



**CITY OF ELKHORN
COMMON COUNCIL MEETING AGENDA**

August 19, 2019

5:30 p.m.

Council Chambers, City Hall, 9 S. Broad St., Elkhorn, Wisconsin

- 1) **Call to Order**
- 2) **Pledge of Allegiance**
- 3) **Roll Call**
- 4) **Public Comment** *Although the public may speak on any item that is not included on this agenda as a "Public Hearing or Forum", the Council may not respond or discuss the issue brought forward at this time. In accordance with open meeting laws the Council must notice an item on the agenda to allow discussion on that matter. Your comments will be considered and may be placed on a future agenda for further discussion.*
- 5) **Consent Agenda** *(One motion & a second will approve all of the following items listed. Any item may be pulled from the list and handled separately.)*
 - a) Council Meeting Minutes: August 5, 2019
 - b) Committee Meeting Minutes: Legislative & Regulatory August 5, 2019; Financial & Judicial August 12, 2019
 - c) Walworth County Ag Society Temporary Class "B" Beer License for Plaza de Mexico, September 22, 2019 from noon to 10 p.m.
- 6) **Bills Payable**
 - i) Consideration and recommendation to pay
- 7) **Report of City Officers**
 - a) Mayor
 - i) Oath of Office for Officer Emanuel Valadez
 - b) City Administrator
- 8) **Report on Liaison Committee Meetings**
 - a) Fire Advisory
 - b) Library
 - c) Recreation Advisory
 - d) Chamber
 - e) Fire/EMS Advisory Steering
- 9) **Committee Reports**
 - a) Legislative & Regulatory
 - i) Recommendation to approve Class "B" Fermented Malt Beverage/"Class C" Wine License for Brian Taylor, dba Mama T's Italian Eatery, 782 E. Geneva St.
 - b) Financial & Judicial
 - i) Recommendation to renew engineering services contract with Kapur & Associates for two years
 - ii) Recommendation to provide police department exempt employees over-time benefits through April 1, 2020
 - iii) Recommendation to renew City's liability insurance with CVMIC and retain dividends
- 10) **Unfinished Business**
 - a) Matheson Memorial Library Fencing Options

11) **New Business**

- a) Community Development Block Grant Program Close Repayment Agreement
- b) Conditional Use Permit Application for New Beginnings Support Center at 20 N. Church Street

12) **Adjourn into Closed Session** pursuant to Wisconsin Statute 19.85(1)(e) "Deliberating or negotiating 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."

- a) City hall location options

13) **Reconvene into Open Session** for possible action on Closed Session items

14) **Adjourn**

DATED at Elkhorn, Wisconsin, this 16th day of August 2019

Cairie L. Virrueta, City Clerk

Should you have any questions or comments regarding any items on this agenda, please contact the City Clerk's office at 723-2219. Upon reasonable notice to the City Clerk, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services.

CITY OF ELKHORN COMMON COUNCIL
MEETING MINUTES
August 5, 2019
COUNCIL CHAMBERS, 9 S. BROAD ST., ELKHORN, WI 53121

The Common Council meeting was called to order by Mayor Reynolds at 5:30 p.m. in the Council Chambers followed by the Pledge of Allegiance.

ROLL CALL

Present: Mayor Howie Reynolds, Aldermen Tim Shiroda, Frank Boggs, Karel Young, Tom Myrin; Ron Dunwiddie, Scott McClory

Others present: City Administrator Sam Tapson, Attorney Ward Phillips, Finance Director James Heilman, City Clerk Cairie Virrueta, Deputy Clerk Lacey Reynolds, Police Captain Al Brandl, Utility Director John Murphy, DPW Manager Matthew Lindstrom, Fire Chief Rod Smith, Library Director Lisa Selje, Recreation Director Karl Sorvick, other interested persons

PUBLIC COMMENT

None.

MINUTES

Motion (McClory/Young) to approve the minutes of the July 15, 2019 Common Council, July 22, 2019 and July 29, 2019 Committee of the Whole meetings. Voice vote, all approved, motion carried.

REPORT OF CITY OFFICERS

MAYOR'S REPORT

The Mayor read a proclamation for World Breastfeeding Week.

CITY ADMINISTRATOR'S REPORT

Sand Creek Consultants: Proposal recommendation to approve proposal to review DNR record file for former Union Gas remediation site (Sunset Park)

Administrator Tapson said the cost is less than \$2,000 and should be done even if the site is not selected as a location for City Hall. ***Motion (McClory/Boggs) to approve Sand Creek Consultants to review the former Union Gas remediation site in an amount not to exceed \$2,000. Roll call vote: Boggs, yes; Shiroda, yes; Young, yes; Dunwiddie, yes; McClory, yes; Myrin, yes. Motion carried.***

COMMITTEE REPORTS

COMMITTEE OF THE WHOLE

Recommendation to approve Applied Technologies for I&I Mitigation

Mayor Reynolds said the committee interviewed firms and after discussion voted for ATI. ***Motion (Dunwiddie/Boggs) to use Applied Technologies Inc. for the City's I&I mitigation. Voice vote, all approved, motion carried.***

LEGISLATIVE & REGULATORY

"Class A" Liquor/Class "A" Fermented Malt Beverage License for America's Liquor, LLC at 9 N. Lincoln St.

