



Common Council Chambers
8040 S. 6TH Street
Oak Creek, WI 53154
(414) 766-7000

Daniel Bukiewicz - Mayor
Steven Kurkowski – 1st District
Greg Loreck – 2nd District
James Ruetz – 3rd District
Lisa Marshall – 4th District
Kenneth Gehl – 5th District
Chris Guzikowski – 6th District

COMMON COUNCIL MEETING AGENDA

FEBRUARY 6, 2024

7:00 P.M.

The City's Vision

Oak Creek: A dynamic regional leader driving the future of the south shore.

1. Call Meeting to Order / Roll Call
2. Pledge of Allegiance.
3. Approval of Minutes: 1/16/24.

Recognition

4. **Resolution:** Consider Resolution No. 12472-020624, a Resolution of Appreciation to Douglas W. Seymour, retiring Community Development Director (by Committee of the Whole).

New Business

5. **Ordinance:** Consider Ordinance No. 3093, relating to taxes and to repeal and recreate Section 3.02 of the Municipal Code (by Committee of the Whole).
6. **Motion:** Consider a motion to approve the purchase of an air cooled chiller from Trane U.S. Inc., in the amount of \$180,790 (by Committee of the Whole).

ENGINEERING

7. **Resolution:** Consider Resolution No. 12470-020624, accepting dedication of the public improvements and releasing the developer from the Development Agreement for the Creekside Crossing Marketplace Phase II project (Project Nos. 20054/20055) (2nd District).
8. **Resolution:** Consider Resolution No. 12471-020624, approving a Storm Water Management Practices Maintenance Agreement with Switchback Enterprises, LLC for the Edgemont Estates Subdivision located at 10670 S. Nicholson Rd. (Tax Key No. 958-9995-006) (5th District).

LICENSE COMMITTEE

9. **Motion:** Consider a motion to approve the various license requests as listed on the 2/6/24 License Committee Report (by Committee of the Whole).

Visit our website at www.oakcreekwi.org for the agenda and accompanying common council reports.
This meeting will be live streamed on the City of Oak Creek YouTube page via <http://ocwi.org/livestream>.

VENDOR SUMMARY

10. **Motion:** Consider a *motion* to approve the January 31, 2024 Vendor Summary Report in the amount of \$997,846.34. (Of this total, \$464,927.06 will affect the 2023 fiscal year, with the remaining \$532,919.28 affecting 2024.) (by Committee of the Whole).

Adjournment.

Public Notice

Upon reasonable notice, a good faith effort will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aid at no cost to the individual to participate in public meetings. Due to the difficulty in finding interpreters, requests should be made as far in advance as possible preferably a minimum of 48 hours. For additional information or to request this service, contact the Oak Creek City Clerk at 414-766-7000, by fax at 414-766-7976, or by mail at 8040 S. 6th Street, Oak Creek, Wisconsin 53154.

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may attend the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

RESOLUTION NO. 12472-020624

RESOLUTION OF APPRECIATION
TO
DOUGLAS W. SEYMOUR

WHEREAS, Douglas W. Seymour commenced his tenure with the City of Oak Creek on November 30, 1990, assuming the role of Assistant Planner; and

WHEREAS, Douglas W. Seymour was appointed to the role of Assistant Director of Planning on January 1, 1992, and subsequently, on July 1, 2002, he was promoted to the position of Director of Community Development, later redesignated as Community Development Director in 2021; and

WHEREAS, throughout his dedicated service, Douglas W. Seymour played an integral role in pivotal initiatives such as the 1995 zoning recodification, the 2002 and 2020 Comprehensive Plans, the 2022 Zoning Code update, and the establishment of 16 Tax Increment Financing Districts; and

WHEREAS, leveraging his professional expertise and foresight, Douglas W. Seymour significantly influenced the community evolution of Oak Creek, contributing to the establishment of more than 100 subdivisions and the creation of twelve new parks; and

WHEREAS, Douglas W. Seymour's expertise played a crucial role in guiding Oak Creek through significant shifts in population growth, proving instrumental in the conception and execution of residential, commercial, and industrial developments that now stand as hallmarks of our community. Prominent among these projects are Woodman's Food Market, Target, the OakView Business Park, the Milwaukee Yard, IKEA, Creekside Crossing Marketplace, Ryan Business Park, and Amazon; and

WHEREAS, Douglas W. Seymour played a key role in numerous prominent public projects, including the visioning, successful design, construction, and relocation of Fire Station #1, the Oak Creek Library and City Hall to the current Civic Center facility, the development of Drexel Town Square, and the redevelopment and design of various lakefront projects. These developments garnered multiple recognition awards for him and his team; and

WHEREAS, Douglas W. Seymour concluded his tenure as Community Development Director with the City of Oak Creek Community Development Department on January 19, 2024, marking the culmination of an exemplary 33-year commitment to the Department of Community Development and the City of Oak Creek.

