, Subpart E.

- (i) Employer will, if feasible, return or destroy all Protected Health Information of a Covered Individual, in whatever form or medium, received from the Plan, including all copies thereof and all data, compilations, or other works derived therefrom that allow identification of any Covered Individual who is the subject of the Protected Health Information, when the Covered Individual's Protected Health Information is no longer needed for the plan administration functions for which the disclosure was made. If it is not feasible to return or destroy all such Protected Health Information, Employer will limit the use or disclosure of any Covered Individual's Protected Health Information that cannot feasibly be returned or destroyed to those purposes that make the return or destruction of the information infeasible.
- (j) Employer will ensure that the adequate separation between Plan and Employer (i.e., the "firewall"), required in 45 CFR Section 504(f)(2)(iii), is satisfied.

7.6 Adequate Separation Between Employer and the Plan

- (a) Only the following employees or classes of employees or other workforce members under the control of Employer may be given access to a Covered Individual's Protected Health Information or Electronic Protected Health Information received from the Plan or a business associate servicing the Plan:
 - (1) Privacy Official;
 - (2) Employees in the Employer's Human Resources Department;
 - (3) Employees in the Employer's Office of General Counsel; and
 - (4) Any other class of employees designated in writing by the Privacy Official.
- (b) The employees, classes of employees or other workforce members identified in Section 7.6(a), above, will have access to a Covered Individual's Protected Health Information or Electronic Protected Health Information only to perform the plan administration functions that Employer provides for the Plan, as specified in Section 7.4, above.
- (c) The employees, classes of employees or other workforce members identified in Section 7.6(a), above, will be subject to disciplinary action and sanctions pursuant to the Employer's employee discipline and termination procedures, for any use or disclosure of a Covered Individual's Protected Health Information or Electronic Protected Health Information in breach or violation of or noncompliance with the provisions of this Article VII.

7.7 Security Measures for Electronic Protected Health Information

The Employer will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of a Covered Individual's Electronic Protected Health Information that the Employer creates, receives, maintains, or transmits on the Plan's behalf.

7.8 Notification of Security Incident

The Employer will report to the Plan any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in the Employer's information systems, of which the Employer becomes aware.

ARTICLE VIII. APPEALS PROCEDURE

8.1 Procedure If Benefits Are Denied Under This Plan

If a claim for reimbursement under this Plan is wholly or partially denied, the Participant (or Spouse or Dependent, as the case may be) (the "Claimant") may appeal such denial by submitting a written notice of appeal to the Administrator within 180 days following such denial. The Committee acts on behalf of the Administrator with respect to appeals.

ARTICLE IX. RECORDKEEPING AND ADMINISTRATION

9.1 Administrator

The administration of this Plan shall be under the supervision of the Administrator. It is the principal duty of the Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan without discrimination among them.

9.2 Powers of the Administrator

The Administrator shall have such duties and powers as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters thereunder, and all determinations of the Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Administrator shall have the following discretionary authority:

- (a) to construe and interpret this Plan, including all possible ambiguities, inconsistencies and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this Plan (provided that, notwithstanding the first paragraph in this Section 9.2, the Committee shall exercise such exclusive power with respect to an appeal of a claim under Section 8.1);
- (b) to prescribe procedures to be followed and the forms to be used by Employees and Participants to enroll in and submit claims pursuant to this Plan;
- (c) to prepare and distribute information explaining this Plan and the benefits under this Plan in such manner as the Administrator determines to be appropriate;
- (d) to request and receive from all Employees and Participants such information as the Administrator shall from time to time determine to be necessary for the proper administration of this Plan;
- (e) to furnish each Employee and Participant with such reports with respect to the administration of this Plan as the Administrator determines to be reasonable and appropriate;

- (f) to receive, review and keep on file such reports and information concerning the benefits covered by this Plan as the Administrator determines from time to time to be necessary and proper;
- (g) to appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;
- (h) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;
- (i) to secure independent medical or other advice and require such evidence as it deems necessary to decide any claim or appeal; and
- (j) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

9.3 Reliance on Participant, Tables, etc.

The Administrator may rely upon the information submitted by a Participant as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Administrator.

9.4 Provision for Third-Party Plan Service Providers

The Administrator, acting on behalf of the Employer appoints **North Shore Bank** to provide all necessary and desirable services in connection with the operation of the Plan. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligation of the Employer.

9.5 Fiduciary Liability

To the extent permitted by law, the Administrator shall not incur any liability for any acts or for failure to act except for their own willful misconduct or willful breach of this Plan.

9.6 Compensation of Administrator

Unless otherwise determined by the Employer and permitted by law, any Administrator who is also an Employee of the Employer shall serve without compensation for services rendered in such capacity, but all reasonable expenses incurred in the performance of their duties shall be paid by the Employer.

9.7 Insurance Contracts

The Employer shall have the right (a) to enter into a contract with one or more insurance companies for the purposes of providing any Benefits under the Plan; and (b) to replace any of such insurance companies or contracts. Any dividends, retroactive rate adjustments or other refunds of any type that may become payable under any such insurance contract shall not be

assets of the Plan but shall be the property of, and be retained by, the Employer, to the extent that such amounts are less than aggregate Employer contributions toward such insurance.

9.8 Inability to Locate Payee

If the Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date that any such payment first became due.

9.9 Effect of Mistake

In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the account of any Participant, or the amount of benefits paid or to be paid to a Participant or other person, the Administrator shall, to the extent that it deems administratively possible and otherwise permissible under Code Section 105, the regulations issued thereunder or other applicable law, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as it will in its judgment accord to such Participant or other person the credits to the HRA Account or distributions to which he or she is properly entitled under the Plan. Such action by the Administrator may include withholding of any amounts due to the Plan or the Employer from Compensation paid by the Employer.

ARTICLE X. GENERAL PROVISIONS

10.1 Expenses

Reasonable expenses incurred in administering the Plan may be paid deducted from the HRA accounts of the Participants in the manner specified in the fee schedule provided by North Shore Bank.

10.2 No Contract of Employment

Nothing herein contained is intended to be or shall be construed as constituting a contract or other arrangement between any Employee and the Employer to the effect that such Employee will be employed for any specific period of time. All Employees are considered to be employed at the will of the Employer.

10.3 Amendment and Termination

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Employer may amend or terminate all or any part of this Plan upon the receipt of written consent of North Shore Bank and any such amendment or termination will automatically apply to the Related Employers that are participating in this Plan.

10.4 Governing Law

This Plan shall be construed, administered and enforced according to the laws of the State of Wisconsin, to the extent not superseded by the Code, PHSA (except to the extent that the non-federal governmental employer has elected exemption from the PHSA) or any other federal law.

10.5 Code and PHSA Compliance

It is intended that this Plan meet all applicable requirements of the Code and the Public Health Service Act (PHSA), and of all regulations issued thereunder (except to the extent that the non-federal governmental employer has elected exemption from the PHSA). This Plan shall be construed, operated and administered accordingly. In the event of any conflict between any part, clause or provision of this Plan and the Code and/or PHSA, the provisions of the Code and PHSA shall be deemed controlling, and any conflicting part, clause or provision of this Plan shall be deemed superseded to the extent of the conflict.

10.6 No Guarantee of Tax Consequences

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal, state or local income tax purposes. It shall be the obligation of each Participant to determine whether each payment under this Plan is excludable from the Participant's gross income for federal, state and local income tax purposes, and to notify the Administrator if the Participant has any reason to believe that such payment is not so excludable.

10.7 Indemnification of Employer

If any Participant receives one or more payments or reimbursements under this Plan on a tax-free basis, and such payments do not qualify for such treatment under the Code, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

10.8 Non-Assignability of Rights

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the Participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.

10.9 Headings

The headings of the various Articles and Sections (but not subsections) are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

10.10 Plan Provisions Controlling

In the event that the terms or provisions of any summary or description of this Plan, or of any other instrument, are in any construction interpreted as being in conflict with the provisions of this Plan as set forth in this document, the provisions of this Plan shall be controlling.

10.11 Severability

Should any part of this Plan subsequently be invalidated by a court of competent jurisdiction, the remainder of the Plan shall be given effect to the maximum extent possible.

10.12 State Law Limitations.

Notwithstanding anything in the Plan to the contrary, no provision of this Plan shall be construed to violate Wis. Stat. Section 49.493(3)(d), 631.89, 631.90, 631.93(2), 632.746(10)(a)2. and (b)2., 632.747(3), 632.85, 632.853, 632.855, 632.87(4) and (5), 632.89, 632.895(10) through (17), 632.896, and 767.513(4), to the extent such provisions are applicable to the Employer.

10.13 Nondiscrimination.

Notwithstanding anything in the Plan to the contrary, reimbursements to Highly Compensated Individuals may be limited or treated as taxable compensation to comply with Code Section 105(h), as may be determined by the Administrator in its sole discretion.

* * *

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the foregoing instrument comprising the CITY OF CEDARBURG Retiree HRA Plan, the CITY OF CEDARBURG has caused this Plan to be executed in its name and on its behalf, on this ____ day of _____, _____.

CITY OF CEDARBURG

By: _____
Its: _____

Witness
Signature: _____

Appendix A
Related Employers That Have Adopted This Plan,
With the Approval of the CITY OF CEDARBURG
(No Related Employers have adopted this Plan)

Appendix B

Exclusions—Medical Expenses That Are Not Reimbursable

The CITY OF CEDARBURG Retiree HRA Plan document contains the general rules governing what expenses are reimbursable. This Appendix B, as referenced in the Plan document, specifies certain expenses that *are not reimbursable*, even if they meet the definition of “medical care” under Code Section 213 and may otherwise be reimbursable under IRS guidance pertaining to HRAs.

Exclusions:

The following expenses are not reimbursable, even if they meet the definition of “medical care” under Code Section 213 and may otherwise be reimbursable under IRS guidance pertaining to HRAs.

- Pregnancy testing kits.
- Long-term care services.
- Cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease. “Cosmetic surgery” means any procedure that is directed at improving the patient’s appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.
- The salary expense of a nurse to care for a healthy newborn at home.
- Funeral and burial expenses.
- Household and domestic help (even though recommended by a qualified physician due to an Employee’s or Dependent’s inability to perform physical housework).
- Massage therapy.
- Home or automobile improvements.
- Custodial care.
- Costs for sending a problem child to a special school for benefits that the child may receive from the course of study and disciplinary methods.
- Health club or fitness program dues, even if the program is necessary to alleviate a specific medical condition such as obesity.
- Social activities, such as dance lessons (even though recommended by a physician for general health improvement).
- Bottled water.
- Maternity clothes.
- Diaper service or diapers.
- Cosmetics, toiletries, toothpaste, etc.
- Vitamins and food supplements, even if prescribed by a physician.
- Uniforms or special clothing, such as maternity clothing.
- Automobile insurance premiums.
- Transportation expenses of any sort, including transportation expenses to receive medical care.
- Psychotherapy (including psychoanalysis).
- Marijuana and other controlled substances that are in violation of federal laws, even if prescribed by a physician.
- Any item that does not constitute “medical care” as defined under Code Section 213.

CITY OF CEDARBURG

Wisconsin

Retiree Healthcare Trust and Trust Agreement

TRUST AND TRUST AGREEMENT

THIS AGREEMENT, is made as of the ____ day of ____, 2018 by and between the _____, (hereinafter referred to as "Employer"), and **North Shore Bank**, a Federal Savings Bank organized and existing under the laws of the State of Wisconsin (hereinafter referred to as "Trustee").

WITNESSETH:

WHEREAS, Employer has adopted the _____ **Retiree Health Reimbursement Arrangement (HRA) Plan**, as amended from time to time, for its eligible employees (hereinafter referred to as "Plan"); and

WHEREAS, pursuant to the provisions of the Plan, _____ serves as the Plan Administrator of the Plan; and

WHEREAS, Employer has appointed North Shore Bank, FSB ("North Shore Bank") as Trustee under the Plan and has authorized the form of this Trust Agreement, and Trustee has accepted its appointment as Trustee hereunder; and

WHEREAS, Plan funds will from time to time be contributed to Trustee which funds will constitute a trust fund to be held for the purpose of providing post-employment health plan benefits for certain employees of the Employer (each a "Participant") and their eligible Spouses and Dependents (as such terms are defined in the Plan) (each a "Beneficiary").

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, Employer and Trustee do hereby covenant and agree as follows:

ARTICLE I ESTABLISHMENT OF TRUST

A. Designation and Meaning of Terms.

This Trust is designated as the _____ **Retiree Health Trust**. Employer intends that the definitional terms of the Plan, are incorporated herein by reference except to the extent terms are explicitly defined hereunder.

B. Purpose of Trust.

The purpose of this Trust is to implement those retiree health and related benefits provided under the Plan.

Except as may be otherwise provided under the terms of the Plan, no part of the Trust Fund shall at any time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries be used for, or diverted to, purposes other than for the exclusive benefit of such Participants and their Beneficiaries and for the defraying of reasonable expenses of the Plan.

C. General Duties of Trustee.

All Trust Funds (as defined below), income and increments thereon created under the Plan prior to the effective date hereof shall be received by the Trustee.

Additional sums of money or other property which Trustee may deem acceptable shall be paid or delivered to Trustee. Employer shall make contributions in such manner and at such times as shall be appropriate. Trustee shall be responsible only for property received by it pursuant to this Agreement.

1. All money and property so received together with the income therefrom and any increment thereon and all other assets acquired by investment or reinvestment (hereinafter collectively referred to as the "Trust Fund") shall be held, invested, reinvested and administered by Trustee pursuant to the terms of this Agreement without distinction between principal and income and without liability for the payment of interest thereon.

2. From time to time, Trustee shall make payments out of the Trust Fund to such persons as the Plan Administrator shall direct in writing to Trustee. Trustee shall incur no liability for any payments made pursuant to such direction.

3. If any payment or directed distribution in the form of a check from the Trust Fund is not claimed, Trustee shall notify the Plan Administrator who shall undertake all reasonable efforts to locate that payee or distributee. Trustee shall have no duty to search for or locate the payee or distributee of any Trust benefits.

D. Duties of the Plan Administrator.

The Plan Administrator shall administer the Plan subject to the provisions therein. The Plan Administrator shall interpret the Plan, determine all questions arising in the administration and application of the Plan, and from time to time formulate and issue such written rules and regulations as may be necessary or desirable for the purpose of administering the Plan. Trustee shall be entitled to rely on such interpretations, determinations and written rules and regulations without liability for any actions based on such.

1. The Employer shall certify in writing to Trustee any change in the identity of the Plan Administrator and the names of the persons from time to time who are authorized to give directions to Trustee on behalf of either the Plan Administrator or the Employer. All such directions to Trustee shall be in writing and signed either by the Plan Administrator or one of such authorized persons. Trustee shall be entitled to rely upon all such written directions without further inquiry and without liability for such action based thereon. Trustee shall be entitled to rely on any such written direction until a written revocation thereof is filed with it. The Plan Administrator shall notify Trustee of any action taken in regard to the Plan or Trust Fund which may be pertinent to Trustee in the execution of its duties and responsibilities.

2. The Plan Administrator shall determine the calculation or collection of any contribution under or required by the Plan.

3. The Plan Administrator shall determine the existence, nature and amount of rights and interests of all persons in and to the Trust Fund or under the Plan and shall, where appropriate, furnish Trustee with complete and accurate information with respect to participants, their compensation, service with Employer, and any other information which Trustee may reasonably request.

4. The Plan Administrator shall timely file or furnish, or cause to be filed or furnished, all such returns, reports, statements and other documents as may be required by any governmental authority or as may be required by law to be furnished to any Participant, Beneficiary or interested party.

5. The Plan Administrator shall establish and carry out a funding policy consistent with the purposes of the Plan and the requirements of applicable law as may be appropriate from time to time and communicate the same in writing to Trustee. As part of such funding policy, the Plan Administrator shall from time to time direct Trustee in writing to provide sufficient cash assets in an amount determined by the Plan Administrator under the funding policy then in effect to be necessary to meet the liquidity requirements for the administration of the Plan.

6. The Plan Administrator shall direct the Trustee with respect to the investment and reinvestment of the principal and income of all portions of the Trust Fund that are not in an Adviser Directed Fund (as defined in Article I, Section E) or a Participant Directed Fund (as defined in Article III).

E. Named Fiduciaries and Funding Policy.

The Plan Administrator, acting as a named fiduciary for this purpose and with prior written notice to Trustee, may appoint an Investment Adviser to manage, acquire and dispose of all or a portion of the Trust Fund. Any portion of the Trust Fund over which an Investment Adviser shall have such responsibility is hereinafter referred to as an "Adviser Directed Fund." Any Investment Adviser so appointed must be either (i) an Investment Adviser registered as such under the Investment Advisers Act of 1940, (ii) an Investment Adviser not registered as such under that Act by reason of paragraph (1) or (2) of Section 203A(a) of such Act, but who is registered as an Investment Adviser under the laws of the state referred to in such paragraph (1) or (2) in which it maintains its principal office and place of business, (iii) a bank, as defined in that Act, or (iv) an insurance employer qualified to perform investment management services under the laws of more than one state, and which shall have acknowledged in writing to both the Employer and Trustee that it is a fiduciary with respect to the Plan.

The Plan Administrator, being a named fiduciary for this purpose, shall have the responsibility to direct the Trustee respecting investment, management and control of any portion of the Trust Fund that is not in an Adviser Directed Fund or a Participant Directed Fund. Any portion of the Trust Fund over which the Employer shall have such responsibility is hereafter referred to as "Employer Directed Fund."

The Plan Administrator shall notify Trustee of any appointment of an Investment Adviser by delivery to Trustee of a copy of the document under which the Investment Adviser was appointed to act as such hereunder and shall specify to Trustee that portion of the Trust Fund which shall be an Adviser Directed Fund. The Plan Administrator shall likewise notify the Trustee should the Plan Administrator determine to establish an Employer Directed Fund.

During the term of such appointment, the Investment Adviser with respect to its Adviser Directed Fund and the Plan Administrator with respect to any Employer Directed Fund shall have the sole responsibility for the investment and reinvestment of the Adviser Directed Fund or Employer Directed Fund subject to its investment management, and shall certify in writing to Trustee the identity of the person or persons authorized to give instructions or

directions on its behalf. Trustee shall follow such directions and shall be under no duty to review any investment to be acquired, held or disposed of pursuant to such directions or to make any recommendation with respect to the disposition or continued retention of any such investment. Trustee shall have no liability for acting without question on the direction of, or failing to act in the absence of any direction from, an Investment Adviser with respect to an Adviser Directed Fund or the Plan Administrator with respect to an Employer Directed Fund. Any Investment Adviser appointed hereunder and the Plan Administrator shall each exercise its respective fiduciary responsibilities with respect to the assets of the Plan, including (without limitation) any responsibility of diversification imposed by ERISA, as if the portion of the Trust Fund under its management constituted the entirety of the assets of the Plan. The Plan Administrator, or some other fiduciary named by it, shall be responsible for the overall diversification of the entire Trust Fund.

In the event that an Investment Adviser appointed hereunder should resign or be removed, the Plan Administrator shall, upon receiving written notice thereof, manage the investment of that portion of the Trust Fund which was an Adviser Directed Fund under the management of such Investment Adviser at the time of such resignation, removal or withdrawal, unless and until Trustee shall be notified of the appointment of another Investment Adviser.

ARTICLE II POWERS AND SPECIFIC DUTIES OF TRUSTEE

A. Investment of Assets.

Trustee shall have and exercise the following powers and authority in the administration of the Trust Fund, only on the direction of an Investment Adviser, the Plan Administrator, or a Participant where such powers relate to an Adviser Directed Fund, an Employer Directed Fund, or a Participant Directed Fund, as the case may be. Trustee shall act solely upon the directions of an Investment Adviser, the Plan Administrator, or a Participant, and in carrying out its duties hereunder, Trustee shall not have the power to exercise discretion in the absence of such instructions:

1. To invest and reinvest the principal and income of the Trust Fund and keep the Trust Fund invested, without distinction between principal and income, in such securities or in such property, real or personal, tangible or intangible, or part interest therein, wherever situated, whether or not productive of income, or consisting of wasting assets, including but not limited to stocks, common or preferred, trust and participation certificates, interests in investment companies whether so-called "open-end mutual funds" or "closed-end mutual funds" (including any such fund from which the Trustee or any affiliate thereof receives an investment advisory fee or any other fee), leaseholds, fee titles, bonds or notes and mortgages, and other evidences of indebtedness or ownership, irrespective of whether such securities or such property shall be of the character authorized by any state law from time to time for trust investments;

2. To purchase and subscribe for any securities or other property and to retain such securities or other property in trust;

3. To sell at public or private sale, for cash, or upon credit, or otherwise dispose of any property, real or personal; and no person dealing with Trustee shall be bound to see to the application or to inquire into the validity, expediency or propriety of any such sale or other disposition;

4. To adjust, settle, contest, compromise and arbitrate any claims, debts, or damages due or owing to or from the Trust Fund, and to sue, commence or defend any legal proceedings in reference thereto;

5. To exercise any conversion privilege, subscription rights or other options pertaining to or in connection with securities or other property held by it; to consent to or otherwise participate in any reorganization, consolidation, merger or adjustment pertaining to any corporate reorganization or other changes affecting corporate securities, to deposit any property with any committee or depository, and to pay any assessments or other changes in connection therewith;

6. To exercise any right, including the right to vote, incident to any securities or other property held by it; except that Trustee shall not exercise its discretion with respect to voting any securities which constitute part of an Adviser Directed Fund, an Employer Directed Fund, or a Participant Directed Fund, but shall instead send the Investment Adviser, the Plan Administrator, or the Participant all notices and proxies relating thereto, signed without indication of voting preference, and the Investment Adviser, Plan Administrator, or Participant shall exercise all voting rights with respect thereto;

7. To invest all or part of the Trust Fund in interest-bearing deposits with the Trustee, or with a bank or similar financial institution related to Trustee whether or not such bank or other institution is a fiduciary with respect to the Plan, including but not limited to investments in time deposits, savings deposits, certificates of deposit or time accounts which bear a reasonable interest rate;

8. To register any investment held in the Trust Fund in its own name or in the name of one or more of its nominees or to hold any investment in bearer form or to cause any investment to be registered and held in the name of one or more nominees of any system for the central handling of securities;

9. To employ suitable agents, accountants and counsel and to pay their reasonable expenses and compensation;

10. To hold any part or all of the Trust Fund uninvested in cash without accrual of interest to the Trust Fund, for the payment of benefits or expenses as necessary or appropriate, notwithstanding that the Trustee or any affiliate thereof may accrue interest on such cash balances;

11. To invest and reinvest collectively with other trusts participating in any collective or common trust fund, including any such fund which is maintained by Trustee. During the period when any part of all of the assets held hereunder comprise part of any collective or common trust fund, such assets shall be subject to all of the provisions of the Declaration of Trusts of such collective or common trust funds, as amended from time to time, which are hereby made a part of this Agreement and incorporated herein by reference thereto as though the same were set forth in full herein;

12. To make, execute and deliver as Trustee any and all deeds, leases, mortgages, advances, contracts, waivers, releases or other instruments in writing necessary or proper in the employment of any of the foregoing powers;

Notwithstanding ARTICLE II, Sections A.1. through A.12, neither the Plan Administrator, any Investment Adviser, nor any Participant or Beneficiary shall direct the Trustee to make any investment that is in violation of Wis. Stats. 66.0603 and 66.0137, if applicable.

B. Maintenance of Records and Accounting.

1. Trustee shall maintain records of all transactions relating to the Trust Fund.

2. Trustee shall provide the Employer with an accounting annually and at such other times as may be agreed upon between the Employer and Trustee.

3. In the absence of the Employer's filing with Trustee objections to any such accounting within sixty days of delivery thereof to the Employer, the Employer shall be deemed to have approved the accounting. In such case, or upon the written approval of the Employer of any such accounting, Trustee shall, to the maximum extent permitted by applicable law, be discharged from all liabilities to the Employer for its acts or failures to act described by such accounting.

4. Trustee, on such valuation date or dates as may be agreed upon, shall render to the Employer a statement of the Trust Fund assets and their fair market values. Trustee may rely, as to any insurance contract or contracts which may constitute a part of the Trust Fund, on the valuation determined and supplied by the issuing insurer.

5. Reasonable expenses incurred by Trustee, including but not limited to legal services, compensation for the services of Trustee as may be agreed upon between the Employer and Trustee, and any proper charges and disbursements of Trustee including any and all taxes assessed against the Trust Fund shall be paid from the Trust Fund unless paid by the Employer.

**ARTICLE III
PARTICIPANT DIRECTED FUND**

A. In General

A Participant shall direct, in accordance with the provisions of this Article, that all or a portion of the amounts credited to his HRA Account be invested in such funds or investments that have been made available under the Trust. Following the Participant's death, the Participant's surviving spouse (or if none, the Participant's dependents entitled to benefits from the HRA Account under the Plan) shall direct such investments. Any amounts invested pursuant to such a direction shall be deemed held in a "Participant Directed Fund" under this Agreement. Any Participant entering the Plan must execute an investment direction election. If no direction is made by a Participant, all amounts credited to the Participant's Account shall be invested as directed by the Plan Administrator. Any investment direction made in accordance with this Article shall continue in effect unless and until a timely subsequent direction is made by the Participant. Any Participant direction shall be made at such time, in such manner and in such form as the Plan Administrator may prescribe through uniform and nondiscriminatory rules.

1. Allocation of Contributions to Investment Options. In accordance with procedures established by the Plan Administrator, a Participant may direct how contributions to his Accounts shall be allocated among the investment options then available for Participant direction. Any Participant investment direction may be made in one percent (1%) increments. An investment

election may be effective as of any Valuation Date. For this purpose, "Valuation Date" means any day that the New York Stock Exchange is open for business.

2. Transfers of Investments. In accordance with procedures established by the Plan Administrator, a Participant may direct the transfer of amounts credited to his Account in one percent (1%) increments between any of the investment options then available for Participant direction. A transfer may be effective as of any Valuation Date.

3. Investment Options. The Plan Administrator shall have the right to establish and change the investment options available under the Plan and Trust, to eliminate existing options and to authorize new options. Affected Participants shall be advised of any such change and shall be afforded the opportunity to make new investment directions corresponding to the investment options available after the change. Notwithstanding the foregoing, no investment shall be authorized or made in violation of Wis. Stats. 66.0603 and 66.0137, if applicable.

4. Fiduciary Responsibility. To the extent that a Participant exercises investment direction or control under this Article, he shall not be deemed to be a fiduciary with respect to any such directed investments by reason of his exercise of such direction or control. Neither the Plan Administrator, Trustee, any Investment Adviser, any Participant, nor any other person who is otherwise a fiduciary with respect to the Plan and Trust, shall be liable for any loss attributable to such directed investments, or by reason of any breach of fiduciary responsibility which results from a Participant's exercise of direction or control over such investment, except to the extent otherwise mandated by applicable law.

ARTICLE IV MISCELLANEOUS

A. Provisions Concerning Trustee.

1. Trustee may resign at any time by giving thirty days written notice to the Employer. The Employer may remove Trustee at any time on thirty days written notice and in the case of such resignation or removal, the Employer shall appoint a successor Trustee. Any successor Trustee shall have the same powers and duties as those determined pursuant to this Agreement.

2. Trustee, upon receipt of written acceptance of the successor Trustee, shall distribute, assign, transfer, or withdraw any amount held in any commingled trust fund, pursuant to the written directions of the Plan Administrator consistent with the provisions of the Plan and this Agreement.

3. When North Shore Bank is at any time acting as Trustee or successor Trustee or succeeds to responsibilities hereunder for management of part or all of the assets constituting the Trust Fund, the Employer hereby agrees to hold North Shore Bank harmless from and against all claims, expenses (including reasonable counsel fees), liabilities, damages, actions, or other charges incurred or assessed against it as Trustee, as a direct or indirect result of any act or omission of, or provision of inaccurate information by, (A) a predecessor trustee, (B) a predecessor recordkeeper of the Plan, or (C) any other person charged with responsibility under any agreement affecting the Plan or the Trust Fund.

4. The Employer recognizes that a burden of litigation may be imposed on Trustee, as a result of some act or transaction for which it has no responsibility or over which it has no control under this Agreement. Accordingly, and in consideration of Trustee's agreement

to act as trustee hereunder, the Employer hereby agrees to indemnify and hold North Shore Bank and its affiliates, directors, officers, and employees harmless from and against all claims, expenses (including reasonable counsel fees), liabilities, damages, actions or other charges incurred by or assessed against North Shore Bank as direct or indirect result of anything done or omitted by North Shore Bank in reliance upon the directions (or absence of directions) of the Plan Administrator, the Employer, any other organization participating in the Plan, any Investment Adviser, or a Participant or Beneficiary, or upon the advice of Trustee's counsel, provided, however, that the foregoing shall not apply to the extent of the Trustee's negligence or gross misconduct.

B. Amendment and Termination.

1. This Trust may be modified, altered or amended in whole or in part by Employer at any time. A written instrument delivered to Trustee and executed by Employer and Trustee pursuant to the requirements of law and in the same manner as this instrument shall be necessary to effect any change in this trust instrument. No termination may result in any part of Trust's assets being used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

2. Trustee's duties shall not be increased without its written consent. No amendment, modification or alteration shall alter the purpose of this Trust in being used for the purpose of providing retirement and other related benefits for Participants and their Beneficiaries, including defraying reasonable expenses of administering the Plan.

3. The effective date of any written alteration, modification or amendment shall be the date of receipt by Trustee of said alteration, modification or amendment, unless otherwise specified in writing and agreed to by Trustee.

4. Subject to the foregoing, any amendment, modification or alteration of the Plan or Trust Agreement adopted by Employer and suggested or required to comply with governmental requirements, shall be retroactively effective if required.