Alderman Young said the committee recommended approval. ***Motion (Myrin/Dunwiddie) to approve the Class A Combination License for America's Liquor. Voice vote, all approved, motion carried.***

PLAN COMMISSION

Request for extension of Conditional Use Permit from New Life of Elkhorn, LP

Administrator Tapson said the project has not materialized yet and the CUP expires in September. The owner of the property, Zoe Makhsous, said she intends to have veterans work at the adult care as caregivers. Attorney Phillips asked if her plans significantly differ from the CUP; she said no and she is not

changing any of it. Makhsous said she might sell the property. Attorney Phillips said the CUP applies to successors and it does not make a difference who the owner is. Alderman Myrin asked why an extension was needed. Makhsous said she thought the project would be at substantial completion at this point but she was surprised when she went by the property and nothing was done. Attorney Phillips asked her when the permit could be applied for and construction started; she said in two weeks. She still needs to work out some issues with the contractor, which is Scherrer. Attorney Phillips said extending the CUP is discretionary and the Council can put conditions on the extension. Alderman Shiroda said he has not heard anything that differs from an extension request the Council recently reviewed and denied and as such, he recommended denial. ***Motion (Young/Shiroda) to deny the request for extension of CUP for New Life of Elkhorn, LP. Voice vote, all approved, motion carried.***

Ordinance to rezone 429 and 431 E. Geneva St. from M-1 to RS-1 (YVSE00009A)

Mayor Reynolds said the Plan Commission supported this unanimously. The sale of the property is conditioned on the rezone, which is something the City has wanted to do for years. Alderman Boggs asked what the new owners plan to do with the property; use it as residential property and live there. Mayor Reynolds said if anything happened to the barn, it could not be rebuilt. ***Motion (Myrin/Boggs) to approve the ordinance to rezone YVSE00009A to RS-1. Voice vote, all approved, motion carried.***

NEW BUSINESS

Change Order No. 4 for new Public Works Facility

DPW Manager Lindstrom said the change order includes deducts for bills paid by the City, such as utility bills. The amount is part of the original allowance for change orders, which will have an available balance of approximately \$11,000 after this order. He expects one more change order to come through. ***Motion (McClory/Young) to approve Change Order No. 4 in the amount of \$5,654.41. Roll call vote: Boggs, yes; Shiroda, yes; Young, yes; Dunwiddie, yes; McClory, yes; Myrin, yes. Motion carried.***

Matheson Memorial Library Fencing

DPW Manager Lindstrom said the property owner north of the library on Wisconsin has complained about car lights shining in his windows. There is only 1' of area so landscaping is not an option, but a fence could be installed. The fence would have vinyl privacy slats and be installed this year by Roth Fence. Alderman McClory was concerned as he frequently sees the slats blown out of the chain-link fence and asked if wood or composite was not an option. DPW Manager Lindstrom said he could get a quote for different fence types. ***Motion (McClory/Dunwiddie) to approve a fence installation and explore other options for fencing. Voice vote, all approved, motion carried.***

ADJOURN TO CLOSED SESSION

Motion (Dunwiddie/Shiroda) to adjourn to closed session pursuant to §19.85(1)(c) "Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercise responsibility." Voice vote, all approved, motion carried to Review City Administrator Contract. Adjourned to closed session at 6:02 p.m.

RECONVENE IN OPEN SESSION

Reconvened in open session at 6:21 p.m. ***Motion (McClory/Shiroda) to approve City Administrator contract as modified. Voice vote, all approved, motion carried.***

ADJOURN

Motion (Dunwiddie/Boggs) to adjourn at 6:22 p.m. Voice vote, all approved, motion carried.

CITY OF ELKHORN
Legislative and Regulatory Committee Minutes
Council Chambers, 9 S. Broad Street, Elkhorn, Wisconsin

August 5, 2019

Legislative and Regulatory Committee was called to order at 4:45 p.m. by Alderman Young followed by Roll Call.

Roll Call

Present: Aldermen Karel Young, Frank Boggs, Ron Dunwiddie

Also present: Alderman Tim Shiroda and Tom Myrin (they should be listed first), Administrator Sam Tapson, City Clerk Cairie Virrueta, Deputy Clerk Lacey Reynolds, Fire Chief Rod Smith, Police Captain Alvin Brandl, Jesus Sandoval, Brian Taylor, Neil Gill and other interested parties

Consider New Alcohol License from Class "B" Fermented Malt Beverage/"Class C" Wine License Application from Brian Taylor dba Mama T's Italian Eatery located at 781 E Geneva St.