NOW, THEREFORE, BE IT RESOLVED that the City extends its sincere best wishes for enduring health and happiness to Douglas W. Seymour and his family in the well-deserved retirement years that await.

BE IT FURTHER RESOLVED that this Resolution of Appreciation be spread upon the minutes of this meeting and that the City Clerk is hereby directed to transmit to Douglas W. Seymour a suitable copy thereof.

Passed and adopted this 6th day of February, 2024.

Kenneth Gehl, Common Council President

Daniel J. Bukiewicz, Mayor

ATTEST:

Catherine A. Roeske, City Clerk

Vote: Ayes _____ Noes _____

COMMON COUNCIL REPORT

Item: Ordinance No. 3093

Recommendation: That the Common Council adopts Ordinance No. 3093, An Ordinance Relating to Taxes and to Repeal and Recreate Section 3.02 of the Municipal Code

Fiscal Impact: The City should realize no loss of revenue as the State will make municipalities whole for loss of personal property taxes via a personal property aid payment beginning in 2025.

Critical Success Factor(s):

- Active, Vibrant, and Engaged Community
- Financial Stability and Resiliency
- Thoughtful Growth and Prosperous Local Economy
- Clean, Safe, and Welcoming
- Inspired, Aligned, and Proactive City Organization
- Quality Infrastructure, Amenities, and Services
- Not Applicable

Background: With the passage of 2023 Act 12, effective January 1, 2024, Wisconsin may no longer levy property tax against personal property, such as furniture, fixtures, and equipment. Some property previously classified as personal property may now be classified as real property, however. State law remains in effect to distribute and collect on 2023 personal property tax bills payable in 2024, as well as in situations of omitted personal property assessments and correction of personal property errors. While municipalities no longer receive personal property tax revenue, Act 12 creates a fund that effectively distributes a property aid payment to taxing jurisdictions for the loss of personal property tax revenue beginning in 2025.

Options/Alternatives: None - the Municipal Code is being updated to comply with the new state law in effect.

Respectfully submitted:



Andrew J. Vickers, MPA
City Administrator

Prepared:



Melissa L. Karls
City Attorney

Fiscal Review:



Maxwell Gagin, MPA
Deputy City Administrator / Finance Officer

Attachments: Proposed Draft Ordinance No. 3093

ORDINANCE NO. 3093

BY: _____

AN ORDINANCE RELATING TO TAXES AND TO REPEAL AND RECREATE SECTION 3.02 OF THE MUNICIPAL CODE.

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

SECTION 1: Section 3.02 of the Municipal Code is hereby repealed and recreated to read as follows:

SEC. 3.02 TAXES.

- (a) **Real Property Taxes.** All real property taxes shall be paid in one of the following ways:
 - (1) In full, on or before January 31.
 - (2) In installments as follows:
 - a. One-half (1/2) of the real property taxes shall be paid on or before January 31.
 - b. One-fourth (1/4) of the real estate taxes shall be paid on or before March 31.
 - c. One-fourth (1/4) of the real estate taxes shall be paid on or before May 31.
- (b) **Delinquent First Installment.** If the first installment of real property taxes is not paid on or before January 31, the entire amount of the remaining unpaid taxes on that parcel is delinquent as of February 1.
- (c) **Delinquent Second or Third Installment.** If the second or third installment payment of real property taxes is not paid by the due date specified in this Section, the entire amount of the remaining unpaid taxes on that parcel is delinquent as of the first day of the month after the payment is due.
- (d) **Special Assessments, Special Charges, and Other Taxes.** All special assessments, special charges and special taxes that are placed on the tax roll shall be paid in full on or before January 31.
- (e) **Penalty.** There is hereby imposed a penalty of five-tenths percent (0.5%) per month, or fraction of a month, in addition to the interest provided under Sec. 74.47, Wis. Stats., on all general property taxes, special charges, special assessments and special taxes included in the tax roll which are delinquent.

SECTION 2: All ordinances contravening the provisions of this Ordinance are hereby repealed.

SECTION 3: This Ordinance shall take effect after its passage and publication.

Introduced this 6th day of February, 2024.

Passed and adopted this 6th day of February, 2024.

President, Common Council

Approved this 6th day of February, 2024.

ATTEST:

Mayor

City Clerk

VOTE: Ayes _____ Noes _____

COMMON COUNCIL REPORT

Item: Police Station Chiller Purchase

Recommendation: That the Common Council considers a motion to approve the purchase of an air cooled chiller from Trane U.S. Inc. in the amount of \$180,790.00.

Fiscal Impact: The purchase amount of \$180,790.00 would be funded by \$185,000 that was allocated in 2024 CIP Budget (CIP# 24009).