5. This Trust Agreement and the Trust hereby created may be terminated at any time by the Employer by written notice delivered to Trustee. Upon such termination Trustee shall, solely as directed by the Plan Administrator, apply the Trust assets to pay any remaining debts, liabilities and approved claims of Plan, and after payment of all expenses incurred in the administration and closing out of the Trust Fund and the compensation to which Trustee may be entitled, then distribute the Trust Fund, in cash or such other property to the Employer. Notwithstanding the foregoing, upon termination, the Trustee may but shall not be required to pay out any assets of the Trust Fund until it shall have received such rulings or determinations of the Internal Revenue Service or any other governmental or quasi-governmental agency as it may deem necessary or appropriate in order to assure itself that any such payment is made in accordance with law or that it will not subject the Trust Fund or Trustee, individually or as such Trustee, to liability.

6. From and after the date of termination of the Trust and until the final distribution of the Trust, Trustee shall continue to possess and exercise all powers provided under this Agreement. Trustee shall continue to administer the Trust in this interim period as though the Plan and Trust were fully effective.

C. Miscellaneous.

1. No Participant's or Beneficiary's benefits under the Plan nor any interest of any such person in the Trust Fund shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, to the maximum extent permitted by law.

2. Any benefits payable under the Plan shall be payable only from the Trust Fund and no liabilities therefor shall be imposed upon Trustee, the Employer or its officers, directors, shareholders, agents or employees.

3. No Participant Beneficiary shall have any interest in, or right to, any part of the earnings of the Trust Fund or any part of the assets thereof except as expressly provided in the Plan.

4. The parties to this Agreement consist only of Trustee and Employer. No insurer shall be considered to be a party to this Agreement.

5. This Trust shall be construed in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, Employer and Trustee have caused this Trust to be executed by their duly authorized officers as of the date first set forth above.

CITY OF CEDARBURG

BY: _____

ATTEST: _____

**North Shore Bank, FSB
Trustee**

BY: _____

ATTEST: _____

Representatives of North Shore Bank, FSB, are not financial advisers or attorneys, and cannot offer financial, legal or tax advice. Please consult with your financial planner, attorney and/or tax advisor as needed.

Upon request we can provide a copy of the IRS Private Letter Ruling (PLR 200708006, issued November 17, 2006) (the “PLR”) is provided solely for purposes of illustration, and may not be used or cited as precedent by any person or entity except the taxpayer that requested it. By providing you with a copy of the PLR, North Shore Bank is not providing you with financial, legal or tax advice, and North Shore Bank makes no representations that the terms of any post-employment health plan that you may adopt are not materially different than the plan described in the PLR or that the tax consequences will be the same as described in the PLR. Please consult with your financial planner, attorney and/or tax advisor as needed.

CITY OF CEDARBURG - POLICE UNION

*Retiree Healthcare
Reimbursement Arrangement
(HRA) Plan*

TABLE OF CONTENTS

Page

**CITY OF CEDARBURG - POLICE UNION Retiree Health Reimbursement Arrangement
(HRA) Plan**

ARTICLE I. INTRODUCTION 1

1.1 Establishment of Plan 1

1.2 Legal Status..... 1

ARTICLE II. DEFINITIONS 1

2.1 Definitions..... 1

ARTICLE III. ELIGIBILITY AND PARTICIPATION 4

3.1 Eligibility to Participate 4

3.2 Termination of Participation..... 4

3.3 Participation Following Termination of Employment or Loss of
Eligibility 4

3.4 FMLA and USERRA Leaves of Absence 4

ARTICLE IV. METHOD AND TIMING OF ENROLLMENT 5

4.1 Enrollment When First Eligible 5

ARTICLE V. BENEFITS OFFERED AND METHOD OF FUNDING 5

5.1 Benefits Offered..... 5

5.2 Employer and Participant Contributions..... 5

5.3 Funding This Plan 6

5.4 Plan Procedures for Determination of Contribution of
Accumulated Unused Vacation and Sick Leave Upon Retirement. 6

5.5 Plan Procedures for Determination of Contribution of Annual
Excess Vacation and Sick Leave. 6

5.6 Establishment of HRA Account..... 7

5.7 Maximum Contributions..... 8

5.8 Retirement Before Vesting; Forfeiture of HRA Account. 8

ARTICLE VI. HEALTH REIMBURSEMENT BENEFITS..... 8

6.1 Benefits 8

6.2 Eligible Qualified Medical Expenses..... 8

6.3 Carryover of Accounts 9

6.4 Reimbursement Procedure 9

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 6.5 Reimbursements After Termination; COBRA..... | 10 |
| 6.6 Named Fiduciary; Compliance With COBRA, HIPAA, etc..... | 11 |
| 6.7 Coordination of Benefits; Health FSA to Reimburse First..... | 11 |
| ARTICLE VII. HIPAA PRIVACY AND SECURITY | 11 |
| 7.1 Employer’s Certification of Compliance | 11 |
| 7.2 Permitted Disclosure of Enrollment/Disenrollment Information | 11 |
| 7.3 Permitted Uses and Disclosures of Summary Health Information | 11 |
| 7.4 Permitted and Required Uses and Disclosure of Protected Health Information for Plan Administration Purposes | 11 |
| 7.5 Restrictions on Employer’s Use and Disclosure of Protected Health Information | 12 |
| 7.6 Adequate Separation Between Employer and the Plan..... | 13 |
| 7.7 Security Measures for Electronic Protected Health Information | 13 |
| 7.8 Notification of Security Incident | 13 |
| ARTICLE VIII. APPEALS PROCEDURE..... | 14 |
| 8.1 Procedure If Benefits Are Denied Under This Plan..... | 14 |
| ARTICLE VIII. RECORDKEEPING AND ADMINISTRATION | 14 |
| 9.1 Administrator | 14 |
| 9.2 Powers of the Administrator | 14 |
| 9.3 Reliance on Participant, Tables, etc. | 15 |
| 9.4 Provision for Third-Party Plan Service Providers | 15 |
| 9.5 Fiduciary Liability | 15 |
| 9.6 Compensation of Administrator..... | 15 |
| 9.7 Insurance Contracts..... | 15 |
| 9.8 Inability to Locate Payee | 16 |
| 9.9 Effect of Mistake..... | 16 |
| ARTICLE X. GENERAL PROVISIONS..... | 16 |
| 10.1 Expenses | 16 |
| 10.2 No Contract of Employment..... | 16 |
| 10.3 Amendment and Termination | 16 |
| 10.4 Governing Law | 16 |

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 10.5 Code and PHSA Compliance..... | 17 |
| 10.6 No Guarantee of Tax Consequences..... | 17 |
| 10.7 Indemnification of Employer..... | 17 |
| 10.8 Non-Assignability of Rights..... | 17 |
| 10.9 Headings..... | 17 |
| 10.10 Plan Provisions Controlling..... | 17 |
| 10.11 Severability..... | 17 |
| 10.12 State Law Limitations..... | 18 |
| 10.13 Nondiscrimination..... | 18 |
| Appendix A..... | 19 |
| Appendix B..... | 20 |

**CITY OF CEDARBURG - POLICE UNION Retiree Health Reimbursement
Arrangement (HRA) Plan**

ARTICLE I. INTRODUCTION

1.1 Establishment of Plan

The CITY OF CEDARBURG - POLICE UNION(the “Employer”) hereby establishes the CITY OF CEDARBURG - POLICE UNION Retiree Health Reimbursement Arrangement (HRA) Plan to be hereafter known as the CITY OF CEDARBURG - POLICE UNION Retiree Health Reimbursement Arrangement (HRA) (the “Plan”), effective _____ (the “Effective Date”). Capitalized terms used in this Plan that are not otherwise defined shall have the meanings set forth in Article II. This Plan is intended to permit an Eligible Employee to obtain reimbursement of Medical Care Expenses on a nontaxable basis from the HRA Account.

1.2 Legal Status

This Plan is intended to qualify as an employer-provided medical reimbursement plan under Code Sections 105 and 106 and regulations issued thereunder, and as a health reimbursement arrangement as defined under IRS Notice 2002-45, and shall be interpreted to accomplish that objective. The Qualified Medical Expenses reimbursed under the Plan are intended to be eligible for exclusion from participating Employees’ gross income under Code Section 105(b). The Plan is further intended to provide benefits only for former employees of the Employer, and their eligible Spouses and Dependents, and therefore exempt from the market reform provisions of the Patient Protection and Affordable Care Act.

ARTICLE II. DEFINITIONS

2.1 Definitions

“**Administrator**” means the Committee established by the **CITY OF CEDARBURG - POLICE UNION**. The contact person shall be the _____ **[POSITION]** of the **CITY OF CEDARBURG - POLICE UNION**, who has the full authority to act on behalf of the Committee, except with respect to appeals, for which the Committee has the full authority to act on behalf of the Administrator, as described in Section 8.1.

“**Benefits**” means the reimbursement benefits for Qualified Medical Expenses described under Article VI.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Committee**” means the Benefits Committee appointed by the **CITY OF CEDARBURG - POLICE UNION**

“**Compensation**” means the wages or salary paid to an Employee by the Employer.

“**Covered Individual**” means, for purposes of Article VII, a Participant, Spouse or Dependent.

“Dependent” means any individual who is a tax dependent of the Participant as defined in Code Section 105(b), with the following exception: any child to whom Code Section 152(e) applies (regarding a child of divorced parents, etc., where one or both parents have custody of the child for more than half of the calendar year and where the parents together provide more than half of the child's support for the calendar year) is treated as a dependent of both parents. Notwithstanding the foregoing, the HRA Account will provide benefits in accordance with the applicable requirements of any QMCSO, even if the child does not meet the definition of “Dependent.”

“Effective Date” of this Plan has the meaning described in Section 1.1.

“Electronic Protected Health Information” has the meaning described in 45 C.F.R. Section 160.103 and generally includes Protected Health Information that is transmitted by electronic media or maintained in electronic media. Unless otherwise specifically noted, Electronic Protected Health Information shall not include enrollment/disenrollment information and summary health information.

“Eligible Employee” means an Employee eligible to participate in this Plan, as provided in Section 3.1.

“Employee” means an individual that the Employer classifies as a common-law employee and who is on the Employer’s W-2 payroll, but does not include the following: (a) any leased employee (including but not limited to those individuals defined as leased employees in Code Section 414(n)) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer’s W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer; (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer; (c) any self-employed individual; (d) any partner in a partnership; and (e) any more-than-2% shareholder in a Subchapter S corporation, including those deemed to be a more-than-2% shareholder by virtue of the Code Section 318 ownership attribution rules. The term “Employee” does include “former Employees” for the limited purpose of allowing continued eligibility for benefits in accordance with Section 3.2.

“Employer” means the **CITY OF CEDARBURG - POLICE UNION**, and any Related Employer that adopts this Plan with the approval of the **CITY OF CEDARBURG - POLICE UNION**. Related Employers, if any, that have adopted this Plan are listed in Appendix A to this Plan. However, for purposes of Article IX and Section 10.3, “Employer” means only the **CITY OF CEDARBURG - POLICE UNION**.

“Employment Commencement Date” means the first regularly scheduled working day on which the Employee first performs an hour of service for the Employer for Compensation, or, for Employees employed on the effective date, the Effective Date.

“Enrollment Form” means the form provided by the Administrator for the purpose of allowing an eligible Employee to participate in this Plan.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“FMLA” means the Family and Medical Leave Act of 1993, as amended.

“Health FSA” means a health flexible spending arrangement as defined in Prop. Treas. Reg. Section 1.125-2, Q/A-7(a).

“Health Insurance Plan” means the plan(s) that the Employer maintains for its Employees (and for their Spouses and Dependents that may be eligible under the terms of such plan), providing major medical type benefits through a group insurance policy or policies.

“Highly Compensated Individual” means an individual defined under Code Section 105(h), as amended, as a “highly compensated individual” or “highly compensated employee.”

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“HRA” means a health reimbursement arrangement as defined in IRS Notice 2002-45.

“HRA Account” means the HRA Account described in Section 5.6.

“Participant” means a person who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article III.

“Period of Coverage” means any Plan Year following the Participant’s Retirement Date, except, for a Participant whose Retirement Date occurs during the Plan Year, it shall mean the portion of the Plan Year following the Participant’s Retirement Date. A different Period of Coverage (e.g., monthly) may be established by the Administrator and communicated to Participants.

“Plan” means the CITY OF CEDARBURG - POLICE UNION Retiree Health Reimbursement Arrangement (HRA) Plan as set forth herein and as amended from time to time.

“Plan Year” means the calendar year (i.e., the 12-month period commencing January 1 and ending on December 31), except in the case of a short Plan Year representing the initial Plan Year or where the Plan Year is being changed, in which case the Plan Year shall be the entire short Plan Year.

“Protected Health Information” shall have the meaning described in 45 C.F.R. Section 160.103 and generally includes individually identifiable health information held by, or on behalf of, the Plan.

“QMCSO” means a qualified medical child support order, as defined in ERISA Section 609(a).

“Qualified Medical Expenses” has the meaning defined in Section 6.2.

“Related Employer” means any employer affiliated with **CITY OF CEDARBURG - POLICE UNION**, that, under Code Section 414(b), (c), or (m), is treated as a single employer with **CITY OF CEDARBURG - POLICE UNION** for purposes of Code Section 105.

“Retirement Date” (“**Retires**”) means the date on which the Employee is no longer providing services for the Employer or any Related Employer and is not on a leave of absence from the Employer or any Related Employer.

“Spouse” means an individual who is legally married to a Participant as determined under applicable state law (and who is treated as a spouse under the Code).

“Trust” means **CITY OF CEDARBURG - POLICE UNION Retiree Health Trust** established in conjunction with this Plan for the funding of benefits payable hereunder.

“USERRA” means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

“Vested” (“Vesting”) means that a Participant has been credited with sufficient service with the Employer in order to receive Benefits as described in Article VI. The manner in which service is credited to determine if a Participant is Vested, and the amount of service required for a Participant to become Vested, are described in the Employer’s employee manual, personnel policy or similar document.

ARTICLE III. ELIGIBILITY AND PARTICIPATION

3.1 Eligibility to Participate

An individual is eligible to participate in this Plan if the individual (a) is an Employee; (b) regularly works 20 hours or more per week; and (c) has been employed by the Employer for 30 consecutive calendar days, counting his or her Employment Commencement Date as the first such day. Once an Employee has met the Plan’s eligibility requirements, the Employee will be eligible to be credited with contributions on the first day of the next calendar month, and participation will continue with respect to contributions to the Plan until such participation is terminated in accordance with Sections 3.3 or 3.4. Once an Employee has met the Plan’s eligibility requirements, participation with respect to the benefits under Article VI shall continue until participation in the Plan with respect to such benefits is terminated in accordance with Section 3.2.

3.2 Termination of Participation

A Participant will cease to be a Participant in this Plan upon the earlier of: (1) the termination of this Plan; or (2) the date on which the Employee’s HRA Account is depleted, provided that eligibility may continue beyond such date for purposes of COBRA coverage, as may be permitted by the Administrator on a uniform and consistent basis under Section 6.5. Reimbursements from the HRA Account after termination of participation will be made pursuant to Section 6.5 (relating to a run-out period for submitting claims incurred prior to termination and relating to COBRA).

Notwithstanding the foregoing, a Participant will cease to be eligible for Employer Contributions under the Plan (see Section 5.2) as of the Participant’s Retirement Date (except as otherwise required under COBRA).

3.3 Participation Following Termination of Employment or Loss of Eligibility

If a Participant terminates his or her employment for any reason, including (but not limited to) disability, retirement, layoff or voluntary resignation, and then is rehired within 30 days or less of the date of a termination of employment, the Employee will be reinstated with the same HRA Account balance that such individual had before termination. If an Employee (whether or not a Participant) terminates employment and is not rehired within 30 days or ceases to be an Eligible Employee for any other reason, including (but not limited to) a reduction in hours, and then becomes an Eligible Employee again, the Employee must complete the waiting period described in Section 3.1 before again becoming eligible to participate in the Plan.

3.4 FMLA and USERRA Leaves of Absence

Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the FMLA or USERRA, then to the extent required by the FMLA or USERRA, as applicable (or as described in the Employer's employee manual, personnel policy or similar document, if such manual, policy or document grants rights broader than those required under the FMLA or USERRA), the Participant will continue to be credited with service toward Vesting and Employer contributions described in Section 5.2(a), (b) and (c) on the same terms and conditions as if the Participant were still an active Employee. Such a Participant will not be eligible for Benefits under Section VI during such leave.

ARTICLE IV. METHOD AND TIMING OF ENROLLMENT

4.1 Enrollment When First Eligible

- (a) Employees Employed before the Effective Date of the Plan. Any Employee who meets the eligibility requirements of Section 3.1 as of the Effective Date of the Plan shall commence participation on the Effective Date of the Plan. The Employer, shall, in its sole discretion, establish a contribution amount applicable to vacation and sick leave accrued prior to the Effective Date of the Plan.
- (b) Employees Employed on or after the Effective Date of the Plan. Employees first employed on or after the Effective Date of the Plan shall commence participation on the first day of the month after the eligibility requirements of Section 3.1 have been satisfied.

Once enrolled, the Employee's participation will continue from month-to-month and year-to-year until the Employee's participation ceases pursuant to Section 3.2. The Participant shall file an Enrollment Form with the Administrator which shall identify the Spouse and Dependents whose Qualified Medical Expenses may be submitted to the HRA (but the Participant's participation shall not be contingent upon filing an Enrollment Form). The Employee must promptly notify the Administrator if this information changes.

ARTICLE V. HRA ACCOUNTS AND METHOD OF FUNDING

5.1 Benefits Offered

When an Eligible Employee becomes a Participant in accordance with Articles III and IV, an HRA Account will be established for such Participant to receive Benefits in the form of reimbursements for Qualified Medical Expenses, as described in Article VI. In no event shall Benefits be provided in the form of cash or any other taxable or nontaxable benefit other than reimbursement for Qualified Medical Expenses.

5.2 Employer and Participant Contributions

- (a) *Discretionary Employer Contributions.* The Employer may fund the HRA Account of each Participant through periodic contributions over the course of the Plan Year. Such contribution amount must be established in the discretion of the Employer prior to the beginning of each Plan Year, and shall be provided in writing to the Trustee by the Administrator.

- (b) *Employer Contribution of Accumulated Unused Vacation and Sick Leave.* The Employer shall fund the HRA Account of each Participant through contributions of the Participant's accumulated unused vacation and sick leave upon the Participant's Retirement Date. The amount of such contribution will be made shall be determined under this Plan in accordance with the procedures set forth in Section 5.4.
- (c) *Employer Contribution of Annual Excess Vacation and Sick Leave.* On a periodic basis through the course of each year, the Employer shall fund the HRA Accounts of Participants through contributions of Participant's annual excess vacation and sick leave. The amount of such contribution shall be determined annually under this Plan in accordance with the procedures set forth in Section 5.5.
- (d) *Participant Contributions.* **There are no Participant contributions for Benefits under the Plan.**
- (e) *No Funding Under Cafeteria Plan.* Under no circumstances will HRA Accounts or Benefits be funded with salary reduction contributions, employer contributions (e.g., flex credits) or otherwise under a cafeteria plan, nor will salary reduction contributions be treated as Employer contributions to the Plan.

5.3 Funding This Plan

All contributions to HRA Accounts under this Plan shall be paid from the general assets of the Employer to the Trust. Benefits under this Plan shall be paid to the Participants from the Trust in accordance with the terms of this Plan.

5.4 Plan Procedures for Determination of Contribution of Accumulated Unused Vacation and Sick Leave Upon Retirement.

The Employer shall establish prior to the beginning of each Plan Year a percentage or fixed amount of vacation and sick leave accrued under an Applicable Accrued Vacation and Sick Leave Policy that will be contributed to the Participant's HRA Account as of the Participant's Retirement Date. The Employer may change this amount or percentage during any Plan Year, but any such change shall only be applicable with respect to Retirement Dates in subsequent Plan Years. This percentage or fixed amount shall be further limited by the maximum amount limitation described in Section 5.7(a)(2). The percentage or fixed amount, the maximum amount limitation, and any subsequent changes to the percentage or fixed amount and the maximum amount limitation, shall be provided in writing to the Trustee by the Administrator.

"Applicable Accrued Vacation and Sick Leave Policy" means an Employer's vacation or sick leave policy (or portion of such policy) if the policy allows Employees to accrue vacation and sick leave over the course of the Employee's employment, and provides that the value of any such accrued amounts not used (as vacation or sick leave) or contributed to the HRA Account hereunder as of the Participant's Retirement Date will be forfeited or payable to the Participant in accordance with the terms of the policy.

5.5 Plan Procedures for Determination of Contribution of Annual Excess Vacation and Sick Leave.

An Employer shall establish prior to the beginning of each Plan Year a percentage or fixed amount of excess vacation and sick leave under an Applicable Vacation and Sick Leave Policy that will be contributed to the Participant's HRA Account as of the last day of the calendar or fiscal year of the Applicable Vacation and Sick Leave Policy. This percentage or fixed amount shall be further limited by the maximum amount limitation described in Section 5.7(a)(3). The percentage or fixed amount, the maximum amount limitation, and any subsequent changes to the percentage or fixed amount and the maximum amount limitation, shall be provided in writing to the Trustee by the Administrator.

“Applicable Vacation and Sick Leave Policy” means an Employer's vacation or sick leave policy (or portion of such policy) if the policy allows Employees to accumulate vacation and sick leave over the course of each calendar or fiscal year (as applicable under the policy), and provides that the value of any such accrued amounts not used (as vacation or sick leave) or contributed to the HRA Account hereunder by the end of the applicable calendar or fiscal year will be forfeited or payable to the Participant in accordance with the terms of the policy (e.g., payable as severance at a rate of fifty cents on the dollar).

5.6 Establishment of HRA Account

The Trust will establish and maintain an HRA Account with respect to each Participant. The HRA Account so established will hold on behalf of each Participant contributions and available reimbursement amounts.

- (a) *HRA Account Balance: Contributions, Carryover and Gains.* The HRA Account of each Participant shall be credited with the following amounts:
 - (1) At the beginning of each month the Employer shall transfer to the Trust and the Trust shall credit to each Participant's HRA Account an amount equal to the Discretionary Employer Contribution amounts described in Section 5.2(a) for the Plan Year divided 12.
 - (2) As soon as practicable after the Participant's Retirement Date, the Employer shall transfer to the Trust and the Trust shall credit to the Participant's HRA Account the Accumulated Unused Vacation and Sick Leave amounts described in Section 5.2(b).
 - (3) As soon as practicable after the last day of the calendar or fiscal year of the Applicable Vacation and Sick Leave Policy, the Employer shall transfer to the Trust and the Trust shall credit to the Participant's HRA Account the Annual Excess Vacation and Sick Leave amounts described in Section 5.2(c).
- (b) *HRA Account Balance: Benefit Payments, Losses and Administrative Expenses.* The amount in a Participant's HRA Account will be reduced for any reimbursement of Qualified Medical Expenses incurred during the Period of Coverage. The Participant's HRA Account may also be decreased for administrative expenses as described in Section 10.1 and decreased for losses as described in Section 5.6(d).
- (c) *Available Amount.* The amount available for reimbursement of Qualified Medical Expenses is the amount in the Participant's HRA Account.

- (d) *Investments and Earnings.* A Participant may direct, in accordance with the provisions of the Trust and procedures established by the Administrator, that all or a portion of the amounts credited to his or her HRA Account be invested in such funds or investments that have been made available under the Trust. Upon the death of the Participant, the Participant's Spouse shall have the right to direct investments under this Section 5.6(b), and following the Spouse's death (or if the Participant dies without a Spouse), the Participant's Dependents shall have the right to direct the investment of, and receive Benefit payments from, equal shares of the HRA Account under this Section 5.6(b). The amount of any gains or losses attributable the amounts held in each HRA Account shall be applied to such account under the terms of the Trust.

5.7 Maximum Contributions

- (a) *Discretionary Employer Contributions.* The maximum amount that may be credited to an HRA Account for a Participant through Discretionary Employer Contributions shall be the amount determined by the Employer for the applicable Plan Year. For subsequent Plan Years, this maximum dollar limit may be changed by the Employer and shall be communicated to Employees through the Enrollment Form or another document.
- (b) *Employer Contribution of Accumulated Unused Vacation and Sick Leave Upon Retirement.* The maximum amount that may be credited to an HRA Account for a Participant through an Employer Contribution of Accumulated Unused Vacation and Sick Leave shall be determined by the Employer for each Plan Year, and shall be communicated to Employees through the Enrollment Form or another document.
- (c) *Employer Contribution of Annual Excess Vacation and Sick Leave.* The maximum amount that may be credited to an HRA Account for a Participant through an Employer Contribution of Annual Excess Vacation and Sick Leave shall be determined by the Employer for each Plan Year, and shall be communicated to Employees through the Enrollment Form or another document.

5.8 Retirement before Vesting; Forfeiture of HRA Account

If an Employer makes contributions to the HRA Account of a Participant who is not Vested, and the Participant subsequently Retires without becoming Vested, the amounts in the Participant's HRA Account will be forfeited by the Participant. Such forfeited amounts shall remain in the Trust, and shall reduce subsequent Employer contributions to the Trust and be allocated in the same manner as Employer contributions described in Section 5.2(a), (b) and/or (c), as directed by the Administrator.

ARTICLE VI. HEALTH REIMBURSEMENT BENEFITS

6.1 Benefits

Following the Retirement Date of a Vested Participant, the Plan will reimburse Participant (or, after the Participant's death, the Participant's Spouse or Dependents) for Qualified Medical Expenses up to the unused amount in the Participant's HRA Account, as set forth and adjusted under Section 5.6.

6.2 Eligible Qualified Medical Expenses

Under the HRA Account, a Participant may receive reimbursement for Qualified Medical Expenses incurred during a Period of Coverage.

- (a) *Incurred.* A Qualified Medical Expense is incurred at the time the medical care or service giving rise to the expense is furnished, and not when the individual incurring the expense is formally billed for, is charged for, or pays for the medical care. Qualified Medical Expenses incurred before a Participant first becomes covered by the Plan are not eligible.
- (b) *Qualified Medical Expenses Generally.* “Qualified Medical Expenses” means expenses incurred by a Participant or his or her Spouse or Dependents for medical care, as defined in Code Section 213 (including, for example, amounts for certain hospital bills, doctor and dental bills and prescription drugs), but shall not include expenses that are described in subsection (c). Reimbursements due for Qualified Medical Expenses incurred by the Participant or the Participant’s Spouse or Dependents shall be charged against the Participant’s HRA Account.
- (c) *Qualified Medical Expenses Exclusions.* “Qualified Medical Expenses” shall not include the expenses listed as exclusions under Appendix B to this Plan. An HRA account may reimburse COBRA premiums that a Participant pays on an after-tax basis under any other group health plan sponsored by the Employer.
- (d) *Cannot Be Reimbursed or Reimbursable from Another Source.* Qualified Medical Expenses can only be reimbursed to the extent that the Participant or other person incurring the expense is not reimbursed for the expense (nor is the expense reimbursable) through the Health Insurance Plan, other insurance, or any other accident or health plan (but see Section 6.7 if the other health plan is a Health FSA). If only a portion of a Qualified Medical Expense has been reimbursed elsewhere (e.g., because the Health Insurance Plan imposes co-payment or deductible limitations), the HRA Account can reimburse the remaining portion of such Expense if it otherwise meets the requirements of this Article VI.

6.3 Carryover of Accounts

If any balance remains in the Participant’s HRA Account for a Period of Coverage after all reimbursements have been made for the Period of Coverage, such balance shall be carried over to reimburse the Participant for Qualified Medical Expenses incurred during a subsequent Period of Coverage. Following the Participant’s death, such amounts (if any) shall continue to Carryover for the benefit of the Participant’s Spouse and Dependents. Upon the death of the Participant, the Participant’s Spouse and the Participant’s Dependents, the amounts remaining in the HRA Account shall be forfeited. Any HRA benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Period of Coverage in which the Qualified Medical Expense was incurred shall be forfeited. Amounts forfeited under this Section 6.3 shall remain in the Trust, and shall reduce subsequent Employer contributions to the Trust and be allocated in the same manner as Employer contributions described in Section 5.2(a), (b) and/or (c), as directed by the Administrator.

6.4 Reimbursement Procedure

- (a) *Timing.* Within 45 days after receipt by the Administrator of a reimbursement claim from a Participant, the Employer will direct the Trustee to reimburse the Participant for the Participant's Qualified Medical Expenses (if the Administrator approves the claim), or the Administrator will notify the Participant that his or her claim has been denied (see Section 8.1 regarding procedures for claim denials and appeals procedures). This time period may be extended for an additional 15 days for matters beyond the control of the Administrator, including in cases where a reimbursement claim is incomplete. The Administrator will provide written notice of any extension, including the reasons for the extension, and will allow the Participant 45 days in which to complete an incomplete reimbursement claim.

- (b) *Claims Substantiation.* A Participant who seeks Benefits may apply for reimbursement by submitting an application in writing to the Administrator in such form as the Administrator may prescribe, by no later than March 31 following the close of the Plan Year in which the Qualified Medical Expense was incurred, setting forth:
 - (1) the person or persons on whose behalf Qualified Medical Expenses have been incurred;
 - (2) the nature and date of the Qualified Medical Expenses so incurred;
 - (3) the amount of the requested reimbursement; and
 - (4) a statement that such Qualified Medical Expenses have not otherwise been reimbursed and are not reimbursable through any other source and that Health FSA coverage, if any, for such Qualified Medical Expenses has been exhausted.

The application shall be accompanied by bills, invoices, or other statements from an independent third party showing that the Qualified Medical Expenses have been incurred and the amounts of such Qualified Medical Expenses, together with any additional documentation that the Administrator may request. Except for the final reimbursement claim for a Period of Coverage, no claim for reimbursement may be made unless and until the aggregate claims for reimbursement is at least \$250.

- (c) *Claims Denied.* For reimbursement claims that are denied, see the appeals procedure in Article VIII.