City Clerk Virrueta reported the Building Inspector, Fire Chief and Police Department found no issues with the new license. ***Motion (Dunwiddie/Boggs) to recommend approval of the Class "B" Fermented Malt Beverage/"Class C" Wine Licenses. Voice vote, all approved, motion carried.***

Consider "Class A" Liquor License/Class "A" Fermented Malt Beverage License for America's Liquor, LLC located at 9 N Lincoln St agent Jesus Sandoval (currently has a Provisional License)

City Clerk Virrueta reported the Building Inspector, Fire Chief and Police Department found no issues and the applicant is ready to open for business. ***Motion (Dunwiddie/Boggs) to recommend approval of the "Class A" Liquor License/ Class "A" Fermented Malt Beverage License. Voice vote, all approved, motion carried.***

Local business owner request to consider allowing alcohol sales at gasoline convenience stores

City Clerk Virrueta reported on the city's ordinance which restricts Class A alcohol sales to businesses in freestanding buildings or strip malls and does not allow sales in stores or gas stations. Alderman Myrin spoke in regards to the previous vote to keep the ordinance the same which he said was unanimous. Alderman Shiroda stated he agrees with Alderman Myrin to keep the ordinance the way it is. He was concerned that gas stations would not be able to adequately oversee alcohol sales and provide the necessary security. Administrator Tapson said the security requirements by the City would be the same for all businesses with alcohol sales. Clerk Virrueta reminded the committee that gas stations would need to have licensed operators on the premise. Public comment from Neil Gill, who owns the gas station on Hwy 67, and his contractor Joe Kopecky ask to allow Mr Gill's business to sell wine and beer as they said Delavan, Lake Geneva and other municipalities in the county changed their ordinances to allow sales at gas stations and other businesses. Gill said he believes he loses sales due to not being able to sell beer and wine. He plans to remodel his gas station and would like to incorporate alcohol sales. Alderman Dunwiddie asked to table for discussion at a future meeting.

Adjournment

Motion (Boggs/Dunwiddie) to adjourn at 5:09 p.m.

Lacey L. Reynolds
Deputy City Clerk

CITY OF ELKHORN
Finance & Judicial Committee Minutes
First Floor Conference Room, 9 S. Broad Street, Elkhorn, Wisconsin

August 12, 2019

The Finance and Judicial Committee was called to order at 4:30 p.m. by Alderman McClory, followed by roll call.

Roll Call

Present: Aldermen Scott McClory, Tim Shiroda

Also present: City Administrator Sam Tapson, City Clerk Cairie Virrueta, Finance Director James Heilman, Police Chief Joel Christensen, Deputy Clerk Lacey Reynolds, Fire Chief Rod Smith, City Engineer Greg Calhoun, Utility Director John Murphy, Public Works Manager Matthew Lindstrom

Contract Renewal for Engineering Services

Alderman McClory went over the services with Kapur. Alderman Shiroda agreed all the information reviewed looks good. Alderman McClory requested more information in regards to the 3% increase.

Motion (Shiroda/McClory) to recommend sending to the Council for approval. Voice vote, all approved, motion carried.

Consideration of Over-time Exemption for Exempt Employees

City Administrator Tapson went over the current Police Dept. staffing shortage. Under the fair labor standards act, it is permissible to allow for overtime pay for Police Chief Christensen and Captain Brandl to fill overtime vacancies. Alderman McClory asked if this would take overtime away from other staff who would like the opportunity for overtime. Police Chief Christensen said no one is requesting or taking the overtime currently available. Alderman Shiroda asked if this issue will be resolved once more staff is hired, training complete and how long training takes. Alderman McClory asked about the vacant positions, whether there will be a fix anytime soon, to make sure we do not over work the employees or cause a negative budget impact. Police Chief Christensen does not anticipate a fix before the end of 2019, but possibly the end of the 1st quarter 2020. Finance Director Heilman advised to extend through 2020. Administrator Tapson advised to not let the extension go a full year and to extend until the end of the 1st quarter 2020. Alderman McClory agrees to extend until April 1, 2020. ***Motion (Shiroda/McClory) to recommend granting overtime extension until April 1, 2020. Voice vote, all approved, motion carried***

CVMIC Insurance Renewal and Dividends

Alderman McClory said he believes the City should continue the insurance and dividends the way it is now. Finance Director Heilman went over the renewal of liability insurance. Alderman Shiroda asked about the process, how often the City can change the setup, the occurrence of incidents, money the city has saved and how it affects the dividends if there are no claims. Administrator Tapson said the City has not had an incident in 15 years. ***Motion (Shiroda/McClory) to send to Council the renewal at option 1 to retain the funds at a cost of \$17,878 (Shiroda/McClory). Voice vote, all approved, motion carried.***

Adjournment

Motion (McClory/Shiroda) to adjourn at 4:45 p.m. Voice vote, all approved, motion carried.