Critical Success Factor(s):

- Active, Vibrant, and Engaged Community
- Financial Stability and Resiliency
- Thoughtful Growth and Prosperous Local Economy
- Clean, Safe, and Welcoming
- Inspired, Aligned, and Proactive City Organization
- Quality Infrastructure, Amenities, and Services
- Not Applicable

Background: The chiller (air conditioner) at the Oak Creek Police Department Station was installed in 2002 during the construction of the building. This Trane 175-ton air-cooled chiller has accumulated approximately 70,000 hours of runtime and is displaying signs of aging. The unit relies on R22 freon, which is currently undergoing a phase-out due to its detrimental impact on the ozone layer when released into the atmosphere. Moreover, the primary electrical components of the unit require rebuilding, incurring a parts cost of \$12,000. Despite this, the remaining parts of the unit have exceeded the typical 15-20-year lifespan.

The chiller was not bid by the City, as the City was able to purchase it directly from Trane using a turnkey proposal through Omnia Racine Cooperative Purchase Program.

Options/Alternatives: To not approve the purchase would mean continuing with the current chiller, thereby elevating the risk of a critical failure.

Respectfully submitted:



Andrew J. Vickers, MPA
City Administrator

Prepared:



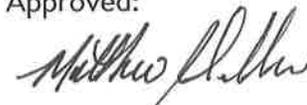
Dick Kulka
Facilities Manager

Fiscal Review:



Maxwell Gagin, MPA
Deputy City Administrator / Finance Officer

Approved:



Matthew J. Sullivan, PE
Assistant City Administrator/Engineer



Trane Turnkey Proposal City Of Oak Creek, Police Department

Co-op Quote Number: T5-135908-24-001

Co-op or Federal Contract ID: OMNIA Racine#3341



Turnkey Proposal For:
City Of Oak Creek
Dick Kulka

Local Trane Office:
Trane U.S. Inc.
234 W Florida St., 6th Floor
Milwaukee, WI 53204

Local Trane Representative:
Nate Nekich
Service Account Manager
E-mail: nnekich@trane.com
Cell: (414) 232-8318
Office Phone: (414) 266-5200

Proposal ID: 7460549

Date: January 08, 2024



TRANE TURNKEY PROPOSAL

Executive Summary

Trane is pleased to present a solution to help City of Oak Creek reach its performance goals and objectives. This proposed project will enhance your operation by helping you to optimize your resources, improve the comfort in your facility, and reduce energy costs.

We appreciate the effort from City of Oak Creek to assist in the HVAC system analysis and business discussions. Because of your efforts, we were able to develop a proposal that offers Turnkey retrofit service solutions to your specific concerns, based on Trane system knowledge and application expertise.

As your partner, Trane is committed to providing Turnkey retrofit services to help achieve a comfortable building environment for the people who occupy the building. For the people who own, manage, and maintain the building, Trane is committed to providing reliable HVAC systems and products that improve performance.

Trane appreciates the opportunity to earn your business. Your investment in the proposed project is \$180,790.00 USD. This investment will provide City of Oak Creek with the capability to significantly reduce operating costs and improve comfort conditions in your facility.

We look forward to partnering with City of Oak Creek for your Turnkey retrofits service needs. I will be contacting you soon to discuss the proposal and to schedule the next steps.

WE VALUE THE CONFIDENCE YOU HAVE PLACED IN TRANE AND LOOK FORWARD TO PARTNERING WITH YOU.

Nate Nekich
Service Account Manager, Trane U.S. Inc.

The Warranty Period

Your Trane Limited Equipment Warranty begins when factory-trained and authorized technicians have completed the Trane factory-recommended start-up. The subsequent period represents the most crucial time in the life of your new system.

The warranty you receive with your new system does not include provisions for prescribed maintenance or regular operation and performance inspections. The general terms of the warranty require that Trane system owners take responsibility for operations, calibration, inspections, and maintenance of their systems. Failure in any of these areas can have an adverse effect on the equipment and the validity of the warranty. Additionally, issues covered by the warranty may go undetected until after the warranty period has ended.

During the warranty period, it is important that your new system is inspected regularly, per Trane industry-leading service recommendations, by factory trained and qualified technicians. It is also important that service is documented carefully during the warranty period. Warranty claims may require documentation verifying that equipment has been operated and inspected per Trane recommendations. Documentation can be used to help determine the cause of failure, preventing similar occurrences after the warranty has expired.

Any warranty issues found during the periodic inspections will be reported immediately. These inspections will feature the use of diagnostic practices developed exclusively for and used by Trane factory trained technicians.



Superior Service Delivery

Trane's original equipment manufacturer (OEM) Service Delivery Process

Ensures consistent quality through:

- Focus on building environments.
- Uniform service delivery
- Pre-job parts planning
- Documented work procedures
- Efficient and economical delivery of services
- Emphasis on safety

Service Workflow - Trane utilizes an industry-exclusive service flow process that includes detailed procedures and identified steps for: safety, parts, materials, tools, and sequence for execution. Trane procedures also include steps for safety, quality control, work validation, and environmental compliance.