6.5 Reimbursements After Termination; COBRA

When a Participant ceases to be a Participant under Section 3.2, the Participant will not be able to receive reimbursements for Qualified Medical Expenses incurred after his or her participation terminates. However, such Participant (or the Participant's estate) may claim reimbursement for any Qualified Medical Expenses incurred during the Period of Coverage prior to termination of participation, provided that the Participant (or the Participant's estate) files a claim by March 31 following the close of the Plan Year in which the Qualified Medical Expense arose.

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, the Participant and his or her Spouse and Dependents (Qualified Beneficiaries), whose coverage terminates under the HRA Account because of a COBRA qualifying event, shall be given the opportunity to continue (on a self-pay basis) the same coverage that he or she had under the HRA Account the day before the qualifying event for the periods prescribed by COBRA (subject to all

conditions and limitations under COBRA). However, in the event that such coverage is modified for all similarly-situated non-COBRA Participants prior to the date continuation coverage is elected, Qualified Beneficiaries shall be eligible to continue the same coverage that is provided to similarly-situated non-COBRA Participants. At the beginning of each month in the Plan Year, Qualified Beneficiaries shall be credited with the monthly reimbursement accrual (i.e., the maximum annual reimbursement amount, divided by the number of months in that Plan Year) that is made available to similarly situated non-COBRA beneficiaries, and any unused reimbursement amounts from the previous Coverage Period shall be carried over (provided that the applicable premium is paid). A premium for continuation coverage shall be charged to Qualified Beneficiaries in such amounts and shall be payable at such times as are established by the Administrator and permitted by COBRA.

6.6 Named Fiduciary; Compliance With COBRA, HIPAA, etc.

Benefits shall be provided in compliance with PHSA, COBRA, HIPAA, FMLA, USERRA, and other group health plan laws to the extent required by such laws.

6.7 Coordination of Benefits; Health FSA to Reimburse First

Benefits under this Plan are intended to pay benefits solely for Qualified Medical Expenses not previously reimbursed or reimbursable elsewhere. To the extent that an otherwise eligible Qualified Medical Expense is payable or reimbursable from another source, that other source shall pay or reimburse prior to payment or reimbursement from this Plan. Without limiting the foregoing, if the Participant's Qualified Medical Expenses are covered by both this Plan and by a Health FSA, then this Plan is not available for reimbursement of such Qualified Medical Expenses until after amounts available for reimbursement under the Health FSA have been exhausted.

ARTICLE VII. HIPAA PRIVACY AND SECURITY

7.1 Employer's Certification of Compliance

The Plan shall not disclose Protected Health Information to the Employer unless the Employer certifies that the Plan document incorporates the provisions of 45 CFR Section 164.504(f)(2)(ii), and that Employer agrees to conditions of disclosure set forth in this Article VII.

7.2 Permitted Disclosure of Enrollment/Disenrollment Information

The Plan may disclose to the Employer information on whether the individual is participating in the Plan.

7.3 Permitted Uses and Disclosures of Summary Health Information

The Plan may disclose Summary Health Information to the Employer, provided that the Employer requests the Summary Health Information for the purpose of modifying, amending, or terminating the Plan. "Summary Health Information" means information (1) that summarizes the claims history, claims expenses or type of claims experienced by individuals for whom a plan sponsor had provided health benefits under a Health Plan; and (2) from which the information described at 42 CFR Section 164.514(b)(2)(i) has been deleted, except that the geographic information described in 42 CFR Section 164.514(b)(2)(i)(B) need only be aggregated to the level of a five-digit ZIP code.

7.4 Permitted and Required Uses and Disclosure of Protected Health Information for Plan Administration Purposes

Unless otherwise permitted by law, the Plan may disclose a Covered Individual's Protected Health Information to the Employer, provided that the Employer will use or disclose such Protected Health Information only for Plan administration purposes. "Plan administration purposes" means administration functions performed by the Employer on behalf of the Plan, such as quality assurance, claims processing (including appeals), auditing, and monitoring. Plan administration functions do not include functions performed by the Employer in connection with any other benefit or benefit plan of the Employer, and they do not include any employment-related functions. Any disclosure to and use by Employer of a Covered Individual's Protected Health Information will be subject to and consistent with the provisions of this Article VII (including, but not limited to, the restrictions on Employer's use and disclosure described in Section 7.5) and the specifications and requirements of the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations at 45 Code of Federal Regulations ("C.F.R.") Parts 160-64.

7.5 Restrictions on Employer's Use and Disclosure of Protected Health Information

- (a) Employer will neither use nor further disclose a Covered Individual's Protected Health Information, except as permitted or required by the Plan document, or as required by law.
- (b) Employer will ensure that any agent, including any subcontractor, to which it provides a Covered Individual's Protected Health Information or Electronic Protected Health Information received from the Plan, agrees to the restrictions, conditions, and security measures of the Plan document that apply to Employer with respect to the Protected Health Information or Electronic Protected Health Information, respectively.
- (c) Employer will not use or disclose a Covered Individual's Protected Health Information for employment-related actions or decisions, or in connection with any other benefit or employee benefit plan of Employer.
- (d) Employer will report to the Plan any use or disclosure of a Covered Individual's Protected Health Information that is inconsistent with the uses and disclosures allowed under the Plan document of which the Employer becomes aware.
- (e) Employer will make Protected Health Information available to the Plan or to the Covered Individual who is the subject of the information in accordance with 45 C.F.R. Section 164.524.
- (f) Employer will make a Covered Individual's Protected Health Information available for amendment, and will on notice amend a Covered Individual's Protected Health Information, in accordance with 45 C.F.R. Section 164.526.
- (g) Employer will track disclosures it may make of a Covered Individual's Protected Health Information that are accountable under 45 C.F.R. Section 164.528 so that it can make available the information required for the Plan to provide an accounting of disclosures in accordance with 45 C.F.R. Section 164.528.

- (h) Employer will make its internal practices, books, and records relating to its use and disclosure of a Covered Individual's Protected Health Information received from the Plan available to the Plan and to the U.S. Department of Health and Human Services to determine compliance with the HIPAA Privacy Rule at 45 C.F.R. Part 164, Subpart E.
- (i) Employer will, if feasible, return or destroy all Protected Health Information of a Covered Individual, in whatever form or medium, received from the Plan, including all copies thereof and all data, compilations, or other works derived therefrom that allow identification of any Covered Individual who is the subject of the Protected Health Information, when the Covered Individual's Protected Health Information is no longer needed for the plan administration functions for which the disclosure was made. If it is not feasible to return or destroy all such Protected Health Information, Employer will limit the use or disclosure of any Covered Individual's Protected Health Information that cannot feasibly be returned or destroyed to those purposes that make the return or destruction of the information infeasible.
- (j) Employer will ensure that the adequate separation between Plan and Employer (i.e., the "firewall"), required in 45 CFR Section 504(f)(2)(iii), is satisfied.

7.6 Adequate Separation Between Employer and the Plan

- (a) Only the following employees or classes of employees or other workforce members under the control of Employer may be given access to a Covered Individual's Protected Health Information or Electronic Protected Health Information received from the Plan or a business associate servicing the Plan:
 - (1) Privacy Official;
 - (2) Employees in the Employer's Human Resources Department;
 - (3) Employees in the Employer's Office of General Counsel; and
 - (4) Any other class of employees designated in writing by the Privacy Official.
- (b) The employees, classes of employees or other workforce members identified in Section 7.6(a), above, will have access to a Covered Individual's Protected Health Information or Electronic Protected Health Information only to perform the plan administration functions that Employer provides for the Plan, as specified in Section 7.4, above.
- (c) The employees, classes of employees or other workforce members identified in Section 7.6(a), above, will be subject to disciplinary action and sanctions pursuant to the Employer's employee discipline and termination procedures, for any use or disclosure of a Covered Individual's Protected Health Information or Electronic Protected Health Information in breach or violation of or noncompliance with the provisions of this Article VII.

7.7 Security Measures for Electronic Protected Health Information

The Employer will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of a Covered Individual's

Electronic Protected Health Information that the Employer creates, receives, maintains, or transmits on the Plan's behalf.

7.8 Notification of Security Incident

The Employer will report to the Plan any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in the Employer's information systems, of which the Employer becomes aware.

ARTICLE VIII. APPEALS PROCEDURE

8.1 Procedure If Benefits Are Denied Under This Plan

If a claim for reimbursement under this Plan is wholly or partially denied, the Participant (or Spouse or Dependent, as the case may be) (the "Claimant") may appeal such denial by submitting a written notice of appeal to the Administrator within 180 days following such denial. The Committee acts on behalf of the Administrator with respect to appeals.

ARTICLE IX. RECORDKEEPING AND ADMINISTRATION

9.1 Administrator

The administration of this Plan shall be under the supervision of the Administrator. It is the principal duty of the Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan without discrimination among them.

9.2 Powers of the Administrator

The Administrator shall have such duties and powers as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters thereunder, and all determinations of the Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Administrator shall have the following discretionary authority:

- (a) to construe and interpret this Plan, including all possible ambiguities, inconsistencies and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this Plan (provided that, notwithstanding the first paragraph in this Section 9.2, the Committee shall exercise such exclusive power with respect to an appeal of a claim under Section 8.1);
- (b) to prescribe procedures to be followed and the forms to be used by Employees and Participants to enroll in and submit claims pursuant to this Plan;
- (c) to prepare and distribute information explaining this Plan and the benefits under this Plan in such manner as the Administrator determines to be appropriate;
- (d) to request and receive from all Employees and Participants such information as the Administrator shall from time to time determine to be necessary for the proper administration of this Plan;

- (e) to furnish each Employee and Participant with such reports with respect to the administration of this Plan as the Administrator determines to be reasonable and appropriate;
- (f) to receive, review and keep on file such reports and information concerning the benefits covered by this Plan as the Administrator determines from time to time to be necessary and proper;
- (g) to appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;
- (h) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;
- (i) to secure independent medical or other advice and require such evidence as it deems necessary to decide any claim or appeal; and
- (j) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

9.3 Reliance on Participant, Tables, etc.

The Administrator may rely upon the information submitted by a Participant as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Administrator.

9.4 Provision for Third-Party Plan Service Providers

The Administrator, acting on behalf of the Employer appoints **North Shore Bank** to provide all necessary and desirable services in connection with the operation of the Plan. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligation of the Employer.

9.5 Fiduciary Liability

To the extent permitted by law, the Administrator shall not incur any liability for any acts or for failure to act except for their own willful misconduct or willful breach of this Plan.

9.6 Compensation of Administrator

Unless otherwise determined by the Employer and permitted by law, any Administrator who is also an Employee of the Employer shall serve without compensation for services rendered in such capacity, but all reasonable expenses incurred in the performance of their duties shall be paid by the Employer.

9.7 Insurance Contracts

The Employer shall have the right (a) to enter into a contract with one or more insurance companies for the purposes of providing any Benefits under the Plan; and (b) to replace any of such insurance companies or contracts. Any dividends, retroactive rate adjustments or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of, and be retained by, the Employer, to the extent that such amounts are less than aggregate Employer contributions toward such insurance.

9.8 Inability to Locate Payee

If the Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date that any such payment first became due.

9.9 Effect of Mistake

In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the account of any Participant, or the amount of benefits paid or to be paid to a Participant or other person, the Administrator shall, to the extent that it deems administratively possible and otherwise permissible under Code Section 105, the regulations issued thereunder or other applicable law, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as it will in its judgment accord to such Participant or other person the credits to the HRA Account or distributions to which he or she is properly entitled under the Plan. Such action by the Administrator may include withholding of any amounts due to the Plan or the Employer from Compensation paid by the Employer.

ARTICLE X. GENERAL PROVISIONS

10.1 Expenses

Reasonable expenses incurred in administering the Plan may be paid deducted from the HRA accounts of the Participants in the manner specified in the fee schedule provided by North Shore Bank.

10.2 No Contract of Employment

Nothing herein contained is intended to be or shall be construed as constituting a contract or other arrangement between any Employee and the Employer to the effect that such Employee will be employed for any specific period of time. All Employees are considered to be employed at the will of the Employer.

10.3 Amendment and Termination

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Employer may amend or terminate all or any part of this Plan upon the receipt of written consent of North Shore Bank and any such amendment or termination will automatically apply to the Related Employers that are participating in this Plan.

10.4 Governing Law

This Plan shall be construed, administered and enforced according to the laws of the State of Wisconsin, to the extent not superseded by the Code, PHSA (except to the extent that the non-federal governmental employer has elected exemption from the PHSA) or any other federal law.

10.5 Code and PHSA Compliance

It is intended that this Plan meet all applicable requirements of the Code and the Public Health Service Act (PHSA), and of all regulations issued thereunder (except to the extent that the non-federal governmental employer has elected exemption from the PHSA). This Plan shall be construed, operated and administered accordingly. In the event of any conflict between any part, clause or provision of this Plan and the Code and/or PHSA, the provisions of the Code and PHSA shall be deemed controlling, and any conflicting part, clause or provision of this Plan shall be deemed superseded to the extent of the conflict.

10.6 No Guarantee of Tax Consequences

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal, state or local income tax purposes. It shall be the obligation of each Participant to determine whether each payment under this Plan is excludable from the Participant's gross income for federal, state and local income tax purposes, and to notify the Administrator if the Participant has any reason to believe that such payment is not so excludable.

10.7 Indemnification of Employer

If any Participant receives one or more payments or reimbursements under this Plan on a tax-free basis, and such payments do not qualify for such treatment under the Code, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

10.8 Non-Assignability of Rights

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the Participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.

10.9 Headings

The headings of the various Articles and Sections (but not subsections) are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

10.10 Plan Provisions Controlling

In the event that the terms or provisions of any summary or description of this Plan, or of any other instrument, are in any construction interpreted as being in conflict with the provisions of this Plan as set forth in this document, the provisions of this Plan shall be controlling.

10.11 Severability

Should any part of this Plan subsequently be invalidated by a court of competent jurisdiction, the remainder of the Plan shall be given effect to the maximum extent possible.

10.12 State Law Limitations.

Notwithstanding anything in the Plan to the contrary, no provision of this Plan shall be construed to violate Wis. Stat. Section 49.493(3)(d). 631.89, 631.90, 631.93(2), 632.746(10)(a)2. and (b)2., 632.747(3), 632.85, 632.853, 632.855, 632.87(4) and (5), 632.89, 632.895(10) through (17), 632.896, and 767.513(4), to the extent such provisions are applicable to the Employer.

10.13 Nondiscrimination.

Notwithstanding anything in the Plan to the contrary, reimbursements to Highly Compensated Individuals may be limited or treated as taxable compensation to comply with Code Section 105(h), as may be determined by the Administrator in its sole discretion.

* * *

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the foregoing instrument comprising the CITY OF CEDARBURG - POLICE UNION Retiree HRA Plan, the CITY OF CEDARBURG - POLICE UNION has caused this Plan to be executed in its name and on its behalf, on this ____ day of _____, _____.

CITY OF CEDARBURG - POLICE UNION

By: _____

Its: _____

Witness

Signature: _____

Appendix A
Related Employers That Have Adopted This Plan,
With the Approval of the CITY OF CEDARBURG - POLICE UNION
(No Related Employers have adopted this Plan)

Appendix B

Exclusions—Medical Expenses That Are Not Reimbursable

The CITY OF CEDARBURG - POLICE UNION Retiree HRA Plan document contains the general rules governing what expenses are reimbursable. This Appendix B, as referenced in the Plan document, specifies certain expenses that *are not reimbursable*, even if they meet the definition of “medical care” under Code Section 213 and may otherwise be reimbursable under IRS guidance pertaining to HRAs.

Exclusions:

The following expenses are not reimbursable, even if they meet the definition of “medical care” under Code Section 213 and may otherwise be reimbursable under IRS guidance pertaining to HRAs.

- Pregnancy testing kits.
- Long-term care services.
- Cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease. “Cosmetic surgery” means any procedure that is directed at improving the patient’s appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.
- The salary expense of a nurse to care for a healthy newborn at home.
- Funeral and burial expenses.
- Household and domestic help (even though recommended by a qualified physician due to an Employee’s or Dependent’s inability to perform physical housework).
- Massage therapy.
- Home or automobile improvements.
- Custodial care.
- Costs for sending a problem child to a special school for benefits that the child may receive from the course of study and disciplinary methods.
- Health club or fitness program dues, even if the program is necessary to alleviate a specific medical condition such as obesity.
- Social activities, such as dance lessons (even though recommended by a physician for general health improvement).
- Bottled water.
- Maternity clothes.
- Diaper service or diapers.
- Cosmetics, toiletries, toothpaste, etc.
- Vitamins and food supplements, even if prescribed by a physician.
- Uniforms or special clothing, such as maternity clothing.
- Automobile insurance premiums.
- Transportation expenses of any sort, including transportation expenses to receive medical care.
- Psychotherapy (including psychoanalysis).
- Marijuana and other controlled substances that are in violation of federal laws, even if prescribed by a physician.
- Any item that does not constitute “medical care” as defined under Code Section 213.

CITY OF CEDARBURG POLICE UNION

Wisconsin

Retiree Healthcare Trust and Trust Agreement

TRUST AND TRUST AGREEMENT

THIS AGREEMENT, is made as of the ____ day of ____, 2018 by and between the _____, (hereinafter referred to as "Employer"), and **North Shore Bank**, a Federal Savings Bank organized and existing under the laws of the State of Wisconsin (hereinafter referred to as "Trustee").

WITNESSETH:

WHEREAS, Employer has adopted the _____ **Retiree Health Reimbursement Arrangement (HRA) Plan**, as amended from time to time, for its eligible employees (hereinafter referred to as "Plan"); and

WHEREAS, pursuant to the provisions of the Plan, _____ serves as the Plan Administrator of the Plan; and

WHEREAS, Employer has appointed North Shore Bank, FSB ("North Shore Bank") as Trustee under the Plan and has authorized the form of this Trust Agreement, and Trustee has accepted its appointment as Trustee hereunder; and

WHEREAS, Plan funds will from time to time be contributed to Trustee which funds will constitute a trust fund to be held for the purpose of providing post-employment health plan benefits for certain employees of the Employer (each a "Participant") and their eligible Spouses and Dependents (as such terms are defined in the Plan) (each a "Beneficiary").

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, Employer and Trustee do hereby covenant and agree as follows:

ARTICLE I ESTABLISHMENT OF TRUST

A. Designation and Meaning of Terms.

This Trust is designated as the _____ **Retiree Health Trust**. Employer intends that the definitional terms of the Plan, are incorporated herein by reference except to the extent terms are explicitly defined hereunder.

B. Purpose of Trust.

The purpose of this Trust is to implement those retiree health and related benefits provided under the Plan.

Except as may be otherwise provided under the terms of the Plan, no part of the Trust Fund shall at any time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries be used for, or diverted to, purposes other than for the exclusive benefit of such Participants and their Beneficiaries and for the defraying of reasonable expenses of the Plan.

C. General Duties of Trustee.

All Trust Funds (as defined below), income and increments thereon created under the Plan prior to the effective date hereof shall be received by the Trustee.

Additional sums of money or other property which Trustee may deem acceptable shall be paid or delivered to Trustee. Employer shall make contributions in such manner and at such times as shall be appropriate. Trustee shall be responsible only for property received by it pursuant to this Agreement.

1. All money and property so received together with the income therefrom and any increment thereon and all other assets acquired by investment or reinvestment (hereinafter collectively referred to as the "Trust Fund") shall be held, invested, reinvested and administered by Trustee pursuant to the terms of this Agreement without distinction between principal and income and without liability for the payment of interest thereon.

2. From time to time, Trustee shall make payments out of the Trust Fund to such persons as the Plan Administrator shall direct in writing to Trustee. Trustee shall incur no liability for any payments made pursuant to such direction.

3. If any payment or directed distribution in the form of a check from the Trust Fund is not claimed, Trustee shall notify the Plan Administrator who shall undertake all reasonable efforts to locate that payee or distributee. Trustee shall have no duty to search for or locate the payee or distributee of any Trust benefits.

D. Duties of the Plan Administrator.

The Plan Administrator shall administer the Plan subject to the provisions therein. The Plan Administrator shall interpret the Plan, determine all questions arising in the administration and application of the Plan, and from time to time formulate and issue such written rules and regulations as may be necessary or desirable for the purpose of administering the Plan. Trustee shall be entitled to rely on such interpretations, determinations and written rules and regulations without liability for any actions based on such.

1. The Employer shall certify in writing to Trustee any change in the identity of the Plan Administrator and the names of the persons from time to time who are authorized to give directions to Trustee on behalf of either the Plan Administrator or the Employer. All such directions to Trustee shall be in writing and signed either by the Plan Administrator or one of such authorized persons. Trustee shall be entitled to rely upon all such written directions without further inquiry and without liability for such action based thereon. Trustee shall be entitled to rely on any such written direction until a written revocation thereof is filed with it. The Plan Administrator shall notify Trustee of any action taken in regard to the Plan or Trust Fund which may be pertinent to Trustee in the execution of its duties and responsibilities.

2. The Plan Administrator shall determine the calculation or collection of any contribution under or required by the Plan.

3. The Plan Administrator shall determine the existence, nature and amount of rights and interests of all persons in and to the Trust Fund or under the Plan and shall, where appropriate, furnish Trustee with complete and accurate information with respect to participants, their compensation, service with Employer, and any other information which Trustee may reasonably request.

4. The Plan Administrator shall timely file or furnish, or cause to be filed or furnished, all such returns, reports, statements and other documents as may be required by any governmental authority or as may be required by law to be furnished to any Participant, Beneficiary or interested party.

5. The Plan Administrator shall establish and carry out a funding policy consistent with the purposes of the Plan and the requirements of applicable law as may be appropriate from time to time and communicate the same in writing to Trustee. As part of such funding policy, the Plan Administrator shall from time to time direct Trustee in writing to provide sufficient cash assets in an amount determined by the Plan Administrator under the funding policy then in effect to be necessary to meet the liquidity requirements for the administration of the Plan.

6. The Plan Administrator shall direct the Trustee with respect to the investment and reinvestment of the principal and income of all portions of the Trust Fund that are not in an Adviser Directed Fund (as defined in Article I, Section E) or a Participant Directed Fund (as defined in Article III).

E. Named Fiduciaries and Funding Policy.

The Plan Administrator, acting as a named fiduciary for this purpose and with prior written notice to Trustee, may appoint an Investment Adviser to manage, acquire and dispose of all or a portion of the Trust Fund. Any portion of the Trust Fund over which an Investment Adviser shall have such responsibility is hereinafter referred to as an "Adviser Directed Fund." Any Investment Adviser so appointed must be either (i) an Investment Adviser registered as such under the Investment Advisers Act of 1940, (ii) an Investment Adviser not registered as such under that Act by reason of paragraph (1) or (2) of Section 203A(a) of such Act, but who is registered as an Investment Adviser under the laws of the state referred to in such paragraph (1) or (2) in which it maintains its principal office and place of business, (iii) a bank, as defined in that Act, or (iv) an insurance employer qualified to perform investment management services under the laws of more than one state, and which shall have acknowledged in writing to both the Employer and Trustee that it is a fiduciary with respect to the Plan.

The Plan Administrator, being a named fiduciary for this purpose, shall have the responsibility to direct the Trustee respecting investment, management and control of any portion of the Trust Fund that is not in an Adviser Directed Fund or a Participant Directed Fund. Any portion of the Trust Fund over which the Employer shall have such responsibility is hereafter referred to as "Employer Directed Fund."

The Plan Administrator shall notify Trustee of any appointment of an Investment Adviser by delivery to Trustee of a copy of the document under which the Investment Adviser was appointed to act as such hereunder and shall specify to Trustee that portion of the Trust Fund which shall be an Adviser Directed Fund. The Plan Administrator shall likewise notify the Trustee should the Plan Administrator determine to establish an Employer Directed Fund.

During the term of such appointment, the Investment Adviser with respect to its Adviser Directed Fund and the Plan Administrator with respect to any Employer Directed Fund shall have the sole responsibility for the investment and reinvestment of the Adviser Directed Fund or Employer Directed Fund subject to its investment management, and shall certify in writing to Trustee the identity of the person or persons authorized to give instructions or

directions on its behalf. Trustee shall follow such directions and shall be under no duty to review any investment to be acquired, held or disposed of pursuant to such directions or to make any recommendation with respect to the disposition or continued retention of any such investment. Trustee shall have no liability for acting without question on the direction of, or failing to act in the absence of any direction from, an Investment Adviser with respect to an Adviser Directed Fund or the Plan Administrator with respect to an Employer Directed Fund. Any Investment Adviser appointed hereunder and the Plan Administrator shall each exercise its respective fiduciary responsibilities with respect to the assets of the Plan, including (without limitation) any responsibility of diversification imposed by ERISA, as if the portion of the Trust Fund under its management constituted the entirety of the assets of the Plan. The Plan Administrator, or some other fiduciary named by it, shall be responsible for the overall diversification of the entire Trust Fund.

In the event that an Investment Adviser appointed hereunder should resign or be removed, the Plan Administrator shall, upon receiving written notice thereof, manage the investment of that portion of the Trust Fund which was an Adviser Directed Fund under the management of such Investment Adviser at the time of such resignation, removal or withdrawal, unless and until Trustee shall be notified of the appointment of another Investment Adviser.

ARTICLE II POWERS AND SPECIFIC DUTIES OF TRUSTEE

A. Investment of Assets.

Trustee shall have and exercise the following powers and authority in the administration of the Trust Fund, only on the direction of an Investment Adviser, the Plan Administrator, or a Participant where such powers relate to an Adviser Directed Fund, an Employer Directed Fund, or a Participant Directed Fund, as the case may be. Trustee shall act solely upon the directions of an Investment Adviser, the Plan Administrator, or a Participant, and in carrying out its duties hereunder, Trustee shall not have the power to exercise discretion in the absence of such instructions:

1. To invest and reinvest the principal and income of the Trust Fund and keep the Trust Fund invested, without distinction between principal and income, in such securities or in such property, real or personal, tangible or intangible, or part interest therein, wherever situated, whether or not productive of income, or consisting of wasting assets, including but not limited to stocks, common or preferred, trust and participation certificates, interests in investment companies whether so-called "open-end mutual funds" or "closed-end mutual funds" (including any such fund from which the Trustee or any affiliate thereof receives an investment advisory fee or any other fee), leaseholds, fee titles, bonds or notes and mortgages, and other evidences of indebtedness or ownership, irrespective of whether such securities or such property shall be of the character authorized by any state law from time to time for trust investments;

2. To purchase and subscribe for any securities or other property and to retain such securities or other property in trust;

3. To sell at public or private sale, for cash, or upon credit, or otherwise dispose of any property, real or personal; and no person dealing with Trustee shall be bound to see to the application or to inquire into the validity, expediency or propriety of any such sale or other disposition;

4. To adjust, settle, contest, compromise and arbitrate any claims, debts, or damages due or owing to or from the Trust Fund, and to sue, commence or defend any legal proceedings in reference thereto;

5. To exercise any conversion privilege, subscription rights or other options pertaining to or in connection with securities or other property held by it; to consent to or otherwise participate in any reorganization, consolidation, merger or adjustment pertaining to any corporate reorganization or other changes affecting corporate securities, to deposit any property with any committee or depository, and to pay any assessments or other changes in connection therewith;

6. To exercise any right, including the right to vote, incident to any securities or other property held by it; except that Trustee shall not exercise its discretion with respect to voting any securities which constitute part of an Adviser Directed Fund, an Employer Directed Fund, or a Participant Directed Fund, but shall instead send the Investment Adviser, the Plan Administrator, or the Participant all notices and proxies relating thereto, signed without indication of voting preference, and the Investment Adviser, Plan Administrator, or Participant shall exercise all voting rights with respect thereto;

7. To invest all or part of the Trust Fund in interest-bearing deposits with the Trustee, or with a bank or similar financial institution related to Trustee whether or not such bank or other institution is a fiduciary with respect to the Plan, including but not limited to investments in time deposits, savings deposits, certificates of deposit or time accounts which bear a reasonable interest rate;

8. To register any investment held in the Trust Fund in its own name or in the name of one or more of its nominees or to hold any investment in bearer form or to cause any investment to be registered and held in the name of one or more nominees of any system for the central handling of securities;

9. To employ suitable agents, accountants and counsel and to pay their reasonable expenses and compensation;

10. To hold any part or all of the Trust Fund uninvested in cash without accrual of interest to the Trust Fund, for the payment of benefits or expenses as necessary or appropriate, notwithstanding that the Trustee or any affiliate thereof may accrue interest on such cash balances;

11. To invest and reinvest collectively with other trusts participating in any collective or common trust fund, including any such fund which is maintained by Trustee. During the period when any part of all of the assets held hereunder comprise part of any collective or common trust fund, such assets shall be subject to all of the provisions of the Declaration of Trusts of such collective or common trust funds, as amended from time to time, which are hereby made a part of this Agreement and incorporated herein by reference thereto as though the same were set forth in full herein;

12. To make, execute and deliver as Trustee any and all deeds, leases, mortgages, advances, contracts, waivers, releases or other instruments in writing necessary or proper in the employment of any of the foregoing powers;

Notwithstanding ARTICLE II, Sections A.1. through A.12, neither the Plan Administrator, any Investment Adviser, nor any Participant or Beneficiary shall direct the Trustee to make any investment that is in violation of Wis. Stats. 66.0603 and 66.0137, if applicable.

B. Maintenance of Records and Accounting.

1. Trustee shall maintain records of all transactions relating to the Trust Fund.

2. Trustee shall provide the Employer with an accounting annually and at such other times as may be agreed upon between the Employer and Trustee.

3. In the absence of the Employer's filing with Trustee objections to any such accounting within sixty days of delivery thereof to the Employer, the Employer shall be deemed to have approved the accounting. In such case, or upon the written approval of the Employer of any such accounting, Trustee shall, to the maximum extent permitted by applicable law, be discharged from all liabilities to the Employer for its acts or failures to act described by such accounting.