Lacey L. Reynolds
Deputy City Clerk

**AGREEMENT
BETWEEN
THE STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
AND
City of Elkhorn**

THIS AGREEMENT is made and entered on _____, 2019 (“Effective Date”), by and between the State of Wisconsin, Department of Administration (“Department”), whose principal business address is 101 East Wilson Street, P.O. Box 7970, Madison WI 53707-7970, and City of Elkhorn (“Municipality”), whose address is 9 S. Broad Street, P.O. Box 920, Elkhorn, WI. 53121.

WHEREAS, the Department administers the Community Development Block Grant (“CDBG”) program on behalf of the U.S. Department of Housing and Urban Development (“HUD”); and

WHEREAS, as part of the administration of the CDBG program the Department established, with approval from HUD, the CDBG Revolving Loan Fund for Economic Development (“RLF-ED”) program, pursuant to which the Department provided CDBG funds to units of local government (“UGLG”) to loan to local businesses to undertake CDBG-eligible activities; and

WHEREAS, under the RLF-ED program, when loan recipients made loan payments to UGLGs those UGLGs were permitted to retain such money in a revolving loan fund for future RLF-ED qualifying loans; and

WHEREAS, the Municipality participated in and received funds from the Department pursuant to the RLF-ED program as an UGLG, used such funds to make loans to qualifying businesses, and established a revolving loan fund into which the Municipality deposited loan repayments for the purpose of funding future RLF-ED qualifying loans;

WHEREAS, the Municipality has certified to the Department that the total balance of money in its RLF-ED revolving loan fund is \$1,605,808.17 (“RLF Bank Balance”) and the total value of outstanding loans is \$486,340.02 (“RLF Accounts Receivable”); and

WHEREAS, the Department has received approval from HUD to implement the CDBG-CLOSE program, the purpose of which is to liquidate and closeout outstanding RLF-ED revolving funds held by UGLGs; and

WHEREAS, pursuant to the CDBG-CLOSE program the UGLGs are required to pay to the Department their RLF Bank Balances, the Department will establish RLF Closeout Accounts for each UGLG to be used for certain qualifying projects, and UGLGs will receive credit in their RLF Closeout Accounts in an amount equal to the amount of their remitted RLF Bank Balances; and

WHEREAS, under the CDBG-CLOSE program UGLG’s with outstanding RLF-ED loans have the option to either: 1) immediately pay an amount to the Department equal to their RLF Accounts Receivable and receive credit in an amount equal thereto in their RLF Closeout Account in addition to the credit received for their RLF Bank Balance; or 2) not immediately pay such amount and instead enter into an agreement with the Department to pay such amount over a period of time. UGLG’s that choose the second option will not receive credit in their RLF Closeout Account for an amount equal to their RLF Accounts Receivable; and

WHEREAS, the Municipality has opted not to immediately pay an amount to the Department equal to its RLF Accounts Receivable;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and intending to be legally bound hereby, the parties do hereby agree as follows:

1. Establishment of RLF Accounts Receivable Payment Schedule. The Municipality shall complete and submit a Closeout Report form (attached hereto as **Exhibit A**) no later than either; the date on which it remits its RLF Bank Balance to the Department or January 31, 2021.

2. Payment of RLF Accounts Receivable to the Department. Commencing on the date the Municipality remits its RLF Bank Balance to the Department, on the 15th day of each calendar month the Municipality shall pay to the Department an amount equal to the amounts received by the Municipality under each RLF-ED loan in the preceding calendar month.

3. Late/Insufficient Payment.

- a. In the event that the Department determines that the amount the Municipality paid to the Department in any given month is less than the amount anticipated as reflected in the Closeout Report the Department may send written notice to the Municipality of such discrepancy. Within thirty (30) days of receipt of such notice the Municipality shall either: i) make a payment to the Department in an amount equal to the noted discrepancy; or ii) provide the Department with a written explanation for the discrepancy along with any supporting documentation.
- b. If, after receipt of notice from the Department of a payment discrepancy the Municipality fails to make a payment as set forth in this section or provide a written explanation within the time period provided, then the Municipality's outstanding RLF Accounts Receivable balance shall become immediately due and payable to the Department.
- c. If the Municipality submits to the Department a written explanation for the discrepancy the Department shall review such explanation and may request further information and/or documentation. Upon completion of its review the Department may take the following actions, which shall be conveyed to the Municipality in writing: 1) accept the Municipality's explanation and excuse the payment discrepancy; 2) accept part of the Municipality's explanation and demand payment of those portions of the payment discrepancy for which the Department rejects the Municipality's explanation; or 3) reject the Municipality's explanation and demand payment in full of the discrepancy amount. If the Municipality fails to make a payment within thirty (30) days of receipt of such notice then the Municipality's outstanding RLF Accounts Receivable balance shall become immediately due and payable to the Department.