This process assures a complete service event. No critical steps are skipped or lost. Systems serviced in this way offer a higher degree of reliability and operational longevity. These exclusive service procedures deliver superior service and most reliable outcomes at the most cost-effective price.

Where applicable, the Trane service process meets or exceeds ASHRAE 180-2008 Standard Practice for Inspection and Maintenance of Commercial Building HVAC Systems.

Knowledge Transfer

Documentation - Work performed on your equipment will be documented by the technician and reviewed with you at the completion of each visit.

Operational System Optimization - Trane Service Technicians will review operating sequences and practices for the equipment covered by the Agreement and advise you of operational improvement opportunities.

Training for Facility Staff – Operator training and coaching is available per the service Agreement. Additional training can be customized to meet your site-specific needs.

Health and Safety

Safety Management Program - Trane Building Services employs several full-time Occupational Safety and Health Administration (OSHA) 30-hour certified safety managers who are available to perform safety consultations relating to the service performed at your site. Our Safety Management Program includes monthly safety training for all Trane Building Services field personnel, field supervisor jobsite audits, technician job safety analyses and other key risk assessments and control strategies.

Personal Safety - Trane service technicians are, at a minimum, OSHA 10-hour certified, or equivalent with yearly retraining on all key occupational safety and health topics. Many of our technicians have participated in "Smith Safe" driver training and some are Department of Transportation (DOT) Hazmat certified. They are provided with up-to-date personal protective equipment (PPE), training on its use and limitations, and FR protective apparel. Trane maintains an industry-leading position in National Fire Protection Agency (NFPA) 70E Electrical Safety, technician ergonomics and fall protection programs.

Drug-Free Workplace - Trane Building Services maintains a Drug-Free Workplace, with a robust drug and alcohol testing program.



Prepared For:
City Of Oak Creek

Date:
September 06, 2023

Job Name:
Oak Creek Police Department Chiller Turnkey '23

Proposal Number:
7460549

CO-OP QUOTE NUMBER: T5-135908-24-001
CO-OP OR FEDERAL CONTRACT ID: OMNIA Racine #3341

Delivery Terms:
Freight Allowed and Prepaid – F.O.B Factory

Payment Terms:
Net 30

Proposal Expiration Date:
30 Days

Equipment	Manufacturer	Model Number	Serial Number
Old: Air Cooled Chiller	Trane	RTAA110AYN01A3D1BN	U02J06599
New: Air Cooled Chiller	Trane	CGAM120A2**2EXB2A1A3A1AX*A 1A2B4XXXXXA1A3A1D1XXCXX	T.B.D.

Scope of Services – Trane Chiller Turnkey

This "Scope of Services" includes labor and materials to perform the following scope of work:

- Receive and inspect the chiller for damage.
- Disconnect and remove the existing chiller. Transport new chiller to the jobsite.
- Provide hydraulic crane service and place the new chiller on the pad.
- Provide and install new isolation valves, drains, vents, thermometers, cross connected pressure gauge and hangers.
- Provide and install new vibration isolators.
- Provide and install required wiring modifications to allow the installation of the new chiller from the existing point of connection to the new chiller internal disconnect.
- Provide and install control wiring conduits and wire to start/stop, alarm status.
- Provide and install removed glycol solution and additional 35% ethylene glycol if required to fill to full operating pressure.
- Provide and install aluminum jacketed fiberglass insulation with vapor barrier.
- Verify correct flows are present.
- Trane Factory startup.



Pricing and Acceptance

City Of Oak Creek

Site Address:
Oak Creek Police Department
301 W Ryan Rd
Oak Creek, WI 53154

Price

Total Net Price (*Including appropriate Sales and/or Use Tax, if required by law*).....\$180,790.00 USD

Financial items not included

- MANUALLY ENTER ADDITIONAL ITEMS
- Bid Bond
- Payment and Performance Bond
- Guarantee of any energy, operational, or other savings

Respectfully submitted,

Nate Nekich
Service Account Manager
Trane U.S. Inc.
E-mail: nnekich@trane.com
Office Phone: (414) 266-5200



ACCEPTANCE

This proposal is subject to Customer's acceptance of the attached Trane Terms and Conditions (Installation).

We value the confidence you have placed in Trane and look forward to working with you.

Retention withheld 5% on installation, 0% on Equipment; rate reduced per the contract documents and released no later than the date of Trane substantial completion.

Submitted By: Nate Nekich	Cell: (414) 232-8318 Office: (414) 266-5200 Proposal Date: January 8th, 2023
CUSTOMER ACCEPTANCE City Of Oak Creek	TRANE ACCEPTANCE Trane U.S. Inc.
Authorized Representative	Authorized Representative
Printed Name	Printed Name
Title	Title
Purchase Order	Signature Date
Acceptance Date:	License Number:

TERMS AND CONDITIONS – COMMERCIAL INSTALLATION

"Company" shall mean Trane U.S. Inc. for Work performed in the United States or Trane Canada ULC for Work performed in Canada.