4. Trustee, on such valuation date or dates as may be agreed upon, shall render to the Employer a statement of the Trust Fund assets and their fair market values. Trustee may rely, as to any insurance contract or contracts which may constitute a part of the Trust Fund, on the valuation determined and supplied by the issuing insurer.

5. Reasonable expenses incurred by Trustee, including but not limited to legal services, compensation for the services of Trustee as may be agreed upon between the Employer and Trustee, and any proper charges and disbursements of Trustee including any and all taxes assessed against the Trust Fund shall be paid from the Trust Fund unless paid by the Employer.

**ARTICLE III
PARTICIPANT DIRECTED FUND**

A. In General

A Participant shall direct, in accordance with the provisions of this Article, that all or a portion of the amounts credited to his HRA Account be invested in such funds or investments that have been made available under the Trust. Following the Participant's death, the Participant's surviving spouse (or if none, the Participant's dependents entitled to benefits from the HRA Account under the Plan) shall direct such investments. Any amounts invested pursuant to such a direction shall be deemed held in a "Participant Directed Fund" under this Agreement. Any Participant entering the Plan must execute an investment direction election. If no direction is made by a Participant, all amounts credited to the Participant's Account shall be invested as directed by the Plan Administrator. Any investment direction made in accordance with this Article shall continue in effect unless and until a timely subsequent direction is made by the Participant. Any Participant direction shall be made at such time, in such manner and in such form as the Plan Administrator may prescribe through uniform and nondiscriminatory rules.

1. Allocation of Contributions to Investment Options. In accordance with procedures established by the Plan Administrator, a Participant may direct how contributions to his Accounts shall be allocated among the investment options then available for Participant direction. Any Participant investment direction may be made in one percent (1%) increments. An investment

election may be effective as of any Valuation Date. For this purpose, "Valuation Date" means any day that the New York Stock Exchange is open for business.

2. Transfers of Investments. In accordance with procedures established by the Plan Administrator, a Participant may direct the transfer of amounts credited to his Account in one percent (1%) increments between any of the investment options then available for Participant direction. A transfer may be effective as of any Valuation Date.

3. Investment Options. The Plan Administrator shall have the right to establish and change the investment options available under the Plan and Trust, to eliminate existing options and to authorize new options. Affected Participants shall be advised of any such change and shall be afforded the opportunity to make new investment directions corresponding to the investment options available after the change. Notwithstanding the foregoing, no investment shall be authorized or made in violation of Wis. Stats. 66.0603 and 66.0137, if applicable.

4. Fiduciary Responsibility. To the extent that a Participant exercises investment direction or control under this Article, he shall not be deemed to be a fiduciary with respect to any such directed investments by reason of his exercise of such direction or control. Neither the Plan Administrator, Trustee, any Investment Adviser, any Participant, nor any other person who is otherwise a fiduciary with respect to the Plan and Trust, shall be liable for any loss attributable to such directed investments, or by reason of any breach of fiduciary responsibility which results from a Participant's exercise of direction or control over such investment, except to the extent otherwise mandated by applicable law.

ARTICLE IV MISCELLANEOUS

A. Provisions Concerning Trustee.

1. Trustee may resign at any time by giving thirty days written notice to the Employer. The Employer may remove Trustee at any time on thirty days written notice and in the case of such resignation or removal, the Employer shall appoint a successor Trustee. Any successor Trustee shall have the same powers and duties as those determined pursuant to this Agreement.

2. Trustee, upon receipt of written acceptance of the successor Trustee, shall distribute, assign, transfer, or withdraw any amount held in any commingled trust fund, pursuant to the written directions of the Plan Administrator consistent with the provisions of the Plan and this Agreement.

3. When North Shore Bank is at any time acting as Trustee or successor Trustee or succeeds to responsibilities hereunder for management of part or all of the assets constituting the Trust Fund, the Employer hereby agrees to hold North Shore Bank harmless from and against all claims, expenses (including reasonable counsel fees), liabilities, damages, actions, or other charges incurred or assessed against it as Trustee, as a direct or indirect result of any act or omission of, or provision of inaccurate information by, (A) a predecessor trustee, (B) a predecessor recordkeeper of the Plan, or (C) any other person charged with responsibility under any agreement affecting the Plan or the Trust Fund.

4. The Employer recognizes that a burden of litigation may be imposed on Trustee, as a result of some act or transaction for which it has no responsibility or over which it has no control under this Agreement. Accordingly, and in consideration of Trustee's agreement

to act as trustee hereunder, the Employer hereby agrees to indemnify and hold North Shore Bank and its affiliates, directors, officers, and employees harmless from and against all claims, expenses (including reasonable counsel fees), liabilities, damages, actions or other charges incurred by or assessed against North Shore Bank as direct or indirect result of anything done or omitted by North Shore Bank in reliance upon the directions (or absence of directions) of the Plan Administrator, the Employer, any other organization participating in the Plan, any Investment Adviser, or a Participant or Beneficiary, or upon the advice of Trustee's counsel, provided, however, that the foregoing shall not apply to the extent of the Trustee's negligence or gross misconduct.

B. Amendment and Termination.

1. This Trust may be modified, altered or amended in whole or in part by Employer at any time. A written instrument delivered to Trustee and executed by Employer and Trustee pursuant to the requirements of law and in the same manner as this instrument shall be necessary to effect any change in this trust instrument. No termination may result in any part of Trust's assets being used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

2. Trustee's duties shall not be increased without its written consent. No amendment, modification or alteration shall alter the purpose of this Trust in being used for the purpose of providing retirement and other related benefits for Participants and their Beneficiaries, including defraying reasonable expenses of administering the Plan.

3. The effective date of any written alteration, modification or amendment shall be the date of receipt by Trustee of said alteration, modification or amendment, unless otherwise specified in writing and agreed to by Trustee.

4. Subject to the foregoing, any amendment, modification or alteration of the Plan or Trust Agreement adopted by Employer and suggested or required to comply with governmental requirements, shall be retroactively effective if required.

5. This Trust Agreement and the Trust hereby created may be terminated at any time by the Employer by written notice delivered to Trustee. Upon such termination Trustee shall, solely as directed by the Plan Administrator, apply the Trust assets to pay any remaining debts, liabilities and approved claims of Plan, and after payment of all expenses incurred in the administration and closing out of the Trust Fund and the compensation to which Trustee may be entitled, then distribute the Trust Fund, in cash or such other property to the Employer. Notwithstanding the foregoing, upon termination, the Trustee may but shall not be required to pay out any assets of the Trust Fund until it shall have received such rulings or determinations of the Internal Revenue Service or any other governmental or quasi-governmental agency as it may deem necessary or appropriate in order to assure itself that any such payment is made in accordance with law or that it will not subject the Trust Fund or Trustee, individually or as such Trustee, to liability.

6. From and after the date of termination of the Trust and until the final distribution of the Trust, Trustee shall continue to possess and exercise all powers provided under this Agreement. Trustee shall continue to administer the Trust in this interim period as though the Plan and Trust were fully effective.

C. Miscellaneous.

1. No Participant's or Beneficiary's benefits under the Plan nor any interest of any such person in the Trust Fund shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, to the maximum extent permitted by law.

2. Any benefits payable under the Plan shall be payable only from the Trust Fund and no liabilities therefor shall be imposed upon Trustee, the Employer or its officers, directors, shareholders, agents or employees.

3. No Participant Beneficiary shall have any interest in, or right to, any part of the earnings of the Trust Fund or any part of the assets thereof except as expressly provided in the Plan.

4. The parties to this Agreement consist only of Trustee and Employer. No insurer shall be considered to be a party to this Agreement.

5. This Trust shall be construed in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, Employer and Trustee have caused this Trust to be executed by their duly authorized officers as of the date first set forth above.

CITY OF CEDARBURG - POLICE UNION

BY: _____

ATTEST: _____

**North Shore Bank, FSB
Trustee**

BY: _____

ATTEST: _____

Representatives of North Shore Bank, FSB, are not financial advisers or attorneys, and cannot offer financial, legal or tax advice. Please consult with your financial planner, attorney and/or tax advisor as needed.

Upon request we can provide a copy of the IRS Private Letter Ruling (PLR 200708006, issued November 17, 2006) (the “PLR”) is provided solely for purposes of illustration, and may not be used or cited as precedent by any person or entity except the taxpayer that requested it. By providing you with a copy of the PLR, North Shore Bank is not providing you with financial, legal or tax advice, and North Shore Bank makes no representations that the terms of any post-employment health plan that you may adopt are not materially different than the plan described in the PLR or that the tax consequences will be the same as described in the PLR. Please consult with your financial planner, attorney and/or tax advisor as needed.



CITY OF CEDARBURG
PERSONNEL MANUAL

ADOPTED 06-09-2014
Revised 03-09-2015
Revised 08-31-2015

Personnel Manual

Section 1 Introduction

- 1-1 Personnel Objectives and Administration
- 1-2 Authority
- 1-3 Definitions

Section 2 Employment Practices (Recruitment/Selection/Placement)

- 2-1 Equal Employment Opportunities
- 2-2 Immigration Law Compliance
- 2-3 Licenses and Certifications
- 2-4 Drug/Alcohol Testing (CDL)
- 2-5 Recruitment
- 2-6 Submissions of Applications
- 2-7 Background Investigations
- 2-8 Employee Orientation
- 2-9 Introductory Period
- 2-10 Hiring Relatives
- 2-11 Residency
- 2-12 Ethics Code

Section 3 Conditions of Employment

- 3-1 Working Hours – Non-sworn Employees
- 3-2 Compensatory Time Off; Applicability of Fair Labor Standards Act
- 3-3 Recordkeeping of Hours
- 3-4 Absences
- 3-5 Accident Policy

Section 4 Employee Benefits

- 4-1 Holidays
- 4-2 Paid Vacations
- 4-3 Insurance and Retirement Benefits
- 4-4 Sick Leave
- 4-5 Family and Medical Leave
- 4-6 General Leave
- 4-7 Jury Duty; Court Appearance
- 4-8 Return to Work
- 4-9 Bereavement Leave
- 4-10 Military Leave
- 4-11 Payment of Wages
- 4-12 Transportation
- 4-13 Longevity Bonus

- 4-14 Uniform/Clothing Allowance
- 4-15 Temporary Employee Benefits
- 4-16 Employee Assistance Program (EAP)

Section 5 Discipline, Rules and Employee Communication Procedures

- 5-1 Political Activities by City Employees
- 5-2 Outside Employment
- 5-3 Work Place Violence
- 5-4 Electronic Communication
- 5-5 Personal Mail
- 5-6 Absenteeism and Tardiness
- 5-7 Non Harassment
- 5-8 Use of City Equipment, Supplies, Tools and Uniforms
- 5-9 Misconduct/Unacceptable Performance/Disciplinary Procedures
- 5-10 Dress Code
- 5-11 Smoking
- 5-12 Gambling Prohibited
- 5-13 Employee Records
- 5-14 Search Policy
- 5-15 Alcohol & Drugs
- 5-16 Grievance Procedures
- 5-17 Americans with Disabilities Act (ADA), Title 1
- 5-18 Americans with Disabilities Act (ADA), Title 2

Section 6 Separation of Employment

- 6-1 Resignation/Retirement
- 6-2 Job Abandonment
- 6-3 Disposition of Final Paycheck
- 6-4 Final Compensation Upon Death of an Employee
- 6-5 Procedure of Departure

SECTION 1

Introduction

SECTION 1-1 PERSONNEL OBJECTIVES AND ADMINISTRATION.

- (a) **Applicability:** The personnel policies and guidelines in the City of Cedarburg Personnel Manual shall be applicable to all City employees, including Library and Police Department employees. This manual does not apply if a Collective Bargaining or individual Employment Agreement covers a policy or procedure. It does not apply to employees of Cedarburg Light & Water.
- (b) **Additional Rights Not Conferred.** None of the benefits or policies in this Personnel Manual are intended by reason of their publication to confer any rights or privileges or to entitle a City employee to be or to remain employed by the City. The Personnel Manual is subject to unilateral change by the City.
- (c) **At-Will Employment.** The purpose of this policy is to address the employment relationship, which, is at will. The City retains the right to terminate an employee's employment at any time with or without reason or notice. Nothing contained in any City policy, handbook, rule, document, communication or practice is intended to be, create, imply or guarantee that employment or any City benefit will be provided for any period of time. The promise of certain benefits now and in the future does not change the employment-at-will relationship. Compensation figures provided in annual or monthly terms to employees are stated as such for convenience or to aid in salary comparison, and are not intended to create an employment contract for a specific period of time.

Employment-at-will may only be altered as expressly stated in a collective bargaining or a written employment agreement.

SECTION 1-2 AUTHORITY.

- (a) **Policy Approval.** The authority to approve the Personnel Manual or to make changes to it is vested in the Mayor and Common Council. It is the responsibility of City personnel to recommend changes to the Mayor and Common Council, through the City Administrator and Personnel Committee, for approval.
- (b) **Administration.** The overall authority and responsibility for the general day to-day administration of the personnel program is with the City Administrator for employees excluding Library and Light & Water employees and the Chief of Police and Fire Chief for employees under their respective jurisdiction.
- (c) The City Council and Mayor retain all of its common law, statutory and inherent rights to manage its employees and to determine the general business practices and policies of the City.

SECTION 1-3 DEFINITIONS.

In this Chapter the following definitions shall apply:

- (a) **City.** The City of Cedarburg, Wisconsin.
- (b) **Collective Bargaining Agreement.** A written and signed contract, between the City and a labor organization, pertaining to the mutual obligations of the City pursuant to Wis. Stat. 111.70 and the represented employees concerning wages, hours and conditions of employment as defined by Wisconsin law.
- (c) **Continuous Service.** Uninterrupted employment as a regular or part-time employee of the City.
- (d) **Department.** An established and recognized City division which is organized and structured to accomplish a particular type of assigned municipal service.
- (e) **Department Head.** An employee who is responsible for the operation of a City department and includes:
 - (1) City Assessor;
 - (2) Chief of Police;
 - (3) Fire Chief;
 - (4) Director of Engineering and Public Works;
 - (5) City Clerk;
 - (6) City Treasurer;
 - (7) Parks and Recreation Director;
 - (8) Library Director; and
 - (9) Light and Water Utility Manager.
- (f) **Employee.** An individual who is engaged to provide services as directed by the City for wages or salary. Department heads are employees of the City.
- (g) **Fulltime Employee.** An employee in a regular position whose normal assigned schedule of hours totals two thousand eighty (2,080) or more per year.
- (h) **Labor Organization.** An employee organization formally recognized as representing the employees, pursuant to §111.70 et. seq. of the Wisconsin Statutes.
- (i) **Part-time Employee.** An employee whose normally assigned schedule of hours totals one thousand five hundred sixty (1,560) hours per year or more but less than two thousand eighty (2,080) hours per year.
- (j) **Regular Employee.** An employee who is scheduled to work throughout the year and who occupies a full or part-time position established by the Common Council.
- (k) **Temporary and Seasonal Employee.** An employee who is hired only for a limited period of time and whose normal assigned schedule of hours totals less than twelve hundred (1,200) hours per year.

SECTION 2

Employment Practices (Recruitment/Selection/Placement)

SECTION 2-1 EQUAL EMPLOYMENT OPPORTUNITIES.

It is the personnel policy of the City to maximize worker resources by selecting the best-qualified person for each job performed. The same principles apply to the hiring of any person with a disability, unless the disability cannot be reasonably accommodated. All personnel the City has hired and promoted in the past, and those to be hired and promoted in the future have been and will continue to be selected from all applicants on the basis of qualifications. These include such factors as ability, aptitude, enthusiasm, experience, education and a willingness to work and serve. Moreover, since the City's objective is to select from all sources of qualified workers, it will administer this policy in such a manner as not to discriminate against any person, employee, or job applicant for employment because of race, color, religion, sex, age, national origin, ancestry, handicap, marital status, sexual orientation, veteran status or arrest and conviction record (except where circumstances relate to employment) or any other characteristic protected by state or federal law. It is the responsibility of each employee and supervisor to give this nondiscrimination policy full support through example and leadership.

SECTION 2-2 IMMIGRATION LAW COMPLIANCE.

- (a) **Compliance.** The City complies with the Immigration Reform and Control Act of 1986. As such, the City needs to verify employment eligibility for anyone hired after November 6, 1986 and have that person complete a one-page form (I-9) for retention by the City. Before commencing work, newly hired employees must also complete the form if they did not previously file an I-9 with the City, if their previous I-9 is more than three years old, or if their previous I-9 is no longer valid.
- (b) **Sworn Personnel.** United States citizenship is required of all sworn personnel in the Police Department. An applicant for a sworn police position must be a legal citizen of the United States at the time of appointment to a sworn position.

SECTION 2-3 LICENSES AND CERTIFICATIONS.

- (a) Applicants for a position requiring a license and/or certification must present proof of same prior to the first assigned starting date.
- (b) Persons operating a City vehicle or equipment must possess an appropriate and valid operator's license and submit that license as proof. Those positions requiring special certification by an agency of the state must submit proof of satisfactory completion, with certification to professionally practice in the State of Wisconsin.
- (c) Various other certifications may be requested as proof of completed education at a recognized institution or university. The City reserves the right to obtain necessary information regarding academic achievement transcripts, educational files, health records, or prior employment records of any applicant.

SECTION 2-4-a DRUG/ALCOHOL TESTING (CDL).

The City of Cedarburg must comply with the Omnibus Transportation Employee Testing Act. The Act applies to public employees who drive commercial motor vehicles (CMV) and are required to hold commercial drivers' licenses (CDLs). This includes employees from the City, Department of Public Works, Light and Water, and Wastewater Treatment Plant employees. The City is required to conduct alcohol and drug testing of drivers engaged in safety-sensitive positions and maintain records related to the administration and results of the drug and alcohol testing programs.

Cedarburg will enforce the following policy:

- (a) **Prohibited Alcohol and Drug - Related Conduct.** An employee may not:
 - (1) Report to work or remain on duty to perform safety-sensitive functions while having an alcohol concentration of 0.04 or higher;
 - (2) Be on duty or operate a CMV while in possession of alcohol (including possession of medicines containing alcohol unless the packaging seal is unbroken);
 - (3) Use alcohol while performing safety sensitive functions;
 - (4) Use alcohol within four hours prior to performing any safety-sensitive functions;
 - (5) When required to take a post-accident alcohol test, use alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first;
 - (6) Possess or use drugs on duty, unless prescribed by a physician who has advised the employee that the medication does not adversely affect the employee's ability to perform safety sensitive functions;
 - (7) Perform safety sensitive functions with any amount of drugs in the employee's system; and
 - (8) Refuse to submit to or cooperate in any drug or alcohol testing.
- (b) **Knowledge of employee under the influence.** An employee who has knowledge of another employee who has consumed or is under the influence of an intoxicating beverage or drugs must take all reasonable steps to prevent the employee from performing safety-sensitive functions.
- (c) **Five (5) types of testing are required by the Act:** pre-employment; random; reasonable suspicion; post-accident; return-to-duty and follow-up testing.
 - (1) Pre-employment Testing - Pre-employment testing for alcohol and drugs is required before a driver may drive a commercial motor vehicle or perform other safety-sensitive functions.
 - (2) Post-Accident Testing - Post-accident testing is conducted as soon as practicable after an accident.
 - (3) Random Testing - Annually, the number of random alcohol tests given must be at least 25% of the total number of employees subject to testing and random drug testing be given at a rate of at least 50% of the total number of employees subject to testing. For the City of Cedarburg, employees holding CDLs from Cedarburg Light and Water, the Wastewater Treatment Plant employees, and Department of Public Works employees will consist of the total number of employees subject to testing.
 - (4) Reasonable Suspicion Testing - An employer must require an employee to submit

to an alcohol or drug test when the employer has a reasonable suspicion that an employee has violated prohibitions against the misuse of alcohol or use of illegal drugs.

- (5) Return to Duty/Follow-Up Testing - An employee may not return to duty requiring the performance of a safety-sensitive function until the employee has successfully passed a return-to-duty alcohol and/or other drug test.
- (d) **Consequences of Failing Drug or Alcohol Testing** - If an employee tests positive for drugs, has a 0.04% BAC alcohol test, or refuses to submit to testing, the employee will be immediately removed from duty. Subsequent disciplinary action will be taken against the employee.

SECTION 2-4 –b DRUG/ALCOHOL TESTING (NON CDL).

Testing for employees who do not hold a CDL. All Employees may be subject to drug and alcohol testing pre-employment, post-accident or upon reasonable suspicion.

SECTION 2-5 RECRUITMENT.

- (a) **Non Sworn Personnel.** As vacancies occur in positions, efforts will be made to fill them by promotion of qualified current employees. The position will be posted in appropriate locations so that all employees desiring to apply will be aware of the vacancy. Each interested employee must file a statement of interest in the vacant position and a formal application.
- (b) **Sworn Personnel.** Recruitment for positions with the Police or Fire Department shall be pursuant to the rules of procedure of the Police and Fire Commission.
- (c) **Filling Vacancies.** Common Council authorization is required to fill any vacant full-time and regular part-time positions (excluding Library personnel) that were not approved within the previous twelve (12) months.

SECTION 2-6 SUBMISSION OF APPLICATIONS.

- (a) All applications for employment shall be submitted on-line.
- (b) Any information given to the City during the application and hiring process, which is false, deceptive or fraudulent in any manner, will subject the applicant to disqualification. If the candidate has been hired, the employee will be subject to immediate dismissal.

SECTION 2-7 BACKGROUND INVESTIGATIONS.

- (a) After an applicant receives conditional offer of employment, the City shall have a routine background check made by the Police Department for employees. This will be done before hiring, and such report shall be filed with the City Administrator. The personal background and criminal or civil forfeiture data will be evaluated in relation to the applicant's ability to perform the duties and responsibilities of the specific position. An investigative credit report may be required- at the discretion of management.
- (b) All applicants shall be checked for verification as to their employment and educational backgrounds.

- (c) A background investigation may be completed on volunteers and temporary employees as considered appropriate and depending on the duties.

SECTION 2-8 EMPLOYEE ORIENTATION.

A new employee's supervisor shall be responsible for the orientation of each new employee and shall, on the first day of employment or as soon thereafter as possible during the first pay period, meet with new employees and advise them of all general conditions of employment.

SECTION 2-9 INTRODUCTORY PERIOD.

All newly hired employees shall be on a six (6) month introductory period from the date of hire. Such introductory period may be extended at the option of the City Administrator for one (1) additional six (6) month period, provided that the employee is so notified prior to the expiration of the initial six (6) month introductory period. During the introductory period a new employee may be terminated by the City without regard to cause and without recourse to the grievance procedure. The use of a probationary period should not be construed as changing the nature of employment from being an at-will employee.

SECTION 2-10 HIRING RELATIVES.

- (a) This Section governs the proposed hiring of individuals for fulltime or part-time work as City employees who are members of the immediate family of current City employees or elected officials. Immediate family includes an employee's parent, spouse, designated partner, sister or brother, children and -in -law and step relations of the same categories.
- (b) No City official or employee shall be involved in any way in the recommendation or decision to hire, evaluate, compensate or promote another person when that person is a member of the employee's immediate family. No City official or employee shall supervise another employee who is a member of his or her immediate family.
- (c) In all cases, including temporary and seasonal employment City officials and employees are required to comply with Wisconsin Statutes 19.59: "No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family or organization with which he or she is associated."
- (d) This Section does not apply to nonelected officials who are asked to accept appointment as members of a City board, commission or committee; nonelected officials, however, will be expected to disqualify themselves from participation in matters under consideration which may affect the hiring, retention, classification or compensation of their relatives if currently employed or being considered for employment by the City.
- (e) The City Administrator with the approval of the Personnel Committee may waive this Section whenever its literal application would be adverse to the City's best interest. If the waiver is agreed to by the Personnel Committee, the City Administrator shall set forth in writing as a matter of public record an explanation of the finding that the waiver is in the

City's interest. This section may be waived by the Director of Engineering and Public Works as to the employment of temporary, seasonal workers.

- (f) Nothing in this Section prohibits a City official or employee from making general policy decisions concerning salaries, salary-related benefits when the action does not result in preferential or favored treatment of a member of the employee's immediate family nor has a relationship by affinity.

SECTION 2-11 RESIDENCY.

The Chief of Police is required to live in the City no further than fifteen (15) miles of the City's borders within one year of appointment to the position. There is no residency requirement for all other employees.

SECTION 2-12 ETHICS CODE.

(a) DECLARATION OF POLICY.

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office is not to be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is established in this Chapter a code of ethics for all City of Cedarburg officials and employees whether elected or appointed, paid or unpaid, including members of Council as well as boards, committees and commissions of the City (City agencies). The purpose of this Ethics Code is to establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the City of Cedarburg and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the City. State ethics codes and conflict of interest law also apply to officials and employees.

(b) RESPONSIBILITY OF PUBLIC OFFICE.

Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this State and carry out impartially the laws of the nation, state and municipality, to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their prime concern.

(c) DEDICATED SERVICE.

- (1) Officials and employees should adhere to the rules of work, ethical requirements, professionalism and performance established as the standard for their positions by the appropriate authority.
- (2) Officials and employees should not exceed their authority or breach the law or ask

others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

(d) **FAIR AND EQUAL TREATMENT.**

- (1) **Use of Public Property.** No official or employee shall request or permit the unauthorized use of City owned vehicles, equipment, materials or property for personal convenience or profit.
- (2) **Fundraising.** With the exception of fundraising for purposes of raising money for City departmental programming, equipment, or capital projects, which may occur subject to Council approval and all provisions of the City Code and the State Statutes, the following shall be prohibited:
 - (1) No official or employee shall request or permit the use of city resources, city time or city equipment for the purpose of fundraising.
 - (2) No official or employee shall use his or her position, authority or influence, whether possessed or anticipated, to represent themselves as a city official or employee for private or public fundraising.
- (3) **Obligations to Citizens.** No official or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(e) **CONFLICT OF INTEREST.**

- (1) **Financial and Personal Interest Prohibited.** No official or employee, whether paid or unpaid, shall engage in any business or transaction or shall act in regard to financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties in the public interest contrary to the provisions of this Chapter or which would tend to impair independence of or action in the performance of official duties.
- (2) **Definitions.**
 - (a) Financial Interest. Any interest which shall yield, directly or indirectly, a monetary or other material benefit to the officer or employee or to any person employing or retaining the services of the officer or employee.
 - (b) Personal Interest. Any interest arising from blood or marriage relationships or from close business or political associations, whether or not any financial interest is involved.
 - (c) Person. Any individual or legal entity.
- (3) **Specific Conflicts Enumerated.**
 - (a) Incompatible Employment. No official or employee shall engage in or accept private employment or render service for private interest when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties, unless otherwise permitted by law.
 - (b) Disclosure of Confidential Information. No official or employee shall, without

proper legal authorization, disclose confidential information concerning the property, government or affairs of the City, nor shall such information be used to advance the financial or other private interests of the official or employee or others.

(c) Gifts and Favors.

1. No public official or employee may use his or her public office to "obtain financial gain" or "anything of value" for the private benefit of himself or herself, for his or her immediate family, or for an organization with which he or she is associated.
2. No person may directly or indirectly offer or give "anything of value" to a local public official or employee if it could reasonably be expected to affect that official's vote, official action or judgment, or if it could be construed as a reward for any official action or inaction on the part of the local public official or employee. No local public official or employee may accept "anything of value" tendered under such circumstances. "Anything of value" is defined as "money or property, favor, service, payment, advance, forbearance, loan or promise of future employment". Legal campaign contributions are exempt from the definitions. An official or employee is not to accept hospitality if, after consideration of the surrounding circumstances, it could reasonably be concluded that such hospitality would not be extended were it not for the fact that the guest, or a member of the guest's immediate family, was a City official or employee. This includes any discount on the price of admission, parking, or use of a box at a stadium that is tax exempt from general property taxes. Participation in celebrations, grand openings, open houses, informational meetings and similar events are excluded from this prohibition. This paragraph further shall not be construed to prevent candidates for elective office from accepting hospitality from citizens for the purpose of supporting the candidate's campaign.
3. No local public official or employee may take any official action that affects a matter in which the public official or employee, a member of his or her immediate family, or an organization with which the official or employee is associated has a substantial financial interest.
4. No local public official or employee may use his or her office or position in any way that produces or assists in producing a substantial benefit, either directly or indirectly, for the official or employee, any members of his or her immediate family, or an organization with which the official or employee is associated.

(d) Representing Private Interests Before City Agencies or Courts. No officer or employee shall appear on behalf of any private person (other than him or herself, his or her spouse or minor children) before any City agency. However, members of the Common Council may appear before City agencies on behalf of constituents in the course of their duties as representatives of the electorate or in the performance of public or civic obligations.

(4) **Contracts with the City.** No City officer or employee who, in his capacity as such officer or employee, participates in the making of a contract in which he has a private pe-

cuniary interest, direct or indirect, or performs in regard to that contract with some function requiring the exercise of discretion on his part shall enter into any contract with the City unless it is within the confines of Sec. 946.13

(5) **Disclosure of Interest in Legislation.**

- (a) Any member of the Common Council who has a financial interest or personal interest in any proposed legislation before the Common Council shall disclose on the records of the Common Council or the Ethics Board created by this Chapter the nature and extent of such interest.
- (b) Any other official or employee who has a financial interest or personal interest in any proposed legislative action of the Common Council or who serves on a board or committee, shall disclose the nature and extent of such interest.
- (c) If there is a conflict of interest for any official or employee, he or she must refrain from participating in any way including discussion, deliberations or action on the item.

f. **ADVISORY OPINION.**

Any questions as to the interpretation of any provisions of this Code of Ethics Chapter shall be referred to the City Attorney. The fact that a person seeks an advisory opinion from the City Attorney and abides by the material facts as stated is evidence of intent to comply with the Ethics Code.

g. **SANCTIONS.**

A determination that an official's or employee's actions constitute improper conduct under the provisions of this Chapter may constitute a cause of suspension, removal from office or employment or other action permitted by law.

h. **DISTRIBUTION OF ETHICS CODE.**

- (1) The City Clerk shall cause a copy of this Code of Ethics to be distributed to every public official and employee of the City of Cedarburg within thirty (30) days after enactment of this Chapter. Each public official and employee elected, appointed or engaged thereafter shall be furnished a copy before entering upon his duties.
- (2) Each public official, the Mayor, the Chairman of each Board, Commission or Committee and, through the City Administrator, the Head of each Department shall, between May 1 and May 31 each year, review the provisions of this Code with his fellow Council, Board, Commission, Committee members or subordinates as the case may be and certify to the City Clerk by June 15 that such annual review had been undertaken. A copy of this Ethics Code Chapter shall be continuously posted on each department bulletin board wherever situated.