4. Term. Except as otherwise specified herein, this Agreement shall remain in full force and effect until such time as the Municipality's RLF Accounts Receivable balance is \$0.00.

5. Responsibility for Loan Collections.

- a. Nothing in this Agreement shall be construed as making the Department in any way responsible for ensuring the Municipality enforces and collects payment on outstanding RLF-ED loans, which shall remain the responsibility of the Municipality. Grantee

represents and warrants that it will make commercially reasonable efforts to enforce the terms of their outstanding RLF-ED loans and pursue collection actions as necessary.

- b. The Municipality shall not write off any outstanding RLF-ED loan with an outstanding balance without the Department's express written permission, which shall not be unreasonably withheld. If the Department grants permission to the Municipality to write off an RLF-ED loan with an outstanding balance, the Municipality's RLF Accounts Receivable shall be reduced by an amount equal to such outstanding balance.
- c. In the event that HUD makes a determination that the Department is required to remit to HUD any outstanding RLF-ED loan balances that have been written off by the Municipality, with or without the express written permission of the Department, the Municipality agrees to hold the Department harmless by paying to the Department, within ninety (90) days of written notice thereof, an amount equal to the amount the Department is required to remit to HUD. Notwithstanding any language in this Agreement to the contrary, the Municipality's obligations under this subsection shall survive the termination of this Agreement.

6. Limitation on Use of Program Income.

- a. The Municipality may use up to twenty percent (20%) of Program Income, as defined by 24 CFR 570.489(e)(1), for qualifying administrative expenses under 24 CFR 570 until either the date on which it remits its RLF Bank Balance to the Department or January 31, 2021. Once the Municipality has remitted its RLF Bank Balance to the Department it shall not use any Program Income for administrative expenses.
- b. Commencing with the Effective Date of this Agreement the Municipality shall use its RLF-ED revolving loan fund account(s) solely for the purpose of collecting RLF-ED loan repayments and remitting such payment amounts to the Department in accordance with section 2 hereof. With the exception of funds remitted to the Department from the Municipality's RLF Bank Balance, the Municipality waives any claim to such funds, regardless of whether such funds qualify as Program Income under 24 CFR 570.489(e)(1), after they have been remitted to the Department.

7. Compliance with CDBG Rules and Regulations. In carrying out its obligations as set forth in this Agreement the Municipality shall at all times comply with all applicable federal and state laws, published circulars, ordinances, federal and state regulations, guidance, and findings that are in effect during the term of this Agreement.

8. Authorized Representatives. The Department's authorized representative for the administration of this Agreement shall be the **Administrator for the Division of Energy, Housing and Community Resources** or his/her designee. The Municipality's representative responsible for the administration of this Agreement shall be the City Treasurer. The Municipality shall notify the Department in writing of any change in Municipality's authorized representative.

9. Authorization to Contract. The person(s) signing this Agreement on behalf of the Municipality represents and warrants that s/he has been given full and complete authority by the Municipality to enter into this Agreement on the Municipality's behalf and to legal bind the Municipality to comply with all obligations thereof.

10. Notices. All notices and demands by any party to any other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the Department: [REDACTED], Administrator
Division of Energy, Housing and Community Resources
101 East Wilson Street, 6th Floor
Madison, WI 53703

To the Municipality: City Administrator
9 S. Broad Street
P.O. Box 920
Elkhorn, WI. 53121

Any party may, upon prior written notice to the others, specify a different address for the giving of notice. Notices shall be effective one business day after sending if sent by overnight courier or two business days after sending if sent by certified mail, return receipt requested.

11. Indemnification.

- a. The Municipality shall indemnify and hold harmless the Department and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from Municipality's actions, or that of any of its agents or sub recipients, in performing the obligations of this Agreement. The Municipality shall indemnify and hold harmless the Department and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any obligations arising out of agreements between the Municipality and sub recipient(s). The Municipality shall also hold the State harmless for any audit disallowance related to the allocation of administrative costs under this Agreement, irrespective of whether the audit is ordered by federal or state agencies or by the courts.
- b. The Municipality assumes full responsibility and holds the Department harmless for any and all payments made, or any other actions taken by the Department in reliance upon the above representations. Further, the Municipality agrees to indemnify and hold the Department harmless against any and all claims, demands, losses, costs, damages, or expenses suffered or incurred by the Department resulting from or arising out of any such payment or other action, including reasonable attorneys' fees and legal expenses, including, but not limited to, any demand by the federal granting agency for repayment or recoupment of funds.

12. Assignment/Sublet. The Municipality shall not sublet or assign all or any part of its obligations under this Agreement without prior written approval of the Department. The Municipality shall be responsible for all matters related to any sub recipient of an RLF-ED loan, including contract compliance, performance, and dispute resolution between itself and a sub recipient. The State bears no responsibility for sub recipient compliance, performance, or dispute resolution.