1. Acceptance; Agreement. These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the "Agreement") resulting from Company's proposal (the "Proposal") for the commercial goods and/or services described (the "Work"). COMPANY'S TERMS AND CONDITIONS AND EQUIPMENT PRICES ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT. The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent ("Customer") delivered to Company within 30 days from the date of the Proposal. Prices in the Proposal are subject to change at any time upon notice to Customer. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counteroffer to provide Work in accordance with the Proposal and the Company terms and conditions. If Customer does not reject or object in writing to Company within 10 days, Company's counteroffer will be deemed accepted. Notwithstanding anything to the contrary herein, Customer's acceptance of the Work by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Work rendered by Company to the date of cancellation.

2. Connected Services. In addition to these terms and conditions, the Connected Services Terms of Service ("Connected Services Terms"), available at <https://www.trane.com/TraneConnectedServicesTerms>, as updated from time to time, are incorporated herein by reference and shall apply to the extent that Company provides Customer with Connected Services, as defined in the Connected Services Terms.

3. Title and Risk of Loss. All Equipment sales with destinations to Canada or the U.S. shall be made as follows: FOB Company's U.S. manufacturing facility or warehouse (full freight allowed). Title and risk of loss or damage to Equipment will pass to Customer upon tender of delivery of such to carrier at Company's U.S. manufacturing facility or warehouse.

4. Pricing and Taxes. Unless otherwise noted, the price in the Proposal includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for equipment and material installed by Company. Tax exemption is contingent upon Customer furnishing appropriate certificates evidencing Customer's tax-exempt status. Company shall charge Customer additional costs for bonds agreed to be provided. Equipment sold on an uninstalled basis and any taxable labor/labour do not include sales tax and taxes will be added. Within thirty (30) days following Customer acceptance of the Proposal without addition of any other terms and conditions of sale or any modification, Customer shall provide notification of release for immediate production at Company's factory. Prices for Work are subject to change at any time prior to shipment to reflect any cost increases related to the manufacture, supply, and shipping of goods. This includes, but is not limited to, cost increases in raw materials, supplier components, labor, utilities, freight, logistics, wages and benefits, regulatory compliance, or any other event beyond Company's control. If such release is not received within 6 months after date of order receipt, Company reserves the right to cancel any order. If shipment is delayed due to Customer's actions, Company may also charge Customer storage fees. Company shall be entitled to equitable adjustments in the contract price to reflect any cost increases as set forth above and will provide notice to Customer prior to the date for which the increased price is to be in effect for the applicable customer contract. In no event will prices be decreased.

5. Exclusions from Work. Company's obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company.

6. Performance. Company shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Work. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons. Unless otherwise agreed to by Customer and Company, at Customer's expense and before the Work begins, Customer will provide any necessary access platforms, catwalks to safely perform the Work in compliance with OSHA or state industrial safety regulations.

7. Payment. Customer shall pay Company's invoices within net 30 days of invoice date. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment. Customer agrees that, unless Customer makes payment in advance, Company will have a purchase money security interest in all equipment from Company to secure payment in full of all amounts due Company and its order for the equipment, together with these terms and conditions, form a security agreement. Customer shall keep the equipment free of all taxes and encumbrances, shall not remove the equipment from its original installation point and shall not assign or transfer any interest in the equipment until all payments due Company have been made.

8. Time for Completion. Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so. Delivery dates are approximate and not guaranteed. Company will use commercially reasonable efforts to deliver the Equipment on or before the estimated delivery date, will notify Customer if the estimated delivery dates cannot be honored, and will deliver the Equipment and services as soon as practicable thereafter. In no event will Company be liable for any damages or expenses caused by delays in delivery.

9. Access. Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company's access to correct any emergency condition shall not be restricted. Customer grants to Company the right to remotely connect (via phone modem, internet or other agreed upon means) to Customer's building automation system (BAS) and/or HVAC equipment to view, extract, or otherwise collect and retain data from the BAS, HVAC equipment, or other building systems, and to diagnose and remotely make repairs at Customer's request.

10. Completion. Notwithstanding any other term or condition herein, when Company informs Customer that the Work has been completed, Customer shall inspect the Work in the presence of Company's representative, and Customer shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed. The initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer's failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.

11. Permits and Governmental Fees. Company shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. If the cost of such permits, fees, licenses and inspections are not included in the Proposal, Company will invoice Customer for such costs.

12. Utilities During Construction. Customer shall provide without charge to Company all water, heat, and utilities required for performance of the Work.

13. Concealed or Unknown Conditions. In the performance of the Work, if Company encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.