SECTION 3

Conditions of Employment

SECTION 3-1 WORKING HOURS - NONSWORN EMPLOYEES.

(a) **Working Hours.**

- (1) The standard workday for full-time employees is eight (8) hours, which all employees are expected to work in full. The standard workweek for employees is forty (40) hours. Employees shall receive an unpaid lunch break; not less than thirty (30) minutes in length, which may be adjusted as necessary and as determined by the employee's supervisor in compliance Fair Labor Standards Act and Wisconsin Wage & Hour Law.
- (2) As far as practical, work hours and days shall conform to the established hours of City business. However, the City has the right to establish rotative, staggered or shortened work periods, multiple shift or part-time hours as needed.
- (3) A paid fifteen (15) minute break is granted each workday for non-exempt full-time and regular part-time employees.

(b) **Overtime/Premium Pay.** City employees may be asked to work outside the standard work day or work week. Employees shall be paid time-and-one-half their regular rate of pay for all hours worked in excess of forty (40) hour work week, or receive compensatory time off as permitted by this Section and the Fair Labor Standards Act and Wisconsin Wage & Hour Law. Hours worked includes vacation, holiday pay, compensatory time, sick time, and floating holidays. Double time will be paid on unscheduled officially observed holidays only as listed in this Manual and unscheduled Sunday hours. One hour of straight time will be paid for each day a Wastewater Treatment Plant employee is assigned to on-call duty. This provision shall not apply to employees who are in administrative, executive or other classes of work exempt from the provisions of the Fair Labor Standards Act and Wisconsin Wage & Hour Law.

(c) **Exempt Employees.**

The City Administrator, department heads and certain other officers are deemed to be executive, administrative or professional employees who meet the qualifications for exemption under the Fair Labor Standards Act and Wisconsin Wage & Hour Law, and such employees shall be paid on a salary basis without regard to the number of hours worked. Exempt employees are generally expected to conform to the normal business hours of their department, and are afforded flexibility in the application of their time to the responsibility involved in managing their department. Such flexibility is not intended to allow for:

- (1) Taking absence for illness without charge to said leave; or
- (2) Pay for overtime hours worked.

(d) **Meetings.** City employees may be required to attend regular or special meetings of the Common Council and applicable meetings of other City committees, boards and

commissions.

SECTION 3-2 COMPENSATORY TIME OFF; APPLICABILITY OF FAIR LABOR STANDARDS ACT

- (a) **Definitions.** "Compensatory time" and "compensatory time off" are defined as hours when an employee is not working and which are paid for at the employee's regular rate of pay. These hours are not counted as hours worked in the week in which they are paid.
- (b) **Non-exempt Employees.** Such employees shall be eligible for pay or compensatory time off at the rate of one and one-half (1-1/2) hours for each hour of authorized overtime work in accordance with the requirements of the Fair Labor Standards Act and Wisconsin Wage & Hour Law. With the permission of the department head, compensatory time accumulation of up to a maximum of forty (40) hours per calendar year shall be permitted. Overtime shall be paid for all hours worked in excess of regularly scheduled hours only when such work has been authorized by the employee's department head or the employee's immediate supervisor.
- (c) **Compensatory Time Off.**
 - (1) Non-exempt employees may take compensatory time off in lieu of immediate overtime pay in cash, at a rate of not less than one and one half hours for each hour of overtime worked pursuant to an agreement between the employee's supervisor and employee before performance of the work.
 - (2) The maximum compensatory time, which may be accrued by an affected employee at any one time, shall be forty (40) hours. An employee who has accrued the maximum number of compensatory hours shall be paid overtime compensation in cash for any additional overtime hours of work.
 - (3) An employee shall be permitted to use accrued compensatory time within a reasonable period after it is requested if to do so would not unduly disrupt the operations of the City. The City may direct that compensatory time off be taken or that the compensatory time balance be paid out.
 - (4) Payment for accrued compensatory time upon termination of employment shall be calculated at the regular rate of pay at the time of termination.
- (d) **Employees Holding Multiple Jobs.**
 - (1) City employees may at their own option agree to work for a separate or independent employer in such activities, provided the permission of the City Administrator, or as appropriate the Police Chief or Library Director, is first secured.
 - (2) City employees may with the approval of the City, substitute during scheduled hours for other employees employed in the same capacity.
- (e) **Volunteers.**

Individuals who volunteer their services to the City and receive no compensation, are excluded from the definition of "employee" and are thus excluded from the requirements of the Fair Labor Standards Act and Wisconsin Wage & Hour Law. Expenses, reasonable benefits, nominal fees, or a combination of these may be paid as authorized by the Common Council; however, an employee of the City may not volunteer to do the City services of the

same type the employee is employed to perform.

SECTION 3-3 RECORD KEEPING OF HOURS.

It shall be the responsibility of the department head to assure proper recording of hours worked. Before records of time worked are submitted to the City Treasurer's Office for payment of wages, they are to be reviewed, approved, and signed by the department head.

SECTION 3-4 ABSENCES.

Employees are expected to work their assigned hours. Any absences must be approved by the employee's supervisor or be permissible pursuant to the terms of other policies, i.e., sick leave, FMLA, vacation, etc. Absences will be paid if the employee is eligible under the particular policy. Simply because time off is allowed under policies does not mean that excessive absences are permissible. The City reserves the right to review individual cases when absences are unauthorized, excessive or when abuse occurs.

- (a) If an employee will be absent from work, it is the employee's responsibility to contact the department head with the reason for the absence. This must be done as soon as possible before the beginning of the regular work shift. Absence, which is without proper notice or without permission, is considered "unauthorized." Such absence in excess of two (2) consecutive workdays is considered as a resignation of employment.
- (b) Anticipated absences shall be reported to the employee's department head or immediate supervisor in advance. Three (3) days of unauthorized absence in a three (3) month period will be grounds for dismissal. Employees with excessive absences or tardiness may be subject to disciplinary action or discharge. See section 5-6.

SECTION 3-5 ACCIDENT POLICY.

- (a) **On-the-Job Injuries.**
 - (1) Reporting.
 - a. Employees injured on the job shall report the injury immediately to their supervisor, if physically able to do so.
 - b. The employee's immediate supervisor or a department head will arrange for first aid treatment or for a doctor's care, if necessary.
 - c. All accidents, however minor, are to be reported as soon as possible by the injured employee or the supervisor to the City Treasurer's Office.
 - d. The City Treasurer's Office will make a record of the injury.
 - (2) Release for Work After Injury. In all cases of injury requiring the services of a physician, it is the responsibility of the employee to obtain from the physician a release authorizing the return to work. The release shall indicate the date upon which the employee may return to work.

SECTION 4

Employee Benefits

SECTION 4-1 HOLIDAYS.

- (a) (1) The following days shall be paid holidays for full time employees:
- | | |
|--------------------|------------------------|
| New Year's Eve Day | Thanksgiving Day |
| New Year's Day | Day after Thanksgiving |
| Memorial Day | Christmas Eve Day |
| Independence Day | Christmas Day |
| Labor Day | Two Floating Holidays |
- (2) In the event a holiday (except Christmas Day, and New Year's Day) falls on Saturday, the immediate preceding Friday shall be recognized as the holiday. In the event a holiday (except Christmas Eve and New Year's Eve) falls on Sunday, the immediate following Monday shall be recognized as the holiday. When Christmas Eve and New Year's Eve fall on a Friday or Saturday, and Christmas Day and New Year's Day on a Saturday or Sunday, the days of celebration are the preceding Friday and the following Monday. When Christmas Eve and New Year's Eve fall on a Sunday, the day of celebration is the following Tuesday. Unless specifically provided otherwise in this Article, the holidays listed above shall be observed on the day established by State Statutes.
- (3) New full-time and regular part-time non-exempt employees shall be ineligible for holiday pay for any holiday which occurs during their first six (6) months of continuous service. Upon successfully completing this period, they shall be paid for any holiday designated in Subsection (a) that occurred during this six (6) month period.
- (4) If any of the above named holidays fall during an employee's vacation, such employee shall be granted another day off at a time mutually agreed upon between the employee and his supervisor.
- (5) In the event that a paid holiday falls within a period when an employee is on sick leave, it shall be charged as a paid holiday, and not deducted from the employee's sick leave.
- (6) Employees who work less than 8 hours per day shall be paid on a pro-rata basis at their regular straight time rate not to exceed eight (8) hours pay for each holiday.
- (b) Employees scheduled to work on these holidays shall receive pay at time and one-half their normal wage for hours worked. Employees called in to work on these holidays shall receive double their normal wage for each hour they work.
- (c) (1) New personnel classified regular full-time, who begin employment with the City prior to July 1 of the year, shall be entitled to two (2) floating holidays. New full-time personnel, who begin employment with the City on July 1 and after, up until

October 1, shall be entitled to use one floating holiday (8 hours). New full-time personnel who begin employment on October 1 and after shall not be entitled to any floating holidays for that calendar year.

- (2) Employees terminated from their employment with the City are not eligible to receive pay for unused floating holidays.
 - (3) Employees who do not use their entitled floating holidays in the given calendar year will not receive additional compensation or additional time off as a carry-over into the next year.
- (d) When scheduled to work on a paid holiday, if the employee is unable to report to work, he shall not be eligible for the holiday compensation. Under no circumstances will an employee be compensated with both holiday pay and sick leave pay when the employee is unable to report to work on a scheduled holiday.
- (e) The City will endeavor to make reasonable accommodations for an employee's holiday time off due to the observance of conscientious religious beliefs. Department heads must be consulted at least three (3) days in advance of such a religious observance in order to insure that the employee's duties are covered. If eligible, an employee must use a floating holiday or vacation time. Otherwise, if eligible, any such day shall be without pay.

SECTION 4-2 PAID VACATION.

- (a) (1) The City believes that adequate time must be provided to employees annually for rest and relaxation. For this reason, all employees are encouraged to take their full allotment of vacation days each year. Only with prior written approval from the City Administrator may an employee carry over vacation time from one vacation year to the next. Any vacation allowance that has been approved for carryover must be used within ninety (90) days or it will be forfeited unless an extension beyond (90) days is approved by the Personnel Committee based on the individual circumstances of the request. Only if the City Administrator determines that it was through the request of the City that vacation time was not used, will payment in lieu of vacation be made.
- (2) Continuous service shall include all the time an employee has been in continuous employment status in a regular position. Regular part-time employees who subsequently assume full-time duties will be given credit for their total hours of service to the date of full-time employment. Such hours will be converted to years of service (using 2,080 hours as an equivalent of one year of full-time service) and the employee placed into the vacation schedule listed in subsection (b) accordingly. The employee's anniversary date will then be adjusted to be the date that the employee had worked a cumulative total of 2080 hours. The continuous service of an employee otherwise eligible for a vacation shall not be considered interrupted if the employee was on an approved leave of absence, or was promoted or transferred to another position. Continuous service shall not accrue during any period of layoff or unpaid leave of absence in excess of thirty (30) days, nor any unpaid leave of absence caused by injury or illness in excess of forty five (45) days.
- (3) Vacation pay shall be paid at the rate of eight (8) hours per day at the employee's regular straight time rate.
- (b) Vacation time shall be accrued annually on the anniversary date of employment according to the following schedule. The year in which the vacation can be taken is the twelve (12)

month period beginning with the employee's anniversary date.

| <u>Years of Continuous Employment</u> | <u>Annual Vacation Time Accrued</u> |
|---------------------------------------|-------------------------------------|
| 1 year | 10 working days |
| 5 years | 15 working days |
| 12 years | 20 working days |
| 20 years | 25 working days |

(c) At the discretion of the City Administrator, new employees may receive credit for service time with prior employers for advanced placement on the vacation accrual schedule in the following situations:

- (1) The service time was with another public employer under a public employee retirement system; or
- (2) Service time with a non-profit or private employer that is directly applicable to an employee's present job duties and such previous experience is necessary for the effective fulfillment of an employee's job responsibilities with the City of Cedarburg.

In order to consider and affect such service credit, the City Administrator must receive a letter from the employee's prior employer verifying employment dates, status, and job classification(s).

(d) Vacations shall be taken in not less than four (4) hour increments unless otherwise approved by the City Administrator.

(e) Upon termination ~~or retirement~~, a regular fulltime or part-time employee shall receive compensation for all unused and accrued vacation allowances earned at the employee's current rate of pay; (except in situations outlined in (f) below). Upon retirement all unused and accrued vacation time will be paid to the employee's Health Reimbursement Account (HRA). The City of Cedarburg adopted the HRA plan provided by North Shore Bank on January 28, 2019. Members of Veteran's Groups with full health insurance benefits are not eligible to participate in the HRA program

(f) An employee terminated for misconduct, or who leaves with less than two-(2) weeks notice, shall not be entitled to accrued vacation. In order to receive accrued vacation pay, the two-(2) weeks prior to resignation must be time worked. Time worked shall not include vacation, holiday, injury, sick leave or medical leave of absence.

(g) Vacations of one week or more must be requested one month in advance. Vacations of less than a week, but more than two days, must be scheduled at least two (2) weeks in advance. Vacations of two (2) or less days must be requested at least forty-eight (48) hours in advance. All vacations are subject to approval by the immediate supervisor or the City Administrator.

(h) In the event of the employee's death, compensation for all unused vacation allowance shall be paid to his/her beneficiary.

(i) Time lost due to sickness or accident originating because of work for the City shall be considered as time worked for the purpose of determining eligibility for vacation as long as

- the employee has earned some wages from the employer in the vacation year.
- (j) Regular part-time employees beginning employment with the City on or after January 1, 2014, working 1,560 hours or more per year, upon completing one year's service with the City, shall be entitled to vacation with pay, computed on a pro-rated basis based on 2080 hours divided by the previous year's hours and multiplied times the amounts as designated in Section 4-2(b). In determining length of service for regular part-time employees, only the period of unbroken continuous service may be considered. Any layoff or unpaid leave of absence, which exceeds sixty (60) calendar days, will be considered as a break in service. Any part-time employee that was hired prior to January 1, 2014 will continue to have no minimum set hours required to earn vacation with pay.

SECTION 4-3 INSURANCE AND RETIREMENT BENEFITS.

- (a) **Insurance Program.** The City maintains a comprehensive insurance program, which provides health, dental, and life coverage for the benefit and protection of all eligible employees. Complete details of these insurance benefits are provided in the insurance benefits booklets. Information on each of these insurance plans, including eligibility and co-payment requirements, may be obtained from the City Treasurer's Office.
- (b) **Retirement Fund.**
Eligibility requirements and pension benefits shall be as provided by Wisconsin Statutes and the rules and regulations of the Wisconsin Retirement Fund.
- (c) **Group Health Insurance.**
 - (1) Coverage. The City will maintain a group health and dental insurance contract to provide protection for the City's full time and regular part-time employees and eligible dependents. For new employees, coverage becomes effective on the first of the month following the date of hire.
 - (2) Premium Contributions.
 - a. The City shall pay the premium for regular fulltime employees from the date of employment, in amounts determined annually by the Common Council.
 - b. Regular part-time employees shall be eligible to participate in the health insurance coverage provided by the City under the terms established by the City, provided however, that the employee pay one-half (1/2) of the monthly premium.
 - c. Upon retirement, fulltime employees may continue to maintain their group health insurance coverage until eligible for Medicare, consistent with the terms of the plan and provided the employee requests continuation in writing to the City Treasurer, pays the full premium costs, remits the full premium one (1) month in advance and makes continual required payments thereafter. The City shall pay the full premium for the month in which the employee retires, regardless of the number of days worked in that month.
 - (3) Payment in Lieu of Insurance Coverage. Any full-time employee who elects not to participate in the group health insurance program shall receive payment in lieu of health benefit coverage in amounts determined by the Common Council.
- (d) **Worker's Compensation.** Employees shall be covered by workers' compensation for duty-related injuries. The City shall pay for employees eligible for workers' compensation payments, the regular net take home pay. Payments from the City to the employee in this event will equal an amount necessary to provide the employee with the same amount as his

or her net salary for the particular pay period, after taking into account the amount of workers' compensation for the particular pay period (this payment will be referred to as "supplemental temporary payment.") Any City employee receiving a check for a workers' compensation claim regarding loss of salary shall immediately provide the City Treasurer with true and correct copies of all relevant information pertaining to the workers' compensation check(s). The City Treasurer then will pay to the employee an amount required to provide the employee with the same amount as his or her net salary for the particular pay period, taking into account amounts previously received by the employee as workers' compensation for the same pay period. Employees shall be regarded as eligible for workers' compensation payment from the first day of any disability, notwithstanding the provisions of Section 102.43, of the Wisconsin Statutes. The supplemental temporary payment made by the City shall not exceed eighteen (18) consecutive months. Injuries which are sustained on the job and reoccur after the employee has returned to work shall be entitled to another eighteen-(18) consecutive month time frame. Employees eligible for workers' compensation payment shall not have any such time off deducted from sick leave provided; however, employees who are still on workers' compensation after the above referenced eighteen (18) month consecutive time frame may use sick leave at their option to supplement the workers' compensation pay to provide a regular net paycheck.

- (e) **Group Life Insurance.** Regular fulltime and part-time employees shall be eligible to participate in the group life insurance plan for public employees established under Section 40.20, Wis. Stats.

SECTION 4-4 SICK LEAVE.

- (a) **Eligibility.**

- (1) Paid sick leave is provided to regular full-time employees who are sick or injured and unable to work.
- (2) Regular full-time employees shall earn twelve (12) days of sick leave in each calendar year, as set forth below. Each employee shall accrue sick leave at a rate of eight (8) hours per month. New employees shall be ineligible to use paid sick leave during their first six (6) months of employment; however, upon completion of this period, new employees shall be credited with sick leave based upon their initial date of employment with the City.
- (3) With the exception of compensable illness and injuries, sick leave shall cover all absences from duty on account of bona fide illnesses (including doctor appointments connected with such illness and emergency dentist appointments) of the employee and sickness in the immediate family of the employee or immediate family of spouse. "Immediate family" shall be defined as a: husband, wife, child, sister, brother, parent, grandparents, mother-in-law, father-in-law, brother-in-law, sister-in-law, or other relatives living in the same household.

- (b) **Maximum Accumulation.**

- (1) Unused sick leave shall be cumulative on the basis of twelve (12) days for each calendar year and may be carried into successive years not to exceed one hundred twenty (120) days.
- (2) All employees who have reached their maximum allotment of one-hundred-twenty (120) sick days shall be compensated thirty percent (30%) of any sick days

accumulated over one-hundred-twenty (120). Part-time employees would receive a maximum payout of up to 500 hours. This compensation shall be paid in the first paycheck of the following year, at the previous year's rate.

- (3) Upon ~~retirement or~~ death of an employee, fifty percent (50%) of unused sick leave will be paid to the ~~employee or~~ employee's beneficiary. Upon retirement fifty percent (50%) plus the FICA percentage of unused sick leave will be paid to the employee's Health Reimbursement Account (HRA). The City of Cedarburg adopted the HRA plan provided by North Shore Bank on January 28, 2019. Members of Veteran's Groups with full insurance health benefits are not eligible to participate in the HRA program.
- (4) The use of sick leave for purposes other than obtaining medical treatment or remaining home on medical advice and for medical or other reasons outlined in this section is an abuse of sick leave policy and grounds for termination.

(c) **Regular Part Time Employees.**

- (1) Regular part-time employees beginning employment with the City on or after January 1, 2014 working 1,560 or more hours per year, shall be entitled to absences with pay on regularly scheduled workdays due to sickness or injury. New regular part-time employees shall be ineligible to use paid sick leave during their first six (6) months of service; however, upon completion of this period, new employees shall be credited with sick leave based on their initial date of hire on a pro-rata basis. Thereafter, employees will earn sick leave on a pro-rata basis per (a)(2). Total sick leave accumulation may not exceed five hundred (500) hours. Any part-time employee that was hired prior to January 1, 2014 will continue to have no minimum set hours required to earn paid sick leave.
 - (2) Regular part-time employees, who have reached the maximum allotment of five hundred (500) hours of accumulated sick leave, shall be compensated twenty-five percent (25%) of any sick days accumulated over five hundred (500) hours. This compensation shall be paid in the first paycheck of the following year at the previous year's rate.
 - (3) Payment for sick leave will be computed on the basis of the employee's hours of work scheduled on the day absent.
 - (4) Any employee off work on sick leave shall, whenever possible, notify his supervisor of his intent to return to work on the day prior to returning.
- (d) **Extension.** In the event of sick leave usage, at the discretion of the City Administrator or Department Head, the employee may be required upon request to furnish, at the employee's expense, a certificate of illness signed by a licensed physician.
- (e) **Preventative Medicine.** Another use of sick leave shall include any form of preventative medicine or treatment which requires the employee to take time off during normal working hours to see his doctor, receive hospital or clinical services, dental care, or any other similar medical attention. Such usage must be requested and approved prior to leaving the work station.

SECTION 4-5 FAMILY AND MEDICAL LEAVE

- (a) **Employee Eligibility:** A City of Cedarburg employee is covered by the Federal Family and

Medical Leave Act (FMLA) if that person has been employed for at least 12 months, and has worked for the City at least 1,250 hours during the previous 12 months. An employee is covered by Wisconsin's FMLA (WFMLA) if that person has worked 1,000 hours during the previous 52 week period.

- (b) **Reasons for Leave:** Eligible employees are entitled to 12 weeks of unpaid leave each calendar year for: the birth of a child and to care for the newborn child (leave must be concluded within 12 months following birth); or the placement of a child with the employee for adoption or foster care (leave must be concluded with 12 months following placement); or to care for the employee's child, spouse, or parent (but not parent -in-law) with a serious health condition; or for the employee's own serious health condition that renders the employee unable to perform the functions of his/her position.

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service-member during a single 12-month period. A covered service member is:

- (1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or
 - (2) A veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
- (c) **A serious health condition is:** A physical or mental illness, injury, impairment or condition involving inpatient care, or outpatient care that requires continuing treatment or supervision by a health care provider.
- (d) **Notice of Need for Leave:** Employees are required to give their supervisor as much notice as possible of the need to take FMLA leave (30 days is required for scheduled leave requests). Failure to provide timely notice as required may result in an employee's request for leave being denied until at least 30 days after the date notice is provided.
- (e) **Substitution of Paid Leave for Unpaid FMLA Leave:** Under Wisconsin law, an employee may choose to substitute any paid leave, including sick leave, for up to **six weeks** of FMLA leave for the birth or adoption of a child. Thereafter, under Federal law, the employee may choose or the employer may require staff members to substitute vacation, personal holiday, legal holiday, or compensatory time for FMLA leave. Under Wisconsin law, the employee may choose to substitute any paid leave, including sick leave, for up to **two weeks** of unpaid

FMLA medical leave. Thereafter, under Federal law, the employee may choose or the employer may require employees to substitute paid leave for unpaid FMLA medical leave. Under no circumstances will employees be entitled to FMLA leave in excess of the authorized 12 weeks as a result of the substitution of paid leave. Any leave, paid or unpaid, that is designated as leave under FMLA will count against the employee's FMLA entitlement. Employees should check with City's Payroll Officer in case of disagreement as to whether leave should be designated as FMLA leave.

- (f) **Intermittent leave or leave on a reduced work schedule:** Under Federal law, leave for medical purposes must be given only when there is a medical need for such leave which can best be accommodated through an intermittent or reduced leave schedule and the leave is being used for the employee's own serious health condition, or to care for a family member with a serious health condition. Family leave on an intermittent basis must be consistent with family leave requirements. Under Wisconsin law, intermittent leave is permitted for all family and medical leaves in increments equal to the shortest increment permitted by employer for any other non-emergency leave.

Questions regarding the duration of any requested intermittent leave should be addressed to the City's Payroll Officer.

(g) **Benefit Continuation:**

- (1) **Group Health Insurance:** For employees on paid leave (e.g., annual leave or sick leave) under FMLA, group health insurance will continue as with any paid leave. For leave without pay under FMLA, the employee's insurance will continue as if the employee had been continuously employed. Employees will be advised of their individual eligibility for continuation of group health insurance under FMLA. Employees are required to pay the employee portion of health insurance premiums, if applicable, during unpaid leave under FMLA. Coverage will be terminated for employees who do not pay their portion of the cost of coverage. In the event an employee's coverage is terminated due to non-payment while on leave, the employee may re-enroll upon return to work in whatever coverage was in effect prior to taking leave under FMLA. Coverage will be effective the first day the employee returns from leave under FMLA.

In the event an employee does not return to work for reasons other than the continuation, recurrence, or onset of a serious health condition which would entitle the employee to leave under FMLA, or other circumstances beyond the employee's control, the City will collect from the individual the employer portion of premium payments incurred during the leave.

- (2) **Benefits Accrued Prior to Leave:** Employees will not accumulate sick leave during leave without pay under FMLA. Sick leave or personal holidays which are not substituted for FMLA leave will be available to the employee upon return from leave.
- (3) **Continuous Service:** Employees will continue to accrue continuous service for seniority purposes while on leave under FMLA. The time an employee is on FMLA

leave (either paid or unpaid) will be treated as continuous service for purposes of vesting and eligibility to participate in the retirement plan. However, the time an employee is on unpaid FMLA leave will not be counted as creditable service for purposes of calculating retirement annuities.

- (h) **Return from FMLA Leave:** When returning from leave taken under FMLA, an employee will be returned to the same or equivalent position. If state law or a collective bargaining agreement governs an employee's return to work, those provisions shall be applied. Employees will be required to provide a fitness-for-duty certification signed by the employee's health care provider before returning to work from FMLA leave taken for the employee's own serious health condition. Failure to provide a fitness-for-duty certification upon request may result in denial of reinstatement until the required certification is provided.
- (i) **FMLA and Other Leave Benefit Provisions:** FMLA entitlement is coordinated with the provisions of the Wisconsin Family and Medical Leave Act (WFMLA), as well as leave benefits provided by the City or the applicable collective bargaining agreement. Leave qualifying under both laws will be counted against the employee's entitlement under both the federal and state laws, as well as towards the employee's entitlement under administrative rule or the applicable collective bargaining agreement.

Questions regarding the Family and Medical Leave Act should be referred to the City's Payroll Officer.

For a comparison of Federal and Wisconsin Family and Medical Leave laws please visit the following website:

http://dwd.wisconsin.gov/er/family_and_medical_leave/publication_erd_9680_p.htm

Application form for Family/Medical Leave: <http://oser.state.wi.us/docview.asp?docid=1199>

SECTION 4-6 GENERAL LEAVE.

Unpaid leaves of absences for reasons not specifically addressed in this handbook may be granted on case-by-cases basis at the discretion of the City Administrator and if leave is for over one month, approved by the Common Council.

SECTION 4-7 JURY DUTY; COURT APPEARANCES.

The City realizes the civic responsibility an employee has when summoned to serve as a juror. A copy of the jury summons must be submitted to the Department Head to be placed in the employee's file.

- (a) Any employee required to serve jury duty will be paid regular wages and shall turn over to the City Treasurer any monies, excluding mileage allowance, received as a result of such jury duty. An employee must give the City Administrator a copy of the Jury Summons. Any time an employee's attendance is not required for purposes of jury duty or witness service during the employee's regularly scheduled work hours, the employee must return to

work as soon as circumstances will reasonably allow.

- (b) Pursuant to Sec. 103.87, Wis. Stats., employers may not discharge an employee for being absent from work in order to appear in court pursuant to a subpoena to testify in a criminal case. If a case involves the employer, the employee will be paid regular wages.

SECTION 4-8 RETURN TO WORK

Credit toward health benefits will be earned if an employee is on leave under the Family and Medical Leave Act, Jury Duty or Military Duty.

Returning to work earlier than the scheduled termination of leave date must be arranged between the department head and the employee.

If, upon expiration of the approved leave of absence, the employee does not return to work, the employee will be considered as having resigned from the City.

SECTION 4-9 BEREAVEMENT LEAVE.

- (a) Employees are eligible for paid bereavement leave in the event of death in the immediate family.
- (b) Employees may take up to three (3) working days of paid bereavement leave with pay for the death of a father, mother, guardian, stepfather, stepmother, spouse, sister, brother, child, or grandchild.
- (c) Employees may take one (1) day of paid bereavement leave with pay for the death of a father-in-law, sister-in-law, brother-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, aunt, uncle or any other relative in the employee's household.
- (d) The funeral leaves provided for in this Section shall apply only to days that the employee is regularly scheduled to work and shall not apply to overtime hours or to days when the employee is on vacation, off for a holiday, on sick leave, military leave or on any other type of paid or unpaid leave of absence.
- (e) Additional time off without pay may be allowed to employees by the employee's department head when necessary to arrange for or attend the funeral of more remote members of the family listed in Subsection (b) and (c) Employees may substitute vacation leave or floating holiday(s) for unpaid leave.
- (f) Pay for paid bereavement leave shall be computed on a pro-rata basis at the regular hourly rate to a maximum of eight (8) hours for one day.

SECTION 4-10 MILITARY LEAVE.

- (a) **Reserve Guard Training.** This type of leave applies to any full-time or regular part-time employee who requests time off to participate in the U.S. Armed Forces Reserves or National Guard training. The City will compensate the employee for the difference between his/her normal pay and the reserve pay during the period of the leave, if the duration of the leave is two weeks or less. A Department Head should submit the employee profile to the Payroll Officer if the leave is extended beyond two weeks. At the conclusion of the leave period, the employee will return to his/her original position.