13. Termination for Convenience.

- a. The Department may terminate this Agreement for convenience without penalty to the Department effective thirty (30) days after the effective date of notice thereof. Upon

termination for convenience the Municipality's RLF Accounts Receivable shall be deemed to have been reduced to \$0.00, provided, however, that if at any time after the termination of this Agreement for convenience HUD makes a determination that the Department is required to remit to HUD any outstanding RLF-ED loan balances not paid to the Department the Municipality agrees to hold the Department harmless by paying to the Department, within thirty (30) days written notice thereof, an amount equal to the amount the Department is required to remit to HUD.

- b. The Municipality may terminate this Agreement for convenience without penalty to the Municipality effective thirty (30) days after the effective date of notice thereof. Upon termination for convenience the Municipality's outstanding RLF Accounts Receivable balance shall become immediately due and payable to the Department.

14. Amendment. No alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced to writing and signed by each party's Authorized Representative.

15. Severability. If any provision of this Agreement shall be adjudged to be unlawful or contrary to public policy, then that provision shall be deemed null and void and severable from the remaining provisions and shall in no way affect the validity of the remainder of this Agreement.

16. Waiver. Failure or delay on the part of either party to exercise any right, power, privilege, or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

17. Force Majeure. Either party's performance of any part of this Agreement shall be excused to the extent that it is hindered, delayed, or otherwise made impractical by reason of flood, riot, fire, explosion, war, acts, or omissions of the other party or any other cause, whether similar or dissimilar to those listed, beyond the reasonable control of that party. If any such event occurs, the non-performing party shall make reasonable efforts to notify the other party of the nature of such condition and the extent of the delay and shall make commercially reasonable, good faith efforts to resume performance as soon as possible.

18. Choice of Law and Venue. In the event of a dispute, this Agreement shall be interpreted in accordance with the laws of the State of Wisconsin, to the extent that there is no conflict with federal law or applicable program requirements. The venue for any dispute shall be Dane County, Wisconsin.

19. Examination of Records.

- a. The Department, any of its authorized representatives and the U.S. Government shall have access to and the right at any time to examine, audit, excerpt, transcribe, and copy on the Municipality's premises any directly pertinent records and computer files of the Municipality involving transactions relating to this Agreement. If the material is held in an automated format, the Municipality shall provide copies of these materials in the automated format or such computer file as may be requested by the Department. Such material shall be retained until such time as the Department notifies otherwise. Notwithstanding any language in this Agreement to the contrary, this provision shall the termination of this Agreement.
- b. The Municipality shall notify the Department in writing of any planned conversion or destruction of these materials at least ninety (90) days prior to such action.

- c. The Municipality may charge for copies of books, documents, papers, records, computer files or computer printouts, but such charge shall not exceed the amount the Municipality would charge for producing such material in response to a public records request under Section 19.35 of the Wisconsin Statutes.

20. Public Records. The Municipality shall make available to the Department for inspection and copying, any record produced or collected under this Agreement in accordance with Wis. Stat. § 19.36(3), subject to the right of the Municipality to assert any limitations upon access and disclosure available under Wisconsin Law. The Department agrees that, if it shall receive a request by any person not a party to this Agreement to disclose any record produced or collected under this Agreement, it shall afford the Municipality written notice, including a copy of such request, and a reasonable period of time, but in no event more than ten (10) business days after receipt of such notice, to respond to such request and, if applicable, raise any objections to disclosure of all or a portion of the requested records that may be available to the Municipality under Wisconsin Law. Notwithstanding the forgoing, if the Department determines that any of the forgoing records are required to be released in compliance with Wisconsin Open Records law under Wis. Stat. § 19.36 et seq., then the Department shall release such records, unless the Municipality agrees to defend and indemnify the Department, including any and all costs and fees including attorneys fees of any records requestor, in any mandamus or other action under Wis. Stat. § 19.36.

21. Captions. The item captions contained herein are for convenience only and do not define, limit, or construe the contents of such items, paragraphs, or sections.

22. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral.

23. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Department and the Municipality have executed this Agreement as of the date this Agreement is signed by the Department.

CITY OF ELKHORN:

DEPARTMENT OF ADMINISTRATION
DIVISION OF ENERGY, HOUSING &
COMMUNITY RESOURCES

BY: HOWIE REYNOLDS

BY:
[INSERT NAME]

TITLE: MAYOR

TITLE: Division Administrator

DATE:

DATE:

COMMON COUNCIL MEETING AGENDA MEMORANDUM

Date: August 19, 2019
Agenda Item: Matheson Memorial Library Fencing
Prepared by: Matthew Lindstrom (DPW Operations Manager)
To: Members of the Common Council

Summary:

At the last Common Council meeting on 08/05/2019, we spoke about the following item:

The landlord / property owner of a rental home adjacent to the Matheson Memorial Library voiced concerns to City Hall regarding the parking lot reconstruction that was completed last year. To accommodate adequate drainage, the revised grading plan for the library parking lot was pitched / tipped in such a fashion that headlights from parking vehicles now shine into the windows of the home at said parcel, located off Wisconsin Street, just north of the library parking lot. The orientation of the stalls was also rotated which directs headlights more directly towards subject home. A landscaped buffer with bushes was considered however, the separation between the edge of parking lot and property line did not create enough space to accommodate this. In coordination with the property owner, a 4' tall chainlink fencing system is being proposed. The fencing system would consist of black fencing with privacy slats to accommodate blocking headlights. Color to be coordinated with library and property owner.