14. Pre-Existing Conditions. Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the Commencement Date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or

fungi. Company also is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company.

15. Asbestos and Hazardous Materials. Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Customer warrants and represents that, except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be exclusively responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and, to the fullest extent permitted by law, shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.

16. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days' notice to Customer, in which event Customer shall pay Company for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor/labour disputes; labor/labour or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

17. Customer's Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead).

18. Indemnity. To the fullest extent permitted by law, Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

19. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, INCLUDING CONTAMINANTS LIABILITIES, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). In no event will Company's liability in connection with the provision of products or services or otherwise under this Agreement exceed the entire amount paid to Company by Customer under this Agreement.

20. CONTAMINANTS LIABILITY

The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. IN NO EVENT WILL COMPANY BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INDEMNIFICATION, ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH), DAMAGE TO PROPERTY, OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO CONTAMINANTS (INCLUDING THE SPREAD, TRANSMISSION, MITIGATION, ELIMINATION, OR CONTAMINATION THEREOF) (COLLECTIVELY, "CONTAMINANT LIABILITIES") AND CUSTOMER HEREBY EXPRESSLY RELEASES COMPANY FROM ANY SUCH CONTAMINANTS LIABILITIES.

21. Patent Indemnity. Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.

22. Limited Warranty. Company warrants for a period of 12 months from the date of substantial completion ("Warranty Period") commercial equipment manufactured and installed by Company against failure due to defects in material and manufacture and that the labor/labour furnished is warranted to have been properly performed (the "Limited Warranty"). Trane equipment sold on an uninstalled basis is warranted in accordance with Company's standard warranty for supplied equipment. **Product manufactured by Company that includes required startup and is sold in North America will not be warranted by Company unless Company performs the product start-up.** Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that the Work can be utilized for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty Period, Company will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said equipment was installed pursuant hereto, labor/labour associated with the replacement of parts or equipment not conforming to this Limited Warranty. Defects must be reported to Company within the Warranty Period. Exclusions from this Limited Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; refrigerant not supplied by Company; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No warranty liability whatsoever shall attach to Company until the Work has been paid for in full and then said liability shall be limited to the lesser of Company's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment, material and/or parts that are not manufactured by Company ("Third-Party Product(s)") are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **CUSTOMER UNDERSTANDS THAT COMPANY IS NOT THE MANUFACTURER OF ANY THIRD-PARTY PRODUCT(S) AND ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS ARE THOSE OF THE THIRD-PARTY MANUFACTURER, NOT COMPANY AND CUSTOMER IS NOT RELYING ON ANY WARRANTIES, CLAIMS, STATEMENTS, REPRESENTATIONS, OR SPECIFICATIONS REGARDING THE THIRD-PARTY PRODUCT THAT MAY BE PROVIDED BY COMPANY OR ITS AFFILIATES, WHETHER ORAL OR WRITTEN. THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. ADDITIONALLY, COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS) (COLLECTIVELY, "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE. IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR THE PREVENTION, ELIMINATION, REDUCTION OR INHIBITION OF THE GROWTH OR SPREAD OF SUCH CONTAMINANTS INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, THIRD-PARTY PRODUCT, OR ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND CUSTOMER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO.**

23. Insurance. Company agrees to maintain the following insurance while the Work is being performed with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation.

24. Commencement of Statutory Limitation Period. Except as to warranty claims, as may be applicable, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Company or its subcontractors physically performed work on the project site.

25. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Work is performed, without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Work is performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

26. Equal Employment Opportunity/Affirmative Action Clause. Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

27. U.S. Government Work.

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business.

The following provision applies only to indirect sales by Company to the US Government. As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions in effect as of the date of this subcontract: 52.203-19; 52.204-21; 52.204-23; 52.219-8; 52.222-21; 52.222-26; 52.222-35; 52.222-36; 52.222-50; 52.225-26; 52.247-64. If the Work is in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

28. Limited Waiver of Sovereign Immunity. If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

29. Building Automation Systems and Network Security. Customer and Trane acknowledge that Building Automation System (BAS) and connected networks security requires Customer and Trane to maintain certain cybersecurity obligations. Customer acknowledges that upon completion of installation and configuration of the BAS, the Customer maintains ownership of the BAS and the connected network equipment. Except for any applicable warranty obligations, Customer is solely responsible for the maintenance and security of the BAS and related networks and systems. In the event there is a service agreement between Trane and Customer, Trane will provide the services as set forth in the service agreement.