- (b) **Active Duty.** This period of leave applies specifically to a period of time away from work for the reason of active military duty and should be granted to all employees, except those of temporary status. An active duty leave is considered an unpaid leave. It directly applies to any individual who enlists in the Armed Forces; is inducted into the Armed Forces under the Military Selective Service Act; or to any member of the Reserve component of the Armed Forces who voluntarily enters into active duty. It is not to be used for time off to determine physical fitness, or training, as these would be covered under the Reserve/Guard Training Section. The actual duration of this type of leave will vary. Re-enlistment for active duty beyond the period required by law will cancel the military leave.
 - (1) **Active Duty Differential Pay**
 - (a) An active duty leave shall be compensated with a pay differential. The difference between the employee's military pay and city salary will be paid to the employee if the military pay is lower.
 - (b) **Represented Employees.** For any City employee represented by a labor organization, the provisions in this section apply until the expiration date of existing collective bargaining agreements. Beginning on the date of the next negotiated agreement, the terms apply only if included in the collective bargaining agreement. If there is no existing agreement, the provisions apply only if provided by the terms of the represented employee's collective bargaining agreement.
- (c) To be entitled to reemployment rights as established by the Universal Military Training and Service Act and other applicable federal laws, the employee must:
 - (1) Satisfactorily complete the period of active duty.
 - (2) Be qualified to perform the duties of his/her original position. If he/she becomes disabled during military service, and cannot perform the duties of the previous job, the City will attempt to place the employee in a comparable position that he/she is able to perform.
 - (3) Make a timely application for reemployment after release. (Within 90 days after completion of service, or 31 days after completion of three months' initial active duty.)

SECTION 4-11 PAYMENT OF COMPENSATION.

- (a) **Compensation.** Salaries and pay ranges shall be as set forth in the annual compensation ordinances as adopted by the Common Council.
- (b) **Pay Day.** The City shall pay wages every other Friday. Should a normally scheduled payday fall on a holiday, payment will be made on the day preceding. Employees should notify their immediate supervisor and the Payroll Officer if they believe there are errors in their paychecks.

SECTION 4-12 TRANSPORTATION.

- (a) **Purpose and General Policy.**
 - (1) The purpose of this policy is to set forth the policies governing travel expenses and to describe certain procedural matters concerning travel authorization,

documentation and accounting. This regulation is applicable for all travel expenses incurred on behalf of the City by employees, elected officials, and Board and Commission members.

- (2) There is no objection to a spouse and/or other family members traveling on an official trip, but no expenses attributable to them will be reimbursed by the City.
- (3) The City Administrator has the discretion to approve travel requests and advance of funds estimated, provided that adequate funds are available in the approved budget.
- (4) A travel advance, in an amount not to exceed the budgeted provision for the trip, may also be requested from the City Administrator. If the travel advance is for a conference or a training program, a descriptive brochure or announcement must accompany the travel advance request. Registration and tuition fees for unbudgeted, but professional meetings and conferences may be authorized and reimbursed at the discretion of the Common Council.

(b) **City Vehicles.**

- (1) All City vehicles are pool vehicles. While a City vehicle may have a primary user, the vehicle is available for use by other employees who need a car to conduct City business.
- (2) City vehicles should be used for business when available. It is the policy of the City to reimburse for mileage only in situations where a municipal vehicle is not available. Under no circumstances will reimbursement be made for mileage associated with commuting, even if a use of a City vehicle would otherwise be permitted.
- (3) Employees using City equipment are expected to conduct themselves with the highest degree of safety, concern for citizens and professionalism. Fines or forfeitures incurred by an employee while operating a City vehicle due to traffic or parking violations shall be the responsibility of the employee and all fines, forfeitures or monies shall be paid by the employee.
- (4) Commuting to and from work in a City vehicle. With the exception of the Police Chief and the City Administrator, employees may not use a City vehicle for commuting purposes except for the following purposes:
 - (a) An evening, City related meeting;
 - (b) Travel to a conference or training session that requires leaving from your residence;
 - (c) Being on-call where there is a reasonable expectation that you would be called back to work that evening.
 - (d) Any other purpose must be authorized on a case-by-case basis by the City Administrator.
- (5) **Tax Reporting.** Use of a City vehicle for commuting purposes generally is considered taxable income as it is personal use. Therefore, it must be documented on forms provided by the City Treasurer's Office. A log of such personal mileage and date of the commuting must be recorded and submitted monthly to the Treasurer's Office for year end placement on the employee's W-2 form.
- (6) **Miscellaneous.** Gasoline, repairs and other expenses attributable to the vehicle are reimbursable and paid receipts must be submitted. Tolls, parking and garage charges are also reimbursable, but care should be exercised to select a parking facility that charges economical rates. Receipts must be submitted for reimbursement.

- (c) **Private Vehicles.**
- (1) Private vehicles may be used for travel on City business when City vehicles are not available. Reimbursement shall be limited to the current Internal Revenue Service mileage reimbursement amount plus tolls, parking and garage charges. When two or more people travel in the same vehicle, reimbursement shall be paid to the owner of the vehicle. The employee will be responsible to track their mileage.
 - (2) Since the City assumes no responsibility when private vehicles are used beyond making a mileage reimbursement allowance, it is the employee's responsibility to protect against damage to his/her vehicle and legal liability in such form and amount as the employee deems adequate. In particular, the employee should consult with the insurance carrier and consider carrying liability insurance in such form and amount as the employee deems adequate to avoid a potential situation which could be a financial burden to the employee.
 - (3) Employees should not drive to meetings and conferences when the travel time enroute to the destination requires more than one day, unless the employee is utilizing holiday or vacation time. In such instances, no reimbursement will be made for any lodging, meals, or other expense incurred enroute, except as allowed in Subsection (c)(1) above.
- (d) **Commercial Transportation.** Commercial carrier fares shall be limited to "coach" or "economy" fares when such services are the most feasible and are approved by the City Administrator. Travel to and from train stations and airports may be by bus, hotel limousine, taxi, or private vehicle (for which mileage will be paid), whichever is less costly. When possible, travel arrangements should be made by the City and billed directly to the City. Receipts for transportation costs are required if reimbursement is requested.
- (e) **Meals Allowance.** When authorized functions away from the City include meals, reasonable expenses for meals will be paid according to City Policy CC-17 and as approved by the City Administrator.
- (f) **Lodging.**
- (1) Lodging should be secured at moderate rates. Receipts are required. Reimbursement shall be limited to the minimum number of nights required to conduct the assigned City business
 - (2) If a spouse and/or other family member travels on an official trip, reimbursement shall be limited to the single rate for the room occupied.
 - (3) No lodging expense shall be reimbursed for one (1) day meetings or conferences held within reasonable driving distance of the City unless prior approval is obtained from the City Administrator.
- (g) **Receipts.** Receipts, to be filed with the City Administrator within one week of the expense, are required for the following expenses in order to receive reimbursement:
- (1) Fuel, repairs and expenses for City vehicles.
 - (2) Tolls, parking and garage charges.
 - (3) Lodging, if previously authorized by the City Administrator.
 - (4) Registration and tuition fees, if previously authorized.
 - (5) Meals.
 - (6) Extraordinary expenses not covered by these regulations.

SECTION 4-13 LONGEVITY BONUS.

- (a) Regular full-time employees shall be entitled to an annual longevity bonus on the basis of sixty three dollars (\$63.00) for each complete calendar year of continuous service to be payable the first pay date of December. Regular full-time employees hired after December 31, 2010 will first be eligible for the longevity benefit after ten (10) years of service.
- (b) Regular part-time employees shall be entitled to an annual longevity bonus on the basis of one-half of the amount allocated in (a) above for each complete calendar year of continuous service, to be payable the first pay date in December. Regular part-time employees hired after December 31, 2010 will first be eligible for the longevity benefit after ten (10) years of service.
- (c) Continuous service shall not include any period of unpaid leaves of absence, except as required by law, i.e. FMLA, military, disability, workers' comp, etc.
- (d) In the event such employee retires during the year, such employee shall receive the above longevity bonus pro-rated on the basis of the number of months of the current year worked up to the date of retirement.

SECTION 4-14 UNIFORM/CLOTHING ALLOWANCE.

The Chief of Police and the Lieutenant of the Police Department shall be entitled to an annual uniform allowance in such amount as authorized by the Common Council.

SECTION 4-15 TEMPORARY EMPLOYEE BENEFITS.

Temporary and seasonal employees receive wages but no additional benefits from the City.

SECTION 4-16 EMPLOYEE ASSISTANCE PROGRAM (EAP)

In an effort to assist City employees in maintaining healthy levels of emotional and physical well being, and to limit the effect of personal problems on job performance, the City sponsors an Employee Assistance Program (EAP). The EAP is designed to provide short-term counseling and referral services to employees, their spouses and dependent children who may be experiencing physical, emotional, financial, drug, alcohol, marital, legal or family problems.

The EAP will provide confidential assessment, short-term counseling, and referral at no cost to the employee or immediate family member with a resource through which they can address personal or work related issues. The intent is to ensure that employees have access to assistance when they need it, and hopefully prior to problems appearing in the workplace. However, when problems do appear at work, the EAP helps supervisors, managers, and employees engage constructively to support employees as they address problems, seek and receive counseling or treatment, and return to work. Participation in the program does not jeopardize an employee's job security, promotional opportunities, or reputation.

(a) **Services (as agreed upon in the EAP Services and Fees Agreement)**

The following services may be confidentially utilized by employees and/or family members living in the same household:

- (1) Seven days a week, 24 hour telephone access to professional counselors for assessment, consultation, referral, and crisis management.

- (2) Professional assessment of issues related to mental health, substance abuse, the work environment and other stressors.
 - (3) Face-to-face short term, focused counseling for individuals, couples and families.
 - (4) Referral for treatment and support.
 - (5) Education, including: internet based, on-site presentations, and written materials on a variety of emotional, family, work and living skills.
 - (6) Work/life balance services; child and eldercare resources, legal consultation, mediation services, adoption information and financial consultation.
- (b) **Utilization of the EAP program**
 Utilization of the program is voluntary and occurs off-site at the offices of Aurora Health Care or their affiliate. Employees may use up to six counseling sessions through the EAP program per problem or issue. For employees who would like to utilize more than 6 counseling sessions, the EAP counselor will facilitate a referral to another appropriate counselor, given the situation. Ongoing counseling or other services utilized by an employee or family member will be their responsibility.
- (c) **Referral**
 The City encourages the utilization of the EAP program through informal or self-referral by employees or their family members. Employees will receive contact information and an informative brochure about the EAP program upon hire and periodically throughout the City's contract with the provider. Employees and family members are encouraged to contact the Payroll Officer if they do not have this information to confidentially obtain the telephone number of the provider. An employee's job security or future career advancement will not be jeopardized as a result of their participation in the Employee Assistance Program
- (d) **Procedure**
- (1) *Appointments*
 Appointments with an EAP counselor can be made by contacting Aurora Health Care at 800-236-3231 to schedule an appointment. Efforts will be made to see clients within the same day or 48 hours depending on the issue. The EAP has 24 hour telephone services as well as the ability to intervene with crisis situations at any hour.
 - (2) *Confidentiality*
 The EAP is a confidential service. No information regarding a client will be shared without a signed consent form. All records and discussion of personal problems are handled in a confidential manner, as are medical records. These records are kept by the Aurora Employee Assistance Program and do not become a part of the employee's personnel file.
 - (3) *Work Performance*
 - (i) *Informal Referrals*
 If it appears that poor performance is or may be due to personal problems or impairment, the supervisor may informally refer the employee to EAP as part of a performance improvement plan. The referral to the EAP does not lessen the expectation that work performance must be improved.
 - (ii) *Formal Referrals*
 A formal referral may be initiated as an alternative to discipline or as part of a last chance agreement where the employee is agreeing to assessment, referral and subsequent treatment as a method to retain their job with the City. Formal referrals and

last chance agreements must be coordinated through the City Administrator's Office and/or the City Attorney's office.

It is appropriate and encouraged that supervisors consult with an EAP counselor regarding employee concerns. The counselor must maintain employee confidentiality and will typically maintain a neutral position with respect to workplace conflict.

(e) **Other Services**

The EAP provider, in addition to counseling, assessment and referral services offers the following services:

- (1) Training (i.e. harassment, workplace violence, substance abuse).
- (2) Education on the EAP website and written materials on a range of issues.
- (3) Onsite crisis support.
- (4) Risk management consultation related to troubled employees and their impact on the workplace.
- (5) Consultation on work-site policies and programs that affect employee health and well being and on employee needs when planning major workplace changes.

SECTION 5

Discipline, Rules and Employee Communications Procedures

SECTION 5-1 POLITICAL ACTIVITIES BY CITY EMPLOYEES.

- (a) **Interference With Duties.** City employees shall not engage in political activities to such an extent that their participation distracts from the performance of their employment duties. No City employees, during the hours that they are on duty, may engage in political activities. City employees engaged in political activities while off duty should clearly act as private individuals and not convey the impression that they are acting in their official capacity as City employees.
- (b) **Contributions.** An employee may voluntarily contribute money or services to a candidate, campaign, party, group or cause. Solicitation of contributions of money or services during working hours is prohibited.
- (c) **Campaign Work.** An off duty employee may voluntarily circulate nomination papers, petitions, distribute campaign literature, type, stuff envelopes and perform other clerical services, telephone and convey voters to the polls, and participate in a political convention, meeting, rally, demonstration, or parade. Campaign work of the nature listed under this heading is prohibited during working hours and is further prohibited off duty by any employee in a City uniform or wearing a City badge. Use of City property for campaign work is prohibited. The use of campaign or political paraphernalia on City owned vehicles, equipment, buildings, or other City property is prohibited.

SECTION 5-2 OUTSIDE EMPLOYMENT.

- (a) **Approval Required.** A full-time or regular part-time employee wishing to hold an outside job shall notify in writing the City Administrator or appropriate Department Head (Police Chief, Library Director) before accepting the position.
- (b) **City as a Primary Employer.** The City is the primary employer of full-time employees and at no time can outside employment activities impair the efficiency and ability of the employee to perform the duties of the job effectively, or present a conflict of interest to the City. Upon reviewing the situation, the City Administrator or appropriate Department Head may revoke the outside employment approval on a permanent or temporary basis depending on the circumstances.
- (c) **Full Disclosure Required.** An employee is required to fully disclose the outside employment including the employer's name and address, the nature of work to be performed and the hours per week that the employee will engage in outside employment.

SECTION 5-3 WORK PLACE VIOLENCE.

It is the City's policy to promote a safe environment. The City is committed to working with its employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior.

- (a) **Reports of Incidents.** Violence, threats, harassment, intimidation, and other disruptive

behavior in our workplace will not be tolerated. All reports of incidents will be taken seriously and will be dealt with appropriately. Such behavior can include oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm. Individuals who commit such acts may be removed from the premises and may be subject to disciplinary action, criminal penalties, or both.

- (b) **Appropriate Action.** The City needs the cooperation of all employees to implement this policy effectively and maintain a safe working environment. Do not ignore violent, threatening, harassing, intimidating, or other disruptive behavior. If you observe or experience such behavior by anyone on City property, or while on City business, report it immediately to a supervisor or manager. Supervisors and managers who receive such reports should seek advice from the City Administrator regarding investigating the incident and initiating appropriate action. **Threats or assaults that require immediate attention by security or police should be reported to the police at 911.**

The City supports all efforts made by supervisors and managers in dealing with violent, threatening, harassing, intimidating or other disruptive behavior in our workplace and will monitor whether this policy is being implemented effectively.

SEC. 5-4 ELECTRONIC COMMUNICATIONS

The Internet, electronic mail, and telecommunication access are resources made available to City employees to communicate with each other, other governmental entities, vendors/suppliers and individuals for the benefit of the City. The use of electronic communication systems such as computer, cell phones, pagers, email, voice mail, facsimile machines, etc., by employees is a privilege to be used in a responsible manner, and not in any way that is illegal or destructive to others. Improper usage can result in revocation of use, and discipline, up to and including discharge. No user of the City of Cedarburg's electronic communications may, without authorization, destroy, alter, dismantle, disfigure or disable information.

All employees should be aware that the City reserves the right to monitor and review the use of all City owned electronic devices and use of the City's network. Employees have no expectation of privacy concerning the use of City owned electronic devices or networks. The City's Internet, email communications and telecommunications resources are not private. The City reserves the right to access an employee's activities on its electronic communication systems at all times and without notice.

(a) **Telephones and Cell Phones**

Employees shall observe the rules of telephone courtesy in receiving or placing calls. Employees are permitted to use City telephones and cell phones, smartphones, electronic note pads, any wireless, Bluetooth or similar devices for personal reasons, but are to limit such use to instances of necessity. Toll calls for personal reasons may be made at the employee's expense. Voice mail messages should be listened to and responded to in a timely manner.

Use of personal cell phones and texting are not permitted, except for emergencies.

Employees are prohibited from using cell phones while operating vehicles on the City's

- behalf. Driver use of a cell phone is allowed only when parked or in the event of an emergency situation, unless using a hands free system, e.g. Bluetooth.
- (b) **Software.** – Computer systems are the sole property of the City and are to be used for business purposes. Only software approved and purchased by the City is allowed on the City’s computers. No employee shall install or reinstall game software, or any personally owned software on any city-owned computer. Employees are prohibited from copying software purchased by the City for their own personal use. Video and computer games may not be used during working hours.
 - (c) **E-mail** is a tool that allows employees to communicate via the computer. Employees should ensure proper and professional use, compliance with the Public Records Act and compliance with records management practices. E-Mail should be used for City business only and personal use should be limited. Appropriate precautions should be taken to detect viruses and prevent its contamination. Confidential, chain letter and sensitive issues should not be communicated via email. Email should not be used to make discriminatory or harassing statements, vulgarities or obscenities. An employee’s email may be monitored.
 - (d) **Internet Use** – Internet services are provided by the City of Cedarburg to support open communications and exchange of information and the opportunity for collaborative government-related work. Each individual is responsible for complying with all applicable state and federal laws and all City policies and standards when accessing the Internet. Internet access via City resources must not be used for illegal purposes. No one may use the resources of the Internet for personal gain or to support or advocate for non-City related business purposes. Inappropriate use may result in loss of access privileges and/or disciplinary action. All Internet uses must be consistent with the City of Cedarburg’s Code of Ethics. The safety and security of the City’s network and resources must be considered at all times when using the Internet. Individual users must be aware of, and at all times, attempt to prevent potential City liability in their use of the Internet. Personal use shall be limited to non-business hours or breaks and shall not be excessive. Downloading and/or transmitting copyrighted, licensed, fraudulent, harassing, obscene, and sexually explicit or hate messages or material and software for personal use are strictly prohibited.
 - (e) Electronic personnel/personal information or data (i.e. driver’s license numbers on voter registrations, payroll information) cannot be used for knowingly transmitting, retrieving, storing or copying to another form of media or device for use outside of the City’s electronic communication equipment.

SECTION 5-5 PERSONAL MAIL.

Employees shall not use the addresses of City Municipal Buildings or offices for receipt of personal mail and other deliveries nor shall they use City postage machines, mailing labels, stationery, and out-going mail.

SECTION 5-6 ABSENTEEISM AND TARDINESS.

- (a) **Notice of Absence/Tardiness.** If an employee is unable to report to work at the scheduled time, he/she shall notify or cause the notification of their immediate supervisor by telephone a minimum of one (1) hour before the scheduled work time. If an employee is going to be

late for work, he/she shall notify the immediate supervisor at least 30 minutes before the scheduled work day.

- (b) **Failure to Provide Proper Notification.** Any employee who fails to provide the foregoing notification in case of absence shall not be compensated for that day unless the employee can show that circumstances beyond his control affected the ability to provide the proper notification.
- (c) The City may investigate the use of sick leave. A doctor's certificate may be required after three (3) consecutive days of absence. Employees shall not receive sick leave benefits for any day that the employee abuses sick leave benefits. In addition abuse of sick leave, excessive absences or tardiness may result in discipline up to and including termination.
- (d) Supervisors, shall ensure that an absence/tardiness report is completed which includes the date absent or tardy and reasons given by the employee.
- (e) **Inclement Weather Absences.**
 - (1) When weather conditions make it impossible for any employee to get to work, the employee's immediate supervisor shall be contacted by telephone to request permission to be excused from work. In such case, the employee may use accrued vacation leave, floating holiday or compensatory time, or may be granted leave without pay for the time lost. At the discretion of the supervisor, the time lost from work may be made up during the current or next pay period on an hour for hour basis at the employee's regular rate of pay (not overtime).
 - (2) Any employee who reports to work late during inclement weather conditions, after an earnest effort to arrive on time, may, at the discretion and scheduling of their supervisor, be allowed to make up the time lost at their regular rate of pay during the current or next pay period.
 - (3) In case of hazardous weather conditions such as a blizzard, where the health and safety of employees are threatened, the City Administrator may direct that all nonessential employees either not report for work or leave work early. The hours lost by leaving work early may be made up or charged against accrued leave, as provided.
- (f) **Sick Leave Use**
 - (1) Regular attendance is an essential job function and is necessary to maintaining quality City services to the public. The City understands that employees will occasionally be ill or will qualify for an extended leave due to serious illness. Sometimes, however, in addition to the above requirements excessive absenteeism or tardiness needs to be addressed.
 - (2) When a supervisor discovers a pattern of absenteeism or tardiness behavior that requires intervention the supervisor will discuss the matter with his/her immediate supervisor to determine the intervention or disciplinary plan.
 - (3) The following criteria provide guidelines to supervisors for recognizing potential patterns of sick time use that would require intervention. These criteria are not expected to address every situation, but are intended to address most situations of sick time use and give supervisors the tools for intervention. : Flagrant/Obvious Abuse will immediately trigger the disciplinary process. (Examples of Flagrant/Obvious Abuse may include calling in sick and then being observed on the golf course or at a football game during normal work hours; Calling in Sick after

previously being denied the day off; Sick time taken that is attached, adjacent or connected to other previously approved discretionary time off; (Example: Work Work VAC SK Work); Sick time used on First or Last day of work week)

SECTION 5-7 NON-HARASSMENT.

The City is committed to ensuring a productive work environment that is free of harassment and other forms of discrimination. The City will not tolerate any form of unwelcome harassing behavior by elected officials, coworkers, supervisors, customers, citizens, vendors, volunteers or agents. Employees should promptly report any incidents in accordance with the procedure outlined below.

- (a) **Definition.** Each employee has a responsibility to keep the workplace free of any form of harassing behavior. No form of race, national origin, religion, disability, pregnancy, age, arrest and conviction record, military status, marital status, sex or sexual orientation harassment will be tolerated. The City expects the full cooperation of every elected official, administrator, department head, supervisor and employee in making this policy effective.
- (b) **Examples** of behavior in violation of this policy include, but are not limited to:
- (1) Verbal harassment such as indecent or belittling comments, jokes or references, and offensive personal references; and/or
 - (2) Unwanted physical contact of any kind, obstructing or blocking movement, or any physical interference with normal work or movement; and/or
 - (3) The display in the workplace of derogatory gestures, posters, cartoons, drawings, or calendars; and/or
 - (4) Demeaning, insulting, intimidating or suggestive written or e-mail transmitted messages; and/or
 - (5) Threatening adverse employment actions if sexual favors are not granted or promising preferential treatment in return of sexual favors.

Because of the inherent ability or perception of elected officials, administrators, department heads and supervisors to affect tenure, promotions and the terms and conditions of employment of their subordinates, any sexual advances, requests for sexual favors and other verbal and physical conduct of a sexual nature between these individuals and their subordinates should be avoided.

- (c) **Complaint Procedure.** Any person who feels that he or she has been subject to or witnessed unwelcome behavior should report this conduct **immediately** to his or her supervisor, city administrator, or department head at once. If the complaint involves your immediate supervisor, you should report directly to the city administrator or a department head. Every effort will be made to ensure confidentiality.
- (d) An employee should utilize the City's internal reporting procedure first. However, if after utilizing the complaint procedure, the complainant does not feel the complaint has been adequately addressed, the employee may file a complaint with either or both of the following:

State of Wisconsin Equal Rights Agency
201 East Washington Avenue
Madison, WI 53703
Phone: (608) 266-6860

Equal Employment Opportunity Commission
201 Martin Luther King Boulevard

Madison, WI 53703
Phone: (608) 266-4910

- (e) **Responsibility.** Department Heads, administrators and supervisors are responsible for being able to recognize incidents of harassment and to take appropriate action, including notification to the City Administrator or a department head. Management is expected to inform their employees that harassment in any form will not be tolerated and that employees have the right to submit allegations of harassment to their supervisor, administrator or a department head. Management is expected to handle all reports of notification of harassment on a respectful and confidential basis. Employees are responsible for promptly informing the city administrator or a department head of any occurrences of harassment.
- (f) **Investigative Procedure.** When an individual submits a complaint, he or she may be asked to provide information regarding the incident(s), including the identity of the harasser, the date(s) of the incident, the conduct giving rise to the complaint, and witnesses, if any, to the alleged conduct. All complaints will be investigated promptly and in as impartial and confidential a manner as possible. The complaint and investigation will be thoroughly documented and only those who need to know about such a complaint will be advised of its existence. Employees are required to cooperate in any investigation. A timely resolution of each complaint will be reached and in all cases, the employee submitting the claim will be advised as to the outcome of the investigation.
- (g) **Disciplinary Procedure.** If it is determined that the person charged has violated the Non-Harassment Policy, such person will be subject to appropriate disciplinary action, up to and including termination of employment. Action will be determined at the City's sole discretion. The City reserves the right in each case to differentiate between violations and situations on whatever basis it considers appropriate and to take such action as it believes to be in the best interests of the parties and the City based on all the facts and circumstances of the case.
- (h) **Retaliation.** Retaliation in any form against an employee who exercises the right to make a complaint is strictly prohibited, and will in itself constitute a basis for disciplinary action, regardless of whether the retaliation is or is not carried out. Any employee, in the judgment of the City, who knowingly or maliciously makes a false allegation of harassment, may be subject to discipline.

SECTION 5-8 USE OF CITY, EQUIPMENT, SUPPLIES, TOOLS AND UNIFORMS.

- (a) City equipment, supplies, tools and uniforms shall not be used for private or unauthorized purposes.
- (b) Employees shall be responsible for the proper care and use of City equipment, supplies, tools and uniforms; and shall promptly report to their department head all accidents, breakdowns or the malfunction of any equipment so that the repairs may be made.

SECTION 5-9 MISCONDUCT-UNACCEPTABLE PERFORMANCE/DISCIPLINARY PROCEDURES POLICY.

- (a) The continued employment of City employees is contingent upon acceptable conduct, satisfactory job performance and compliance with the rules and regulations set forth by the City Administrator and the Personnel Manual. Failure to display acceptable job performance

or the violation of the rules and regulations shall normally be cause for disciplinary action including reprimands, suspension without pay, or dismissal. The decision to discipline and the form it takes is a management right reserved by the City.

- (b) **Conduct Guidelines.** It is the City's policy to place as few restraints and restrictions on an employee's conduct as are possible. However, there must be certain guidelines for the protection of all employees, the City, and its residents. The following conduct guidelines are not exclusive.

- (1) Maintain honesty at all times.
- (2) Maintain regular and on time attendance consistent with the City Policies.
- (3) Report accurate information on employment application, timesheets, timecards and all other records. Falsifying documents is sufficient cause for termination.
- (4) Observe scheduled start times and lunch hours. Tardiness or absenteeism must be avoided whenever possible.
- (5) Never report to work under the influence of drugs or alcohol. Use or possession of intoxicating beverages without permission or use or possession of illegal drugs on City property are prohibited.
- (6) Avoid using profane, obscene or abusive language while on City property.
- (7) Treat clients and coworkers with dignity and respect.
- (8) Follow job instructions by carrying out assignments accurately and completely when requested by an authorized person.
- (9) Respect equipment and co-workers' valuables and possessions. Stealing or unauthorized use of City's equipment or possessions is prohibited.
- (10) Comply with ethics code.
- (11) Observe safety procedures.
- (12) Perform job with care and consideration of safety of others.
- (13) Insubordination, defined as an employee's failure or refusal to recognize or submit to the authority of a supervisor, or open defiance of authority or resistance to control (i.e., refusing to obey instructions), is strictly prohibited. Insubordination may result in discipline, up to and including discharge.

- (c) The City reserves the right to impose whatever discipline is appropriate based on the situation. In addition, violation of the following rules shall also be considered misconduct and shall be considered cause for disciplinary action including dismissal depending on the severity of the violation.

- (1) All employees shall observe all City ordinances and shall exercise reasonable care when driving any City vehicles.
- (2) All employees shall be courteous at all times in dealing with the public. Employees should, when necessary, listen carefully to complaints and refer them to the proper individual for action.
- (3) Any employee involved in an accident involving City vehicles shall immediately notify the Police Department. Vehicles should not be moved until Police arrive.

- (d) **Disciplinary Procedures Policy.**

The City of Cedarburg's policy is to administer discipline fairly and consistently, and to clearly communicate to management, supervisors and employees the elements of disciplinary action definitions and processes for discipline. The focal point of this policy is to correct employee misconduct or inappropriate behavior, and eliminate future occurrences of misconduct.

Administration and enforcement of discipline are subject to the general requirements of federal and state law, and discipline must be imposed without motivation that is discriminatory. Therefore, it is the supervisor's responsibility, along with guidance provided by the City Administrator or City Attorney to apply discipline fairly and consistently.

SECTION 5-10 DRESS CODE.

Employee dress should be neat in appearance and in a manner consistent with the City's professional atmosphere; keeping in mind the impression made on citizens, visitors and other employees.