Cost:

Since our last discussion regarding this item, I received additional options for fencing, with pricing as summarized below. See quotes and data sheets from Roth fencing for additional information, attached.

Chainlink Fencing System = \$4,226
Solid Polyvinyl White Fencing System = \$4,482
Designer Fence w/ Aluminum Posts / Rails & Vinyl Pickets = \$5,743

Recommendation to Council:

Authorize budget adjustment to perform work as described at a cost and product to be determined by Common Council.

ROTH & SONS FENCE, INC

N5487 Kennel Rd., Elkhorn, WI 53121
 262-723-4239 • Fax 262-723-7481 • rothfencellc@elknet.net

DATE 7.17.19

ESTIMATE # 07172019

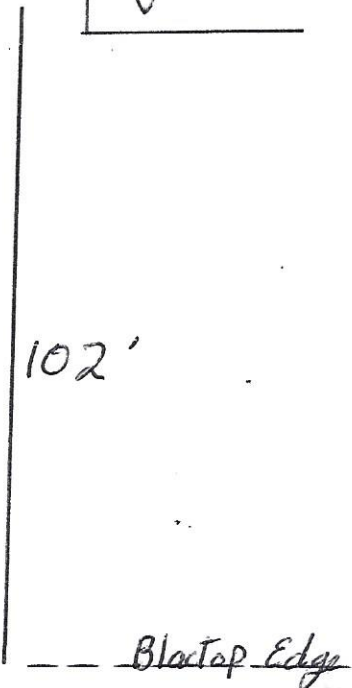
INVOICE _____

NAME Matheson Memorial Library ADDRESS CITY OF ELK
m.lindstrom@cityofelkhorn.org

Matt PHONE 262-325-0274

PHONE _____

Dumpster



102' OF 4' Tall Commercial grade
Chain Link

2" OD Line Post 8' apart

1 5/8" O.D Top Rail

2" X 9 gauge Aluminized chain link

PDS Slates Color To be Determined

102' of Black chain link 3480.00

102' of Aluminized chain link 3170.00

102' of Winged slates 95% 1049.00

102' of Bottom Locking 70% slates 746.00

DATE COMPLETED: _____

ESTIMATE AMOUNT \$

One Year Warranty valid only if balance is paid within ten days. Limited warranty is for workmanship. Does not cover natural causes or damage. Your project will not be scheduled until we have a signed copy and 50% deposit. Roth Fence cannot be responsible for privet lines, drain tile, sprinkler systems or Building Permits.

CANCELLATION CHARGE If an order is canceled and if refund is available from your deposit, it may be subject to a 20% re-stocking fee.

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

TERMS **BALANCE DUE UPON COMPLETION. All accounts over 30 days will be charged a 1.5% late fee per month on unpaid balances.**

I have the authority to order the above work and do so order as outlined above. It is agreed that the seller will retain title to any equipment or material furnished until final & complete payment is made. If settlement is not made as agreed, the seller shall have the right to remove it and the seller will be held harmless for any damages resulting from the removal thereof. All work will be performed in accordance with standard practices.

I agree to pay SELLER (Roth & Sons Fence, Inc) BALANCE (total amount due) of this contract according to the terms specified above, and upon default thereof, to pay all costs of collection, including a reasonable attorney's fee and court costs and waive all rights of exception under the constitution and laws of this and any other state. There will be an additional charge for removal of existing old fences and shrubs.

The authorized person signing below hereby assumes full responsibility for location of the line upon with said fencing material is to be installed and agrees to hold the company and the contractor harmless from all claims arising from question of survey of said property or location of said lines, and from all claims for personal injury, property damage or trespass from or by means of the installation of said fence material.