In order to maintain a minimum level of security for the BAS, associated networks, network equipment and systems, Customer's cybersecurity responsibilities include without limitation:

1. Ensure that the BAS, networks, and network equipment are physically secure and not accessible to unauthorized personnel.
2. Ensure the BAS remains behind a secure firewall and properly segmented from all other customer networks and systems, especially those with sensitive information.
3. Keep all Inbound ports closed to any IP Addresses in the BAS.
4. Remove all forwarded inbound ports and IP Addresses to the BAS.
5. Maintain user login credentials and unique passwords, including the use of strong passwords and the removal of access for users who no longer require access.
6. Where remote access is desired, utilize a secure method such as Trane Connect Secure Remote Access or your own VPN.
7. For any Trane services requiring remote data transfer and/or remote user access, configure the BAS and related firewall(s) per instructions provided by Trane. This typically includes configuring Port 443 and associated firewall(s) for Outbound only.
8. Perform regular system maintenance to ensure that your BAS is properly secured, including regular software updates to your BAS and related network equipment (i.e., firewalls).

Any and all claims, actions, losses, expenses, costs, damages, or liabilities of any nature due to Customer's failure to maintain BAS security responsibilities and/or industry standards for cybersecurity are the sole responsibility of the Customer.

1-26.251-10(0123)
Supersedes 1-26.251-10(1221)

COMMON COUNCIL REPORT

Item: Dedication and Release - Creekside Crossing Marketplace Phase II

Recommendation: That the Common Council adopts Resolution No. 12470-020624, a resolution accepting dedication of the public improvements and releasing the developer from the development agreement for the Creekside Crossing Marketplace Phase II project (2nd Aldermanic District).

Fiscal Impact: None

Critical Success Factor(s):

- Active, Vibrant, and Engaged Community
- Financial Stability and Resiliency
- Thoughtful Growth and Prosperous Local Economy
- Clean, Safe, and Welcoming
- Inspired, Aligned, and Proactive City Organization
- Quality Infrastructure, Amenities, and Services
- Not Applicable

Background: The Developer has completed, to the satisfaction of the Engineering Department, all required public improvements for the Creekside Crossing Marketplace Phase II project that facilitated the required public infrastructure to serve future site development. The Developer, Walden OC, LLC, entered into a development agreement dated May 7, 2020, and recorded on December 18, 2020, as Document #11057921. This agreement was approved by Council by Resolution 12156-050520. This project was for the installation of public roadway, public storm sewer, sanitary sewer, water main and site grading for a future commercial development. There are no current outstanding assessments against the properties, and all required City fees and costs have been paid.

Options/Alternatives: None

Respectfully submitted:



Andrew J. Vickers, MPA
City Administrator

Prepared:



Ashley Kiepczynski, PE
Assistant City Engineer

Fiscal Review:



Maxwell Gagin, MPA
Deputy City Administrator / Finance Officer

Approved:



Matthew J. Sullivan, PE
Assistant City Administrator/Engineer

RESOLUTION NO. 12470-020624

BY: _____

RESOLUTION ACCEPTING DEDICATION OF PUBLIC IMPROVEMENTS AND
RELEASING THE DEVELOPER FROM THE DEVELOPMENT AGREEMENT

CREEKSIDE CROSSING MARKETPLACE PHASE II

TAX KEY NO. 784-9008, 984-9009-001, 784-9010-001,
784-9013, 784-9014, 784-9016, 784-9024 & 784-9994-001

(2nd ALDERMANIC DISTRICT)

WHEREAS, WALDEN OC, LLC, (collectively the "Developer") and the City of Oak Creek ("City") entered into a Development Agreement dated May 7, 2020, and recorded with the Milwaukee County Register of Deeds as Document No. 11057921; and

WHEREAS, the Developer has successfully constructed and installed all required public improvements for said project at the expense of the Developer and in accordance with the plans and specifications conforming to applicable City ordinances and approved by the City; and

WHEREAS, the City Engineer certifies that all conditions and restrictions of the Development Agreement have been fully satisfied; and

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Oak Creek that dedication of the public improvements is hereby accepted and that the Developer is released from the terms and conditions of the Development Agreement.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute said Dedication and Release on behalf of the City, and upon execution by both the City and the Developer, the City Clerk is hereby directed to record the same in the Office of the Register of Deeds in and for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Oak Creek held this 6th day of February, 2024.

Passed and adopted this 6th day of February, 2024.

Common Council President Kenneth Gehl

Approved this 6th day of February, 2024.

Mayor Daniel J. Bukiewicz

ATTEST:

Catherine A. Roeske, City Clerk

VOTE: Ayes ____ Noes ____

Document Number

DEDICATION OF PUBLIC IMPROVEMENTS
AND RELEASE FROM THE CREEKSIDE
CROSSING MARKETPLACE PHASE II
DEVELOPMENT AGREEMENT
Document Title

Recording Area

Name and Return Address

Matthew J Sullivan, PE
Assistant City Administrator/Engineer
8040 S. 6th St
Oak Creek, WI 53154

784-9008, 984-9009-001, 784-9010-001,
784-9013, 784-9014, 784-9016, 784-9024
and 784-9994-001

Parcel Identification Number (PIN)