Employees are expected to be neat, clean, professionally attired and well groomed at all times. Nails should be neatly trimmed and only fingernail polish that is in keeping with business dress should be worn. Pierced parts of the body, other than ears, may not be used to display jewelry at the workplace. Tattoos should be covered at the workplace.

SECTION 5-11 SMOKING.

In keeping with the City's intent to provide a safe and health work environment, smoking inside City facilities and vehicles are not permitted at any time. The City is dedicated to providing a healthy, comfortable and productive work environment for ALL employees.

In order to protect all of our employees, the City has instituted a smoke free work environment. Smoking and the use of tobacco products is banned in all City offices including break-rooms, vehicles, offices, building entrances, landings and restrooms. Employees and customers are expected to honor the smoke free policy at all times.

SECTION 5-12 GAMBLING PROHIBITED

- (a) **Definition.** Gambling is the wagering of money or other valuables on the outcome of events.
- (b) **Policy.** Gambling constitutes a threat to the City's security, and gambling can interfere with an employee's productivity and morale. Any gambling on the part of City employees, while on duty, is strictly prohibited. Gambling includes placing, accepting, recording or registering bets, or otherwise carrying on a game of chance for money, property, or any other item of value. This prohibition includes all gambling operations, even if and where such activities do not constitute illegal activity. This includes, but is not limited to, card and dice games, sport pools and Internet gambling. Employees involved in gambling while at work will be subject to discipline, up to and including discharge.

SECTION 5-13 EMPLOYEE RECORDS.

- (a) **Personnel Files.** The City Clerk, under the general supervision of the City Administrator, shall maintain confidential personnel folders for all City employees, including those employees represented by a labor organization and covered by a written labor agreement,

and keep on file therein all information pertaining to employment or service records of such employees and officials, such folders and records therein to be kept in locked file and to be retained after termination of employment or service.

- (b) **Medical Records.** All medical records will be kept in locked file separate from personnel records. Such records are subject to statutory confidentiality requirements.
- (c) **Access by Others to an Employee's Personnel File.**
 - (1) Only the City Administrator, City Treasurer, Deputy Treasurer/Payroll Officer, Mayor, City Attorney, the employee's department head and members of the Common Council acting on official City business are permitted to have access to personnel records of City employees. Elected officials should consult with legal counsel before reviewing files because of their due process responsibilities.
 - (2) Employment information will not be released without the authorization of the individual concerned, except for the following:
 - a. "Directory" information, which consists of verification of employment or past employment; dates of employment; position held; or, location of employment.
 - b. When required as part of an established statutory reporting procedure.
 - c. To protect the legal interests of the City when the actions of an individual appear to violate the conditions of employment or threaten physical injury to members of the public, to other employees, or to City property.
 - d. In response to a court order, administrative summons, search warrant, or subpoena.
 - e. When requested as part of an appropriate governmental inquiry into the City's employment practices.
 - (3) With the exception of Subsections (c)(1) and (2), the City Administrator or City Clerk shall reveal no information to others, without the employee's signature on a release. This applies to requests for information from anyone or any organization, including other government agencies.

SECTION 5-14 SEARCH POLICY.

In support of the City's commitment to the protection of all employees, operations and the public, the City may conduct searches to the extent considered appropriate to ensure the safe and efficient operation of the City's facilities. Entry onto City property, including parking areas, is deemed consent to an inspection of person, vehicle, personal effects and electronic devices and equipment at any time while entering, on, or leaving the property. Inspections will be conducted at the discretion of the City.

The City reserves the right to search any person entering onto its property or off site while employed, or while performing services for the City. The City also reserves the right to search property, equipment and storage areas including, but not limited to, clothing, personal effects, vehicles, buildings, rooms, facilities, offices, parking lots, desks, drawers, devices, cabinets, lunch boxes or bags, parcels, electronic devices and equipment. Any items that you do not want to have inspected should not be brought to work.

SECTION 5-15 ALCOHOL AND DRUGS.

Possession, selling, using or being under the influence of drugs or alcohol on City property and while on City business is prohibited.

Any employee violating this rule will be immediately terminated or subject to other disciplinary action which the City Administrator, in his or her sole discretion, deems appropriate based on each incident.

Any employee who refuses alcohol or drug screening pursuant to this policy shall be subject to termination.

- (a) **Unfit Condition.** If an employee is observed in an unfit condition, in terms of not being able to perform work safely or in a productive manner, a supervisor shall immediately report the observation to the department head or City Administrator. If deemed appropriate, a City representative and a witness shall initiate the search procedure and, if appropriate, escort the employee to an off-site medical facility for alcohol/drug screening which will subsequently be analyzed by a certified testing laboratory.
- (b) **Incident on Duty.** When an employee becomes involved in an incident affecting person or property while performing services for the City, a supervisor shall immediately report the incident to the department head or City Administrator. If deemed appropriate, a City representative and a witness shall initiate the search procedure and, if appropriate, escort the employee to an off-site medical facility for alcohol/drug screening using a test kit which will subsequently be analyzed by a certified testing laboratory.
- (c) **Reasonable Suspicion.** Screening may also be conducted when it is believed or suspected that an employee's job performance including, but not limited to, productivity, deteriorating performance, safety or attendance is related to an alcohol or drug-related problem. Prior to any action under this provision, the employee's supervisor should immediately report the observation or suspicion to the department head or City Administrator. If deemed appropriate, a City representative and a witness shall initiate the search procedure and, if appropriate, escort the employee to an off-site medical facility for alcohol/drug screening using a test kit which will subsequently be analyzed by a certified testing laboratory.
- (d) **Searches Related to Drugs/Alcohol.** Conditions under which searches will be considered include when an employee is found to be in "Unfit Condition," when an employee is involved in an "Incident on Duty," or if the City has a "Reasonable Suspicion" that alcohol or drugs may be possessed by an employee in violation of the City's policy. Searches may include lockers, vehicles, personal effects from pockets, handbags, etc. (See Sec. 2-6-82).

SECTION 5-16 GRIEVANCE PROCEDURES.

(a) **Definitions.**

- (1) A "Grievance" is a complaint an employee may have about workplace safety, discipline and termination. This policy applies to all employees covered under Section 66.0509, Wis. Stats., other than police employees subject to Section 62.13(5), Wis. Stats. An employee may appeal any level of discipline under this grievance procedure.
- (2) "Workplace Safety": means any alleged violation of any standard established under state law or rule or federal law or regulation relating to workplace safety, including the City of Cedarburg Safety Manual.
- (3) "Discipline": means any employment action that results in disciplinary suspension without pay, disciplinary reduction in pay or other benefits, disciplinary demotions and terminations. The term "discipline" does not include verbal notices or reminders, written reprimands, performance evaluations, documentation of employee acts and/or omissions in an employment file, non-disciplinary job reassignments, non-disciplinary adjustments to compensation or benefits or actions taken to address job performance for non-disciplinary reasons.
- (4) "Termination": means a discharge from employment for rule violations, poor performance, acts detrimental to the employer or other acts of misconduct. The term "termination" does not include: a voluntary quit, completion of seasonal employment, completion of temporary assignment, completion of contract, layoff or failure to be recalled from layoff at the expiration of the recall period; retirement, job abandonment ("no call, no show" or other failure to report to work); or termination of employment due to inability to perform the job, medical condition, lack of qualification or license, or any other cessation of employment not involving involuntary termination.
- (5) "Hearing Officer": means the impartial hearing officer required pursuant to s. 66.0509(1m)(d)2, Wis. Stat. The City will provide a hearing officer who shall not be an employee, official or agent of the City.
- (6) "Employee": does not include employees covered under a collective bargaining agreement, elected officials, statutory political appointees; temporary, seasonal, part-time employees or independent contractors.

(b) **Procedure.** The Parties may mutually agree in writing to waive a step or extend time limits within the procedure.

- (1) Step One. The employee should meet with their direct supervisor in an effort to resolve any questions, problems and misunderstandings that have arisen.
- (2) Step Two. If resolution does not occur at Step One, the employee shall notify his department head in writing within ten (10) working days following the day the employee first became aware of the particular problem or complaint. The employee shall be specific that they want to enter a grievance. If such grievance is not presented within the specified time period, it shall then be deemed waived. Within ten (10) working days after receiving the grievance, the department head shall investigate the complaint and meet with the employee. Within ten (10) working days after the meeting between the employee and the department head, the department head shall provide a written response.

- (3) Step Three. Where an employee does not have an immediate supervisor, or does not agree with the Department Head's decision, the grievance shall be submitted in writing to the City Administrator. Within ten (10) working days after receiving the grievance, the City Administrator shall investigate the complaint and meet with the employee. Within ten (10) working days after the meeting between the employee and the City Administrator, the City Administrator shall provide a written response. Step Three does not apply to Light and Water employees or Library employees.
- (4) Step Four. The employee may request an appeal to a Hearing Officer by filing a written request with the City Clerk within 10 days of receiving the written response. The City Clerk shall notify the Mayor, City Administrator, City Attorney and employee's Department Head about the filing of the request for a hearing as soon as practicable. The City Administrator will work with the hearing officer, department head and grievant to schedule a mutually agreeable hearing date. Any expense incurred by an employee in investigating, preparing, or presenting a grievance shall be the sole responsibility of the employee. Each party (employee and employer) shall bear its own costs for witnesses and all other out-of-pocket expenses, including possible attorney fees. The fees of the impartial hearing officer shall be divided equally between the parties.
- (5) Step Five. The decision of the impartial hearing officer shall be made within 30 days and be final unless either party files with the City Clerk a request for the decision to be reviewed by the Final Appeal Board no later than five (5) working days of the date of the decision issued under Step 4 above. For Library Employees the final appeal shall be to the Library Board and for Light and Water Employees the final appeal shall be to the Light and Water Commission. For all other employees the Final Appeal Board is the Common Council. The Final Appeal Board shall review the matter as soon as practicable and in accordance with procedures for public participation. The Final Appeal Board shall examine any records produced at the hearing before the hearing officer and determine whether a rational basis exists for the hearing officer's written decision. The Final Appeal Board shall not conduct a de novo hearing. A simple majority vote of the Final Appeal Board membership shall decide the appeal and shall be final. The Final Appeal Board may sustain, deny or modify the recommendation of the impartial hearing officer. The decision must be made within 45 days and shall be final and binding. A copy of the Decision shall be provided to the employee and filed with the City Clerk.

SECTION 5-17 AMERICANS WITH DISABILITIES ACT (ADA), TITLE 1.

This policy outlines the provisions of the Americans with Disabilities Act (ADA) of 1990 and The Americans with Disabilities Act (ADA) Amendments Act of 2008 and the rights and obligations of employees and the City under federal and state law.

- (a) In accordance with the Americans with Disabilities Act of 1990 and The Americans With Disabilities Act (ADA) Amendments Act of 2008, the Rehabilitation Act of 1973, the ADA Amendments Act of 2008 and the Wisconsin Fair Employment Act, the City of Cedarburg prohibits discrimination against qualified individuals with disabilities in all employment practices, including: job application procedures, hiring, firing, ad-

vancement, compensation, training, and other terms, conditions, and privileges of employment. The City of Cedarburg is committed to providing accommodations for eligible employees, citizens and/or applicants with documented disabilities.

- (1) Application Process. In accordance with the law, all applicants for City positions must have accessibility to all steps in the selection process and are protected from disability related questions that could potentially screen them out of the application process. Applicants may not be asked questions that are likely to elicit information about a disability, including whether an applicant has a particular disability. Inquiries regarding an applicant's medical or worker's compensation history may also not be asked. However, applicants may be asked questions concerning their ability to perform the essential functions of a job. An applicant may not be asked to describe or demonstrate how they would perform the job functions, unless all applicants are asked to do this or if the disability is obvious or the applicant discloses a hidden disability. Reasonable accommodation will be provided to qualified applicants during the selection process to ensure that all applicants have accessibility to all phases of the process. Accommodations may include making an interview room accessible, or supplying an interpreter or reader.
- (2) Pre-Employment. Pre-offer physicals are prohibited by the City, as are inquiries regarding the existence of an applicant's disability or the nature and severity of the disability. After an offer of employment has been extended, it may be conditioned on the results of a medical examination, as long as all individuals in the same job category have to undergo a medical exam. The information received during medical examinations will remain confidential. However, a supervisor may be told of a candidate's necessary restrictions and/or accommodations. If the existence of a disability is revealed during the medical exam, the offer of employment may not be withdrawn unless:
 - (i) the reason is job related and consistent with business necessity and no reasonable accommodation can be made;
 - (ii) the disability poses a *direct threat* to the health and safety of the applicant, other employees or the general public, and which cannot be eliminated by reasonable accommodation.
- (3) Reasonable Accommodation. The City is committed to making reasonable accommodation in job duties, the work environment, and the application process to enable a qualified individual with a disability to enjoy equal employment opportunities, as long as such accommodations do not constitute an undue hardship on the City.
- (4) Complaint Procedure. If an employee believes they have been discriminated against in employment on the basis of disability, an internal complaint may be filed through the City's harassment complaint procedure, or a formal complaint may be filed with the Wisconsin Equal Rights Division of the Department of Workforce Development and/or the federal Equal Employment Opportunity Commission.

(b) **Procedure**

(1) Requests for Accommodation

An employee who believes they need a reasonable accommodation to perform their job should make that request through their direct supervisor or the City Ad-

administrator or his or her designee. The City will work with the employee to determine if their disability can be reasonably accommodated.

When a request for accommodation is received by a supervisor or when it is apparent that a reasonable accommodation may enable an individual with a disability to perform the essential functions of the position or participate in the employment process, the employee should be directed to submit a **“Reasonable Accommodation Request Form”** with appropriate supporting documentation to their direct supervisor or City Administrator for consideration.

All requests for accommodation shall be responded to in a timely fashion, after the supervisor has engaged in the “interactive process” with the employee requesting accommodation. Supervisors are encouraged to request assistance from the Human Resources Department [or other department or ADA Coordinator] or other outside sources, as necessary.

The City reviews all requests for accommodation on a case by case basis and may provide a reasonable accommodation that allows the qualified individual with a disability to achieve the same level of job performance as other similarly skilled employees. The City is not obligated to provide an accommodation that causes an undue hardship on the City.

(2) Documentation of Request for Accommodation

Documentation of the request for accommodation and the response (provided on the **“Response to Accommodation Request Form”**) by the supervisor and/or City Administrator should be forwarded to the Clerk’s Office and shall be kept in a confidential file (separate from personnel and/or medical files).

(c) **Definitions**

- (1) **“Disability”** as defined under the Americans with Disabilities Act of 1990 (42 U.S.C. sec. 12101): A qualified individual who has a physical or mental impairment that substantially limits one or more major life activities (and includes times when the impairment is episodic or in remission); a person who has a record of such impairment; a person who is regarded or perceived to have an impairment; or has a known association or relationship with an individual with a disability.
- (2) **Disability”** as defined under the Wisconsin Fair Employment Act (Section 111.32): A physical or mental impairment which makes achievement unusually difficult or limits the capacity to work; has a record of such an impairment; or is perceived as having such an impairment.
- (3) **Direct Threat To Safety:** A significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation.
- (4) **Essential Job Functions:** Those activities of a job that are the core to performing the position that cannot be modified. A function is essential if: the job exists to accomplish the function, only a limited number of employees can perform the function, the function is highly specialized and an employee is hired for his/her expertise in the area. Other factors that may be considered in determining whether a function is essential are: the amount of time an employee spends performing the function, the consequences if the employee were not required to perform the

function, the terms of applicable collective bargaining agreements, the work experience of previous employees who held the job, and the work experience of employees in similar jobs.

- (5) Interactive Process: The process by which an agent of the employer and individual requesting accommodation engage in, to discuss physical or mental abilities and limitations as they relate to the job's essential functions and to determine possible job accommodations.
 - (6) Major Life Activities: Caring for one's self, performing manual tasks, walking, sitting, standing, seeing, hearing, eating, breathing, speaking, sleeping, reproducing, working, learning, thinking, concentrating and interacting with others, as well as major bodily functions (i.e. endocrine, neurological, reproductive).
 - (7) Qualified Individual with A Disability: A person who meets legitimate skill, experience, education, or other requirements of an employment position that s/he holds or seeks, and who can perform the "essential" functions of the position with or without reasonable accommodation.
 - (8) Reasonable Accommodation: Any modification or adjustment to a job or the work environment that will enable a "qualified" applicant or employee with a disability to participate in the application process or to perform essential job functions. Examples of reasonable accommodation include: making facilities readily accessible, job restructuring, modifying work schedules, implementing flexible leave policies, reassignment to a vacant position, acquiring or modifying equipment or devices, adjusting or modifying tests, training material or policies, and providing qualified readers or interpreters.
 - (9) Undue Hardship: An action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.
- (d) The Wisconsin Fair Employment Act. Under the WFEA, "individual with a disability" is defined as an individual who has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work. The first prong involving an "impairment which makes achievement unusually difficult" is similar to the "substantially impairs one or more major life activities" criterion under the ADA. The second prong "limits the capacity to work" refers to the particular job in question. Obligations under the WFEA may be broader than those under the ADA, and the City will comply with both laws.

SECTION 5-18 AMERICANS WITH DISABILITIES ACT (ADA), TITLE II.

Title II of the American's with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. Therefore, this policy outlines the provisions of Title II of the ADA, and the rights and obligations of citizens and the City under federal and state law.

It is the policy of the City of Cedarburg to ensure that all citizens have an equal opportunity to participate in and receive the benefits of the services, programs, or activities of the City. This will be done in the most integrated setting appropriate to the needs of the qualified individual with a disability. Only where it is absolutely necessary will the City provide services, programs, or activities separately to persons with disabilities. No qualified individual with a disability shall, on the basis of said disability, be screened out of a service, program or activity. Nor, shall any individual be excluded from participation in or denied the benefits of said services, programs or activities, because of their disability.

The City is required to ensure all programs and activities are accessible, but are not required to make each and every facility accessible, as long as all programs are accessible (see "*Transition Plans*"). There are several means by which the City can make its programs readily accessible to and usable by disabled individuals, including:

- Redesigning equipment;
- Reassigning services or programs to alternative, accessible buildings;
- Assigning aides to beneficiaries;
- Providing auxiliary aids;
- Making home visits; or
- Altering existing facilities or building new facilities

The City is required to reasonably modify City-wide policies, practices or procedures to avoid discrimination. However, modifications may not be required where a particular modification would fundamentally alter the nature of the service, program or activity.

- (a) **Reasonable Accommodation.** If a reasonable accommodation is necessary to participate in the services provided by the City, please contact your immediate supervisor or the City Administrator. Every attempt will be made to accommodate the request.
- (1) Due Process. The following procedure is intended to protect the rights of interested individuals to meet appropriate due process standards and to assure that the City complies with the Americans with Disabilities Act (ADA) and the implementation regulations.
- (2) Complaint Procedure. If anyone utilizing the City's facilities, programs, services or activities believes they have been discriminated against on the basis of a disability in connection with access to any City facility or programs, services or activities, they have the right to file a complaint. Complaints should be addressed to the City Administrator (262-375-7606), who has been designated to coordinate ADA compliance efforts.
- (i) A complaint should be filed in writing, contain the address of the person filing it, and briefly describe the alleged violation.

- (ii) A complaint should be filed within 30 days.
 - (iii) An investigation, as appropriate, shall follow a complaint filing. The investigation shall be conducted by City Administrator, and afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.
 - (iv) A written response to the complaint, and a description of the resolution, if any, shall be issued by City Administrator and a copy forwarded to the complainant no later than 30 days after its filing.
 - (v) The Clerk's Office maintains the files and records of all ADA complaints filed with the City.
 - (vi) The complainant can request a reconsideration of the case in instances where they are dissatisfied with the resolution. The request for reconsideration should be made within 60 days the City Administrator.
 - (vii) The right of an individual to a prompt and equitable resolution of the filed with the City shall not be impaired by the individual's pursuit of other remedies such as the filing of an ADA complaint with the responsible federal department or agency.
- (b) **Self Evaluation.** The City is required to conduct a *self-evaluation*, which includes a comprehensive review of current policies and practices (formal written policies and procedures and actual operating practices). Any policy or practice that does not comply with the requirements of Title II must be identified and modified to bring the policy or practice into compliance. Individuals must be provided the opportunity to submit comments pertaining to the City's effort.
- (c) **Transition Plan.** When structural modifications to facilities are necessary in order to make a program, service, or activity accessible to people with disabilities, are required to develop a facility transition plan which must include:
- The physical barriers which limit access to and use of the programs, services, and activities for people with disabilities, including communications features which are structural in nature;
 - A detailed description of how the City plans to make the facilities accessible;
 - The schedule for barrier removal;
 - A yearly schedule, if the transition plan is more than one year long; and
 - The name of the individual who is responsible for implementing the transition plan;

The City is required to maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. This includes locked accessible doors, elevators, accessible routes which are obstructed by parked cars or furniture, and complaint signage which is obstructed from.

SECTION 6

Separation of Employment

SECTION 6-1 RESIGNATION/RETIREMENT.

- (a) An employee shall file a written letter of resignation to his supervisor and the City Administrator stating the reason(s) and the effective date of the resignation. Employees shall provide written notice a minimum of ten (10) working days prior to their termination date. Employees shall provide written notice a minimum of twenty (20) working days prior to their retirement. Retirement is defined as being qualified for the Wisconsin Retirement System. Failure to provide the required number of days will result in a forfeiture of the sick leave payout.
- (b) The workdays required for proper notice shall exclude vacation and holidays and any other paid time off. Failure to provide the proper notice of resignation as identified in this section shall cause the employee's personnel record to indicate that the employee did not leave the City in good standing. The City retains the right to waive the resignation notice requirement if it is in the best interest of the City to do so. If sufficient notice is not given, the employee will not be entitled to accrued vacation pay as wages.

SECTION 6-2 JOB ABANDONMENT

Employees who fail to report to work or contact their supervisor for three (3) consecutive work days or employees who fail to return from approved leaves of absence (i.e., FMLA, worker's compensation, unpaid leave of absence) on a specified return date without prior notice to their supervisor shall be considered to have abandoned their job without notice. Supervisors shall notify the Payroll Officer at the expiration of the third (3rd) work day and initiate the paper work to terminate the employee. Employees who abandon their jobs are ineligible to receive accrued benefits and are ineligible for rehire.

SECTION 6-3 DISPOSITION OF THE FINAL PAYCHECK.

- (a) The final paycheck for employees who have retired, resigned or been dismissed shall be computed and the final earnings directly deposited to the employee's last know depository. The check detail will be mailed to the employee at the address of record, or if the employee prefers, ready to be picked up in the City Treasurer's Office only on the regular scheduled pay day following the termination date. The final paycheck shall also include payments for accrued wages.
- (b) All deductions for amounts owed by the employee to the City have been computed and deducted from the final paycheck.

SECTION 6-4 FINAL COMPENSATION UPON DEATH OF AN EMPLOYEE.

If an employee dies, the City may pay all wages due the employee to his or her spouse, children, parent, brother, sister or creditors (in that order of priority) after at least five (5) days have passed after death and before probate proceedings have commenced. In any case, the wages become due

and payable upon death, and if the employee's spouse, children or dependent demands them before the employer has voluntarily made payment, the City shall pay them to that person. In either case, payment constitutes a full discharge of the employer's obligation. The amount of wages due includes unused vacation allowances.

SECTION 6-5 PROCEDURE OF DEPARTURE

(a) The Department Head shall notify the Payroll Officer immediately when they know an employee has resigned or plans to retire. The Department Head will conduct the check-out and return of property, utilizing the Exit Interview Form. The form should be forwarded to the Payroll Officer. The departing employee will be given a copy of the Exit Interview Form and informed that a COBRA notice will be sent directly to them from the City's third party administrator.

(1) Return of Property.

All items which have been issued to an employee during the course of employment remain the property of the City. At the time of an employee's separation, whether voluntary or involuntary, all City documents and other items of City property in the employee's possession (i.e. cell phones, identification cards, uniforms, keys, key cards, credit card or procurement cards, tools and equipment) must be returned on or before the employee's last of work. It will be supervisor's responsibility to ensure that all City property is returned.

(2) Exit Interview.

An exit interview will be conducted by the Payroll Officer for all separations of employment for regular and part-time employees. This interview is intended to be beneficial for both the City and the departing employee. During the interview, an exit questionnaire form will be provided to the employee by the Payroll Officer to be completed by the employee, and the employee will have the opportunity to ask questions, discuss any areas of concern, and receive answers to specific questions. It is the intention of the City to obtain information that will help in recruitment and retention efforts.

The Payroll Officer will provide all completed exit interview questionnaires to the City Administrator, or to the Mayor if deemed necessary. The Payroll Officer will verify that the department check out process has occurred, ensure the exit questionnaire is completed, process any benefit payout information, and distribute the required information to the departing employee.

The City reserves the right to change, add, delete or suspend any of its policies and procedures stated herein, in whole or in part, at any time, with or without notice.

**CITY OF CEDARBURG
TRANSFER LIST
1/10/19-1/23/19**

| Date | Amount | Transfer to |
|------------------------------|---------------------|--|
| PWSB CHECKING ACCOUNT | | |
| 1/10/2019 | \$10,000.00 | PWSB Payroll |
| 1/11/2019 | \$1,897.50 | Light & Water-December usage |
| 1/16/2019 | \$11,201.29 | State of Wisconsin-December sales tax |
| 1/16/2019 | \$193,000.00 | PWSB Payroll |
| 1/16/2019 | \$2,488.37 | ICMA-contributions for 12/30/18-1/12/19 |
| 1/16/2019 | \$4,415.51 | North Shore Bank-contributions for 12/30/18-1/12/19 |
| 1/16/2019 | \$6,105.31 | Health Savings Accounts-contributions for 12/30/18-1/12/19 |
| 1/16/2019 | \$440.00 | Police Union-contributions for 12/30/19-1/12/19 |
| 1/17/2019 | \$1,477.82 | State of Wisconsin-child support payment |
| 1/18/2019 | \$539.99 | Light & Water-December usage |
| | <u>\$231,565.79</u> | |

PWSB PAYROLL CHECKING ACCOUNT

| | | |
|-----------|---------------------|--|
| 1/11/2019 | \$8,176.15 | Payroll for EMS 4th Quarter 2018 |
| 1/11/2019 | \$1,835.93 | Payroll taxes for EMS 4th Quarter 2018 |
| 1/18/2019 | \$135,583.92 | Payroll for 12/30/18-1/12/19 |
| 1/18/2019 | \$57,140.37 | Payroll taxes for 12/30/19-1/12/19 |
| | <u>\$202,736.37</u> | |

PWSB MONEY MARKET ACCOUNT

| | | |
|-----------|----------------|----------------|
| 1/15/2019 | \$7,879,815.57 | Tax Settlement |
|-----------|----------------|----------------|

BMO HARRIS TEMPORARY INVESTMENT ACCOUNT

| | | |
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| 1/15/2019 | \$911,164.77 | Tax Settlement |
|-----------|--------------|----------------|

CITY OF CEDARBURG

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111300 PWSB Checking

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|------------------|-----------|--|-------------------|----------------------------------|--------------------------|
| Paid Chk# 030651 | 1/7/2019 | SOUTHEAST PARK & REC. COUNCIL | | | |
| E 100-555510-320 | | PROF PUBLICATIONS AND DU | \$35.00 | MEMBERSHIP REC - SEPRC 2019 DUES | |
| | | Total SOUTHEAST PARK & REC. COUNCIL | \$35.00 | | |
| Paid Chk# 030705 | 1/11/2019 | ADP, LLC. | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$442.94 | 527498363 | TREAS - PAYROLL SERVICES |
| | | Total ADP, LLC. | \$442.94 | | |
| Paid Chk# 030706 | 1/11/2019 | AMISH CRAFTSMEN GUILD II | | | |
| G 240-212000 | | ACCOUNTS PAYABLE | \$3,686.39 | JAN2019 | POOL - PICNIC TABLE |
| | | Total AMISH CRAFTSMEN GUILD II | \$3,686.39 | | |
| Paid Chk# 030707 | 1/11/2019 | AT&T | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$194.44 | 414Z45632012 | PD - TELEPHONE |
| | | Total AT&T | \$194.44 | | |
| Paid Chk# 030708 | 1/11/2019 | ATLAS BUSINESS SOLUTIONS INC | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$576.00 | INV291740 | PD - LICENSES |
| | | Total ATLAS BUSINESS SOLUTIONS INC | \$576.00 | | |
| Paid Chk# 030709 | 1/11/2019 | BROWN, KIRK J | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$62.99 | REFUND | REFUND PROPERTY TAX |
| | | Total BROWN, KIRK J | \$62.99 | | |
| Paid Chk# 030710 | 1/11/2019 | CINTAS CORPORATION | | | |
| G 260-212000 | | ACCOUNTS PAYABLE | \$36.56 | 184198391 | LIBR - SUPPLIES |
| | | Total CINTAS CORPORATION | \$36.56 | | |
| Paid Chk# 030711 | 1/11/2019 | DANNY FRIESS/CHAMBER OF COMMER | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$50.00 | AWARD | EMPREL - SERVICE AWARD |
| | | Total DANNY FRIESS/CHAMBER OF COMMER | \$50.00 | | |
| Paid Chk# 030712 | 1/11/2019 | FIVE CORNERS DODGE | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$761.37 | 48446 | PD - CAR #2 |
| | | Total FIVE CORNERS DODGE | \$761.37 | | |
| Paid Chk# 030713 | 1/11/2019 | FRANK, THOMAS | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$74.02 | REFUND | REFUND PROPERTY TAX |
| | | Total FRANK, THOMAS | \$74.02 | | |
| Paid Chk# 030714 | 1/11/2019 | GFOA | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$280.00 | CKREQ | TREAS - GFOA AWARD |
| | | Total GFOA | \$280.00 | | |
| Paid Chk# 030715 | 1/11/2019 | GUTH, GARY R | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$52.05 | REFUND | PROPERTY TAX REFUND |
| | | Total GUTH, GARY R | \$52.05 | | |