AUTHORIZED SIGNATURE: _____ **DATE:** _____

Special Instructions	
CREDITS	
ADDITIONS	
1 DEPOSIT	
2 DEPOSIT	
BALANCE DUE	

ROTH & SONS FENCE, INC

N5487 Kennel Rd., Elkhorn, WI 53121
 262-723-4239 • Fax 262-723-7481 • rothfencellc@elknet.net

DATE 8-7-19

ESTIMATE # 08072019

INVOICE _____

NAME Matheson Memorial Libr ADDRESS CITY OF ELK

MAIN PHONE 262 325 0274

PHONE _____

Dumpster

102'

Edge of Blacktop

Note:

We have 2 Types of Vinyl
 1. you can see in front of washrooms @ fairgrounds
 Near 20 years old solid Polyvinyl white
 This is 4' Tall 102' \$4482.00

2. The other is a Designer fence it has
 Aluminum Post and Rails with
 Vinyl pickets much stronger
 This 4' Tall installed for \$5743.00

Composite has warping issues

DATE COMPLETED: _____

ESTIMATE AMOUNT

\$

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The authorized person signing below hereby assumes full responsibility for location of the line upon with said fencing material is to be installed and agrees to hold the company and the contractor harmless from all claims arising from question of survey of said property or location of said lines, and from all claims for personal injury, property damage or trespass from or by means of the installation of said fence material.

AUTHORIZED SIGNATURE: _____

DATE: _____

Special Instructions

CREDITS

ADDITIONS

1 DEPOSIT

2 DEPOSIT

BALANCE DUE

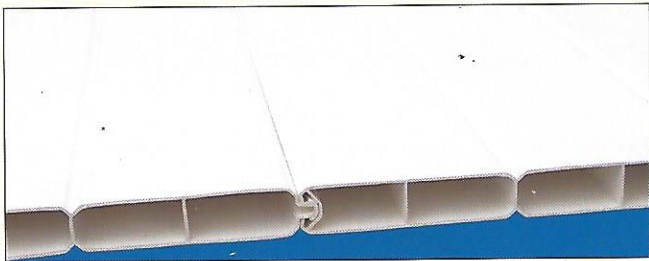
SUPERIOR

Privacy Fence

Superior Specifications

- Heights: 48", 60", 72", 84"* , 96"*
(84"* , 96"* with Aluminum Reinforced Mid-rail)
 - Width: 8' Sections
 - 7/8" x 11.28" Snap Lock Tongue & Groove Verticals
 - Aluminum Reinforced Bottom Rail
 - Heavy Wall 5" Posts (.150" Wall)
 - Flat Post Caps Standard (Ball, Gothic and Trim Caps Optional)
 - 7° Rackable Section Optional
(Racks 12" per 8' Sections)
 - Concave and Convex Gates Optional
 - Colors: White or Tan
- *Aluminum Stiffeners Required in All Line & End Posts for 84" & 96" Heights.

Standard Gates Available



11.28" Snap Lock Tongue & Groove Verticals



60" Superior (Tan)



60" Superior (Tan)

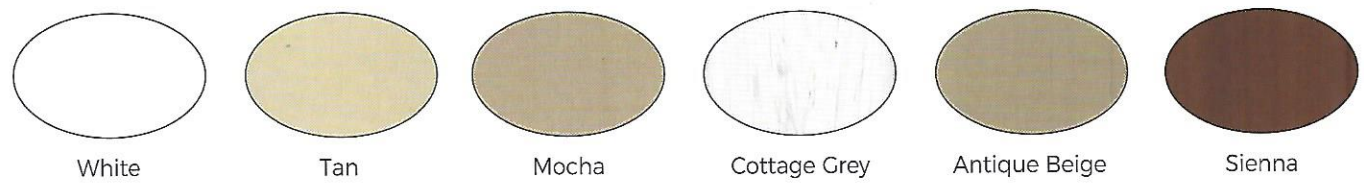


Designer Fence offers the privacy of a vinyl infill with the durability and aesthetics of a powder coated aluminum fence. The aluminum frame of Designer Fence is available in 12 standard AAMA 2604 colors and six vinyl infill colors. Designer Fence is a perfect way to protect your pool, hot tub, patio and yard.

ALUMINUM FRAME AND COMPONENT COLORS



IN-FILL COLORS



FEATURES



Line and End Post Cap



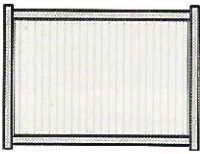
Corner Post Cap



Posts and Rails can be ordered separately for use with your own in-fill

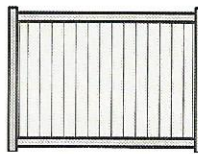
DESIGNER

NARROW VERTICALS



48", 60", 72"
with 6" Verticals

WIDE VERTICALS



48", 60", 72"
with 11.28" Verticals

SPECIFICATIONS

Style	Colors	Heights	Racking	Section Width	Vertical Size	Rails	Post Size	Standard Post Cap
Designer	White Tan Mocha	48", 60", 72"	2" Standard Optional 7" Rackable Section (12" per 8' Section)	8' Per Ft. Section Widths Available	7/8" x 11.28" Snap Lock Tongue & Groove	1-1/4" x 5-1/2"	3" x 5"	Flat Cap
	Antique Beige Cottage Grey Sienna	48", 60", 72"	10" Standard	8' Per Ft. Section Widths Available	7/8" x 6" Tongue & Groove	1-1/4" x 5-1/2"	3" x 5"	Flat Cap