CITY OF CEDARBURG

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| Paid Chk# 030716 | 1/11/2019 | GUTHRIE & FREY | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$75.00 | 0166042 | COMPLEX - 2019 RENTAL |
| | | Total GUTHRIE & FREY | \$75.00 | | |
| Paid Chk# 030717 | 1/11/2019 | HARRINGTON, MICHAEL G | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$51.58 | REFUND | PROPERTY TAX REFUND |
| | | Total HARRINGTON, MICHAEL G | \$51.58 | | |
| Paid Chk# 030718 | 1/11/2019 | HERBERT M HILLMAN TRUST | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$97.39 | REFUND | PROPERTY TAX REFUND |
| | | Total HERBERT M HILLMAN TRUST | \$97.39 | | |
| Paid Chk# 030719 | 1/11/2019 | HILLGARTNER, RYAN | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$55.00 | REFUND | REFUND APPLIANCE PICK UP |
| | | Total HILLGARTNER, RYAN | \$55.00 | | |
| Paid Chk# 030720 | 1/11/2019 | JACKSON, HUGH A. | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$71.93 | REFUND | REFUND |
| | | Total JACKSON, HUGH A. | \$71.93 | | |
| Paid Chk# 030721 | 1/11/2019 | JANI-KING OF MILWAUKEE/ROYAL F | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$368.00 | MIL01190516 | DPW - JANUARY BILLING |
| | | Total JANI-KING OF MILWAUKEE/ROYAL F | \$368.00 | | |
| Paid Chk# 030722 | 1/11/2019 | KRINGS, DENNIS J | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$29.40 | REFUND | PROPERTY TAX REFUND |
| | | Total KRINGS, DENNIS J | \$29.40 | | |
| Paid Chk# 030723 | 1/11/2019 | LARK UNIFORM OUTFITTERS INC | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$69.39 | 278607 | PD - UNIFORMS |
| G 100-212000 | | ACCOUNTS PAYABLE | \$64.95 | 281559 | PD - UNIFORMS |
| G 100-212000 | | ACCOUNTS PAYABLE | \$46.95 | 281560 | PD - UNIFORMS |
| G 100-212000 | | ACCOUNTS PAYABLE | \$235.90 | 281561 | PD - UNIFORMS |
| | | Total LARK UNIFORM OUTFITTERS INC | \$417.19 | | |
| Paid Chk# 030724 | 1/11/2019 | MANAGERPLUS | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$749.00 | 262-375-76061 | DPW - 2019 SOFTWARE AGREEMENT |
| | | Total MANAGERPLUS | \$749.00 | | |
| Paid Chk# 030725 | 1/11/2019 | MICAT PROPERTIES LLC | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$25.00 | REFUND | REFUND PROPERTY TAX |
| | | Total MICAT PROPERTIES LLC | \$25.00 | | |
| Paid Chk# 030726 | 1/11/2019 | MID-STATES ORGANIZED CRIME | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$150.00 | 93007-1409 | PD - 2019 MEMBERSHIP |
| | | Total MID-STATES ORGANIZED CRIME | \$150.00 | | |
| Paid Chk# 030727 | 1/11/2019 | OLIVER FIONTAR LLC | | | |
| G 350-212000 | | ACCOUNTS PAYABLE | \$16,792.50 | 494 | DRAW #6 |

CITY OF CEDARBURG

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Page 3

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JANUARY 2019

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| | Total | OLIVER FIONTAR LLC | \$16,792.50 | | |
| Paid Chk# | 030728 | 1/11/2019 | | | ORKIN COMMERCIAL SERVICES |
| | G 260-212000 | ACCOUNTS PAYABLE | \$74.00 | 175777362 | LIBR - MAINTENANCE |
| | Total | ORKIN COMMERCIAL SERVICES | \$74.00 | | |
| Paid Chk# | 030729 | 1/11/2019 | | | OWEN S OFFICE SUPPLIES |
| | G 100-212000 | ACCOUNTS PAYABLE | \$29.50 | 27820 | PLAN - SUPPLIES |
| | Total | OWEN S OFFICE SUPPLIES | \$29.50 | | |
| Paid Chk# | 030730 | 1/11/2019 | | | QUILL CORP. |
| | G 100-212000 | ACCOUNTS PAYABLE | \$459.96 | 4032836 | TREAS - SUPPLIES |
| | Total | QUILL CORP. | \$459.96 | | |
| Paid Chk# | 030731 | 1/11/2019 | | | R.A. SMITH NATIONAL |
| | G 100-212000 | ACCOUNTS PAYABLE | \$14,308.12 | 141397 | CEDAR PLACE APTS |
| | Total | R.A. SMITH NATIONAL | \$14,308.12 | | |
| Paid Chk# | 030732 | 1/11/2019 | | | RAMIREZ-ST ONGE, ALETA |
| | G 100-212000 | ACCOUNTS PAYABLE | \$11.56 | REFUND | PROPERTY TAX REFUND |
| | Total | RAMIREZ-ST ONGE, ALETA | \$11.56 | | |
| Paid Chk# | 030733 | 1/11/2019 | | | RIVAS CARPIO, FRANCISCO J |
| | G 100-212000 | ACCOUNTS PAYABLE | \$109.92 | REFUND | PROPERTY TAX REFUND |
| | Total | RIVAS CARPIO, FRANCISCO J | \$109.92 | | |
| Paid Chk# | 030734 | 1/11/2019 | | | SHEBOYGAN CO UW-EXT |
| | G 100-212000 | ACCOUNTS PAYABLE | \$40.00 | REGISTRATIO PARKS - COURSE REGISTRATION | |
| | Total | SHEBOYGAN CO UW-EXT | \$40.00 | | |
| Paid Chk# | 030735 | 1/11/2019 | | | STATE OF WI-DSPS-93086 |
| | G 601-212000 | ACCOUNTS PAYABLE | \$100.00 | 490462 | CWRC - PERMIT TO OPERATE FEE |
| | G 100-212000 | ACCOUNTS PAYABLE | \$50.00 | 490508 | FD - PERMIT TO OPERATE FEE |
| | G 260-212000 | ACCOUNTS PAYABLE | \$100.00 | 490508 | LIBR - PERMIT TO OPERATE FEE |
| | Total | STATE OF WI-DSPS-93086 | \$250.00 | | |
| Paid Chk# | 030736 | 1/11/2019 | | | STREICHER S POLICE EQUIPMENT |
| | G 100-212000 | ACCOUNTS PAYABLE | \$156.98 | 11347348 | PD - SUPPLIES |
| | G 100-212000 | ACCOUNTS PAYABLE | \$39.99 | 11347349 | PD - SUPPLIES |
| | Total | STREICHER S POLICE EQUIPMENT | \$196.97 | | |
| Paid Chk# | 030737 | 1/11/2019 | | | UNIFIRST CORPORATION |
| | G 601-212000 | ACCOUNTS PAYABLE | \$51.45 | 0961051458 | CWRC - EQUIPMENT |
| | G 100-212000 | ACCOUNTS PAYABLE | \$44.01 | 0961051462 | DPW - UNIFORMS |
| | Total | UNIFIRST CORPORATION | \$95.46 | | |
| Paid Chk# | 030738 | 1/11/2019 | | | VERMONT SYSTEMS INC. |
| | G 240-212000 | ACCOUNTS PAYABLE | \$1,476.00 | 61052 | POOL - 2019 SERVICES |
| | G 220-212000 | ACCOUNTS PAYABLE | \$2,879.64 | 61053 | REC - 2019 SERVICES |

CITY OF CEDARBURG

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JANUARY 2019

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| Total VERMONT SYSTEMS INC. | | \$4,355.64 | | |
| Paid Chk# | 030739 | 1/11/2019 | VOIGT LIVING TRUST | |
| G 100-212000 | ACCOUNTS PAYABLE | \$50.00 | REFUND | PROPERTY TAX REFUND |
| Total VOIGT LIVING TRUST | | \$50.00 | | |
| Paid Chk# | 030740 | 1/11/2019 | VOLLRATH RECOCABLE TRUST | |
| G 100-212000 | ACCOUNTS PAYABLE | \$730.06 | REFUND | PROPERTY TAX REFUND |
| Total VOLLRATH RECOCABLE TRUST | | \$730.06 | | |
| Paid Chk# | 030741 | 1/11/2019 | WASTE MANAGEMENT OF WI-MN | |
| G 100-212000 | ACCOUNTS PAYABLE | \$2,357.23 | 0055233-2286- | DPW - MSW |
| Total WASTE MANAGEMENT OF WI-MN | | \$2,357.23 | | |
| Paid Chk# | 030742 | 1/11/2019 | WILDE, CHRISTOPHER D | |
| G 100-212000 | ACCOUNTS PAYABLE | \$9.63 | REFUND | PROPERTY TAX REFUND |
| Total WILDE, CHRISTOPHER D | | \$9.63 | | |
| Paid Chk# | 030743 | 1/11/2019 | WODA, CAROLYN | |
| G 100-212000 | ACCOUNTS PAYABLE | \$48.12 | REFUND | REFUND PROPERTY TAX |
| Total WODA, CAROLYN | | \$48.12 | | |
| Paid Chk# | 030744 | 1/11/2019 | WYMORE, JASON H | |
| G 100-212000 | ACCOUNTS PAYABLE | \$11.34 | REFUND | PROPERTY TAX REFUND |
| Total WYMORE, JASON H | | \$11.34 | | |
| Paid Chk# | 030745 | 1/11/2019 | YOUNG, JOSEPH M | |
| G 100-212000 | ACCOUNTS PAYABLE | \$58.74 | REFUND | PROPERTY TAX REFUND |
| Total YOUNG, JOSEPH M | | \$58.74 | | |
| Paid Chk# | 030772 | 1/18/2019 | ADAPTOR INC. | |
| G 601-212000 | ACCOUNTS PAYABLE | \$455.00 | 32959 | CWRC - SUPPLIES |
| Total ADAPTOR INC. | | \$455.00 | | |
| Paid Chk# | 030773 | 1/18/2019 | ASSESSMENT TECHNOLOGIES, LLC | |
| G 100-212000 | ACCOUNTS PAYABLE | \$1,869.35 | 8017 | ASSESSOR - 2019 TECH LICENSE |
| Total ASSESSMENT TECHNOLOGIES, LLC | | \$1,869.35 | | |
| Paid Chk# | 030774 | 1/18/2019 | BEYER S HARDWARE STORE | |
| G 220-212000 | ACCOUNTS PAYABLE | \$33.29 | 145187 | REC - SUPPLIES |
| G 100-212000 | ACCOUNTS PAYABLE | \$2.51 | 145193 | FOREST - SUPPLIES |
| G 100-212000 | ACCOUNTS PAYABLE | \$19.01 | 145201 | EM - SUPPLIES |
| G 100-212000 | ACCOUNTS PAYABLE | \$9.25 | 145219 | EM - SUPPLIES |
| G 100-212000 | ACCOUNTS PAYABLE | \$35.55 | 145250 | COMPLEX - SUPPLIES |
| G 100-212000 | ACCOUNTS PAYABLE | \$24.79 | 145282 | COMPLEX - SUPPLIES |
| G 260-212000 | ACCOUNTS PAYABLE | \$3.14 | 145286 | LIBR - SUPPLIES |
| G 601-212000 | ACCOUNTS PAYABLE | \$35.07 | 145339 | CWRC - SUPPLIES |
| G 100-212000 | ACCOUNTS PAYABLE | \$31.81 | 145369 | COMPLEX - SUPPLIES |
| G 100-212000 | ACCOUNTS PAYABLE | \$15.99 | 145371 | EM - SUPPLIES |

CITY OF CEDARBURG

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JANUARY 2019

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| G 601-212000 | ACCOUNTS PAYABLE | \$5.92 | 145410 | CWRC - SUPPLIES |
| Total BEYER S HARDWARE STORE | | \$216.33 | | |
| Paid Chk# 030775 | 1/18/2019 | BOND TRUST SERVICES | | |
| G 350-212000 | ACCOUNTS PAYABLE | \$400.00 | 47962 | PAYING AGENT FEE |
| Total BOND TRUST SERVICES | | \$400.00 | | |
| Paid Chk# 030776 | 1/18/2019 | BUBLITZ CREATIVE | | |
| G 260-212000 | ACCOUNTS PAYABLE | \$75.00 | 3812 | LIBR - TECH |
| Total BUBLITZ CREATIVE | | \$75.00 | | |
| Paid Chk# 030777 | 1/18/2019 | BURGHARDT SPORTING GOODS | | |
| G 220-212000 | ACCOUNTS PAYABLE | \$160.00 | BBL005533 | POMS - UNIFORMS |
| Total BURGHARDT SPORTING GOODS | | \$160.00 | | |
| Paid Chk# 030778 | 1/18/2019 | COMPLETE OFFICE OF WISCONSIN | | |
| G 100-212000 | ACCOUNTS PAYABLE | \$195.00 | 1883 | FD - COPY PAPER |
| G 100-212000 | ACCOUNTS PAYABLE | \$39.04 | 9207 | ASSESSOR - SUPPLIES |
| G 100-212000 | ACCOUNTS PAYABLE | \$52.16 | 9207 | ENG - SUPPLIES |
| Total COMPLETE OFFICE OF WISCONSIN | | \$286.20 | | |
| Paid Chk# 030779 | 1/18/2019 | CONLEY MEDIA, LLC | | |
| G 100-212000 | ACCOUNTS PAYABLE | \$94.00 | 2054522 | REC - SUBSCRIPTION |
| Total CONLEY MEDIA, LLC | | \$94.00 | | |
| Paid Chk# 030780 | 1/18/2019 | EGELHOFF LAWNMOWER SERVICE | | |
| G 100-212000 | ACCOUNTS PAYABLE | \$67.75 | 250384 | FOR - PARTS |
| Total EGELHOFF LAWNMOWER SERVICE | | \$67.75 | | |
| Paid Chk# 030781 | 1/18/2019 | EMC INSURANCE COMPANIES | | |
| G 700-212000 | ACCOUNTS PAYABLE | \$26,365.00 | D-95080064 | 2019 PROPERTY INSURANCE |
| Total EMC INSURANCE COMPANIES | | \$26,365.00 | | |
| Paid Chk# 030782 | 1/18/2019 | ENGLEHART, CLAIRE | | |
| G 220-212000 | ACCOUNTS PAYABLE | \$70.00 | REFUND | REC - REFUND CANCELLED CLASS |
| Total ENGLEHART, CLAIRE | | \$70.00 | | |
| Paid Chk# 030783 | 1/18/2019 | FIVE CORNERS DODGE | | |
| G 100-212000 | ACCOUNTS PAYABLE | \$85.89 | 48603 | PD - CAR#8 |
| G 100-212000 | ACCOUNTS PAYABLE | \$430.65 | 48696 | PD - CAR#6 |
| Total FIVE CORNERS DODGE | | \$516.54 | | |
| Paid Chk# 030784 | 1/18/2019 | FORESTRY SUPPLIERS | | |
| G 100-212000 | ACCOUNTS PAYABLE | \$64.50 | 459532-00 | FOR - SUPPLIES |
| Total FORESTRY SUPPLIERS | | \$64.50 | | |
| Paid Chk# 030785 | 1/18/2019 | GFOA | | |
| G 100-212000 | ACCOUNTS PAYABLE | \$190.00 | | MEMBERSHIP TREAS - 2019 DUES |
| Total GFOA | | \$190.00 | | |

CITY OF CEDARBURG

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JANUARY 2019

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|------------------|-----------|-----------------------------------|------------|------------|--|
| Paid Chk# 030786 | 1/18/2019 | GH WIRTH INC | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$1,137.39 | REFUND | PROPERTY TAX REFUND |
| | | Total GH WIRTH INC | \$1,137.39 | | |
| Paid Chk# 030787 | 1/18/2019 | GRACEFFA, JADA | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$1.42 | REFUND | PROPERTY TAX REFUND |
| | | Total GRACEFFA, JADA | \$1.42 | | |
| Paid Chk# 030788 | 1/18/2019 | GRAINGER | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$5.93 | 9049026868 | COMPLEX - SUPPLIES |
| | | Total GRAINGER | \$5.93 | | |
| Paid Chk# 030789 | 1/18/2019 | HARTFORD POLICE DEPT | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$70.00 | CKREQ | PD - TRAINING/MCNERNEY |
| G 100-212000 | | ACCOUNTS PAYABLE | \$60.00 | CKREQ | PD - TRAINING/KELL |
| | | Total HARTFORD POLICE DEPT | \$130.00 | | |
| Paid Chk# 030790 | 1/18/2019 | HINZ, GREGREY W | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$3,319.43 | REFUND | PROPERTY TAX REFUND |
| | | Total HINZ, GREGREY W | \$3,319.43 | | |
| Paid Chk# 030791 | 1/18/2019 | JAMES IMAGING SYSTEMS, INC. | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$307.75 | 24043121 | TECH - COPIER 1ST FLOOR |
| G 100-212000 | | ACCOUNTS PAYABLE | \$241.15 | 24043121 | TECH - COPIER 2ND FLOOR |
| G 100-212000 | | ACCOUNTS PAYABLE | \$348.90 | 24043121 | REC - COPIER |
| | | Total JAMES IMAGING SYSTEMS, INC. | \$897.80 | | |
| Paid Chk# 030792 | 1/18/2019 | JOE JACOBS | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$450.00 | 19-001 | BI - JAN ELEC CONTRACTOR |
| | | Total JOE JACOBS | \$450.00 | | |
| Paid Chk# 030793 | 1/18/2019 | JOHNSON CONTROLS | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$6.31 | 31718438 | BI - JANUARY 2019 SERVICE CHG |
| | | Total JOHNSON CONTROLS | \$6.31 | | |
| Paid Chk# 030794 | 1/18/2019 | KALAHARI RESORT | | | |
| G 601-212000 | | ACCOUNTS PAYABLE | \$104.00 | RESERVATIO | CWRC - 2019 MIDWEST W&W EXPO |
| | | Total KALAHARI RESORT | \$104.00 | | |
| Paid Chk# 030795 | 1/18/2019 | KOEPKE, KRISTINE | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$55.00 | REFUND | REFUND APPLIANCE PICK UP |
| | | Total KOEPKE, KRISTINE | \$55.00 | | |
| Paid Chk# 030796 | 1/18/2019 | LAROSA LANDSCAPE COMPANY | | | |
| G 260-212000 | | ACCOUNTS PAYABLE | \$217.53 | 68641 | LIBR - MAINTENANCE |
| | | Total LAROSA LANDSCAPE COMPANY | \$217.53 | | |
| Paid Chk# 030797 | 1/18/2019 | LEAGUE OF WI.MUNICIPALITIES | | | |
| G 400-212000 | | ACCOUNTS PAYABLE | \$400.00 | MEMBERSHIP | 2019 LEAGUE STORM WATER GROUP MEMBERSHIP |

CITY OF CEDARBURG

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| Total | LEAGUE OF WI.MUNICIPALITIES | \$400.00 | | |
| Paid Chk# | 030798 1/18/2019 | | | LENOX, KARIS |
| G | 220-212000 ACCOUNTS PAYABLE | \$115.00 | REFUND | REC - REFUND CANCELLED CLASS |
| | Total LENOX, KARIS | \$115.00 | | |
| Paid Chk# | 030799 1/18/2019 | | | LIGHT & WATER |
| G | 601-212000 ACCOUNTS PAYABLE | \$292.50 | 007194 | CWRC - MEMBERSHIP |
| G | 601-212000 ACCOUNTS PAYABLE | \$10,555.06 | 007196 | CWRC - JANUARY SEWERAGE |
| G | 100-212000 ACCOUNTS PAYABLE | \$28,765.36 | IMPACT FEES | CWRC - MEMBERSHIP |
| | Total LIGHT & WATER | \$39,612.92 | | |
| Paid Chk# | 030800 1/18/2019 | | | LONG, MARCIE |
| G | 220-212000 ACCOUNTS PAYABLE | \$115.00 | REFUND | REC- REFUND CANCELLED CLASS |
| | Total LONG, MARCIE | \$115.00 | | |
| Paid Chk# | 030801 1/18/2019 | | | MALICKI, KIMBERLY A. |
| G | 100-212000 ACCOUNTS PAYABLE | \$57.55 | REFUND | PROPERTY TAX REFUND |
| | Total MALICKI, KIMBERLY A. | \$57.55 | | |
| Paid Chk# | 030802 1/18/2019 | | | MASTER PRINTWEAR |
| G | 220-212000 ACCOUNTS PAYABLE | \$2,326.50 | 4378 | POM S- TANKS |
| G | 220-212000 ACCOUNTS PAYABLE | \$729.35 | 4410 | REC- SOLAR REC SHIRTS |
| | Total MASTER PRINTWEAR | \$3,055.85 | | |
| Paid Chk# | 030803 1/18/2019 | | | MOEGENBURG BUILDERS INC. |
| G | 100-212000 ACCOUNTS PAYABLE | \$110.00 | JAN2019 | COMPLEX - JAN WINDOW CLEANING |
| | Total MOEGENBURG BUILDERS INC. | \$110.00 | | |
| Paid Chk# | 030804 1/18/2019 | | | MONARCH LIBRARY SYSTEM |
| G | 260-212000 ACCOUNTS PAYABLE | \$14,860.11 | 414485 | LIBR - 2019 SHARED SVCS |
| G | 260-212000 ACCOUNTS PAYABLE | \$432.00 | 414516 | LIBR - 2019 BOOKPAGES |
| | Total MONARCH LIBRARY SYSTEM | \$15,292.11 | | |
| Paid Chk# | 030805 1/18/2019 | | | NASSCO, INC. |
| G | 260-212000 ACCOUNTS PAYABLE | \$498.89 | S2420645.001 | LIBR - SUPPLIES |
| | Total NASSCO, INC. | \$498.89 | | |
| Paid Chk# | 030806 1/18/2019 | | | NORTH CENTRAL LABORATORIES |
| G | 601-212000 ACCOUNTS PAYABLE | \$178.65 | 417336 | CWRC - SUPPLIES |
| | Total NORTH CENTRAL LABORATORIES | \$178.65 | | |
| Paid Chk# | 030807 1/18/2019 | | | OLSEN S PIGGLY WIGGLY |
| G | 260-212000 ACCOUNTS PAYABLE | \$27.66 | 36359 | LIBR - PROGRAM SUPPLIES |
| | Total OLSEN S PIGGLY WIGGLY | \$27.66 | | |
| Paid Chk# | 030808 1/18/2019 | | | ONTECH SYSTEMS, INC |
| G | 100-212000 ACCOUNTS PAYABLE | \$3,003.00 | 38895 | TECH - 2019 SYSTEM MONITORING |
| | Total ONTECH SYSTEMS, INC | \$3,003.00 | | |

CITY OF CEDARBURG

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JANUARY 2019

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| Paid Chk# 030809 | 1/18/2019 | OUT & OUT CATERING | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$75.88 | CATERING | SRCTR - 2019 SPECIAL EVENTS |
| | | Total OUT & OUT CATERING | \$75.88 | | |
| Paid Chk# 030810 | 1/18/2019 | OWEN S OFFICE SUPPLIES | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$20.15 | 27812 | FOR - REPAIR PARTS |
| | | Total OWEN S OFFICE SUPPLIES | \$20.15 | | |
| Paid Chk# 030811 | 1/18/2019 | OZAUKEE COUNTY REGISTER OF | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$30.00 | CKREQ | CLERKS - RECORDING FEE |
| | | Total OZAUKEE COUNTY REGISTER OF | \$30.00 | | |
| Paid Chk# 030812 | 1/18/2019 | PACE ANALYTICAL SERVICES, INC. | | | |
| G 601-212000 | | ACCOUNTS PAYABLE | \$21.00 | 1940061335 | CWRC - TESTING |
| | | Total PACE ANALYTICAL SERVICES, INC. | \$21.00 | | |
| Paid Chk# 030813 | 1/18/2019 | PARDO, MARCO A. | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$8,317.88 | REFUND | PROPERTY TAX REFUND |
| | | Total PARDO, MARCO A. | \$8,317.88 | | |
| Paid Chk# 030814 | 1/18/2019 | PITNEY BOWES GLOBAL FINANCIAL | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$112.51 | 3307916180 | CLERKS - REPAIR |
| | | Total PITNEY BOWES GLOBAL FINANCIAL | \$112.51 | | |
| Paid Chk# 030815 | 1/18/2019 | PRLTD. KALEIDOSCOPIES TO YOU | | | |
| G 260-212000 | | ACCOUNTS PAYABLE | \$77.81 | CH19010K1 | LIBR - KITS |
| | | Total PRLTD. KALEIDOSCOPIES TO YOU | \$77.81 | | |
| Paid Chk# 030816 | 1/18/2019 | R.A. SMITH NATIONAL | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$2,646.14 | 141536 | THE GLEN AT CEDAR CREEK - INSPECTION |
| | | Total R.A. SMITH NATIONAL | \$2,646.14 | | |
| Paid Chk# 030817 | 1/18/2019 | STARNET TECHNOLOGIES | | | |
| G 601-212000 | | ACCOUNTS PAYABLE | \$780.00 | 0091029-IN | CWRC - DATA CHGS |
| | | Total STARNET TECHNOLOGIES | \$780.00 | | |
| Paid Chk# 030818 | 1/18/2019 | TIME WARNER CABLE-PO BOX 4639 | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$1,026.50 | 702696601011 | CH - INTERNET |
| G 240-212000 | | ACCOUNTS PAYABLE | \$134.98 | 709737801010 | POOL - INTERNET |
| G 100-212000 | | ACCOUNTS PAYABLE | \$410.51 | 709872301010 | POOL - INTERNET |
| | | Total TIME WARNER CABLE-PO BOX 4639 | \$1,571.99 | | |
| Paid Chk# 030819 | 1/18/2019 | TIRES UNLIMITED AUTOMOTIVE | | | |
| G 100-212000 | | ACCOUNTS PAYABLE | \$570.20 | 10296 | TIRES - 2014 FORD INTERSEPTOR |
| | | Total TIRES UNLIMITED AUTOMOTIVE | \$570.20 | | |
| Paid Chk# 030820 | 1/18/2019 | UNIFIRST CORPORATION | | | |
| G 601-212000 | | ACCOUNTS PAYABLE | \$48.35 | 0961052587 | CWRC - EQUIPMENT |

CITY OF CEDARBURG

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Total UNIFIRST CORPORATION \$48.35

Paid Chk# 030821 1/18/2019 USA BLUEBOOK

G 601-212000 ACCOUNTS PAYABLE \$339.95 775869 CWRC - SUPPLIES

G 601-212000 ACCOUNTS PAYABLE \$419.51 776372 CWRC - TESTS

Total USA BLUEBOOK \$759.46

Paid Chk# 030822 1/18/2019 VALU RITE CORPORATION

G 100-212000 ACCOUNTS PAYABLE \$1,125.00 CKREQ ASSESSOR - JAN CONTRACT PYMT

Total VALU RITE CORPORATION \$1,125.00

Paid Chk# 030823 1/18/2019 VEY, DORIS M.

G 100-212000 ACCOUNTS PAYABLE \$216.28 REFUND PROPERTY TAX REFUND

Total VEY, DORIS M. \$216.28

Paid Chk# 030824 1/18/2019 WELLS, BONNIE L.

G 100-212000 ACCOUNTS PAYABLE \$1.35 REFUND PROPERTY TAX REFUND

Total WELLS, BONNIE L. \$1.35

Paid Chk# 030825 1/18/2019 WIL-KIL PEST CONTROL

G 100-212000 ACCOUNTS PAYABLE \$46.00 3549252 COMPLEX - JANUARY SERVICE

Total WIL-KIL PEST CONTROL \$46.00

111300 PWSB Checking \$164,371.11

Fund Summary

111300 PWSB Checking

100 GENERAL FUND \$78,898.30

220 RECREATION PROGRAMS FUND \$6,428.78

240 SWIMMING POOL FUND \$5,297.37

260 LIBRARY FUND \$16,402.70

350 TIF DISTRICT FUND #4 \$17,192.50

400 CAPITAL IMPROVEMENTS FUND \$400.00

601 WATER RECYCLING CENTER \$13,386.46

700 RISK MANAGEMENT FUND \$26,365.00

\$164,371.11



City of Cedarburg

City Administrator's Report

January 24, 2019

Department News

The following information is provided to keep the Common Council and staff informed on some of the activities and events of the City. Points of clarification may be addressed during the City Administrator's Report portion of the agenda; however, if discussion of any of these items is necessary, placement on a future Council agenda should be directed.

Engineering & Public Works— The dam projects will go out to bid soon. The Columbia Mills dam will be bid out first, followed by the Woolen Mills dam.

The 2019 Street and Utility project includes Lexington, Aspen, Cambridge, and Willowbrooke, and will also be bid out soon.

Assistant Engineer Wieser is updating City maps.

The Public Works crew performed snow removal on Saturday and clean up on Sunday.

Parks, Recreation & Forestry— Two trucks have been out in the City on a daily basis doing pruning for the past several weeks. Training on the new grapple truck took place this week.

Light & Water— The Light & Water Commission discussed the issue of adding fluoride to the water at its meeting on Monday.

Library— A committee has been formed to begin the Strategic Planning process at the Library.

Due to exam week at the high school the Library saw an increase in the number of students using the Library.

Police— Canine Officer Jake's retirement party was held today.

AT&T will now be the mobile phone provider for the Police Department.

It is anticipated a new police officer will be hired in the next few weeks, pending the outcome of drug testing.

Senior Center— The Senior Center travel show will be held on Tuesday, January 29.

Administrator— Department Heads gave a recap of what occurred in their Departments as well as what is to come in 2019 at the employee meeting on Wednesday morning. The Wellness Tracking system was also presented.

I listened to a webinar on Wednesday regarding the CDBG Close program.

A Personnel Committee meeting will be held on Tuesday, February 5 at 7:00 p.m.

Respectfully submitted,

Christy Mertes
City Administrator/Treasurer