WHEREAS, THE CITY OF OAK CREEK, a municipal corporation of Milwaukee County, State of Wisconsin, hereinafter referred to as the "City", and WALDEN OC, LLC, a Delaware limited liability company, hereinafter referred to as "Developer", entered into a Development Agreement dated May 7, 2020, which was approved by City of Oak Creek Common Council Resolution No 12156-050520 for Creekside Crossing Marketplace Phase II and more particularly described as follows;

WHEREAS, the Developer proposed to develop the following described lands situated in the City of Oak Creek, County of Milwaukee and State of Wisconsin, to-wit

Lots 1, 3 and 4 of Certified Survey Map No 9268, being a division of Lot 1 of Certified Survey Map No 9152, recorded on August 7, 2019, as Document No 10895711, all being a part of the Northwest ¼ and Southwest ¼ of Southeast ¼ of Section 7, Township 5 North, Range 22 East, in the City of Oak Creek, Milwaukee County, Wisconsin

Said land containing 950,039 square feet or 21 8099 acres

WHEREAS, the Developer has completed the construction and installation of said public improvements in accordance with the provisions of Chapter 236 of the Wisconsin Statutes and Chapter 14 of the Municipal Code of the City, and the City Engineer has certified the improvements; and

WHEREAS, the Development Agreement was recorded with the Milwaukee County Register of Deeds on December 18, 2020 as Document #11057921; and

NOW, THEREFORE, in consideration of \$1.00 and other good and valuable consideration, to it in hand paid, receipt of which is herein acknowledged and confessed

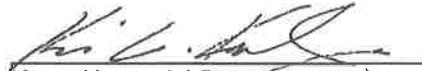
- 1 The Developer hereby gives, grants, conveys and fully dedicates the said public improvements to the City of Oak Creek, forever, free and clear of all encumbrances whatever, together with and including any and all land, structures, mains, conduits, pipes, equipment, plant appurtenances and hereditaments, which in any way may be a part of or pertain to such public facilities.
2. The Developer hereby warrants and will forever defend the title to the dedicated public improvements, for the Creekside Crossing Marketplace Phase II, against all lawful claims of all persons whomsoever.
- 3 The Developer is hereby released and discharged from the terms of the Development Agreement

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this instrument under their several seals the day and year first above written, the name and corporate seal of each corporate body being hereto affixed, and the instrument duly signed by its duly authorized representatives

In presence of

WALDEN OC, LLC

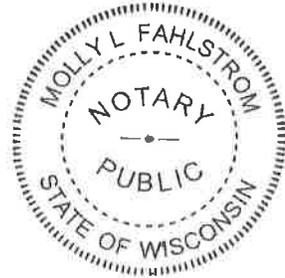

Kevin Kennedy, Director

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this 29th day of January, 2024, the above-named Kevin Kennedy, Director of WALDEN OC, LLC, to me known to be the person who executed the foregoing instrument and acknowledged that they executed the foregoing instrument on behalf of WALDEN OC, LLC

By Molly L. Fahlstrom
Name Printed: Molly L. Fahlstrom

Notary Public, State of Wisconsin
My Commission Expires. March 29, 2024



CERTIFICATE OF THE CITY ENGINEER

I, Matthew J Sullivan, Assistant City Administrator/Engineer of the City of Oak Creek, do hereby certify

That the construction and installation of public improvements, installed by the Developer of Creekside Crossing Marketplace Phase II, in the City of Oak Creek, have been completed in accordance with the approved designs, plans and specifications therefore, or in accordance with approved changes, variations, alterations and modifications, and

That the public improvements are in satisfactory operating condition, and

That I further certify that the Developer has submitted satisfactory written evidence that they have paid all of the costs incurred in the construction and installation of said systems and improvements

Dated this _____ day of _____, 2024

Matthew J Sullivan, P E
Assistant City Administrator/Engineer

COMMON COUNCIL REPORT

Item: Edgemont Estates Storm Water Maintenance Agreement

Recommendation: That the Common Council adopts Resolution No. 12471-020624, a resolution approving a Storm Water Management Practices Maintenance Agreement with SWITCHBACK ENTERPRISES, LLC, for the Edgemont Estates Subdivision located at 10670 S. Nicholson Road (Tax key No. 958-9995-006) (5th District).

Fiscal Impact: None. The owner is responsible for all costs per the Storm Water Management Practices Maintenance Agreement.

Critical Success Factor(s):

- Active, Vibrant, and Engaged Community
- Financial Stability and Resiliency
- Thoughtful Growth and Prosperous Local Economy
- Clean, Safe, and Welcoming
- Inspired, Aligned, and Proactive City Organization
- Quality Infrastructure, Amenities, and Services
- Not Applicable

Background: The proposed Edgemont Estates Subdivision located on S. Nicholson Road requires onsite storm water management practices in accordance with Sections 13.100 through 13.114 of the Municipal Code. Section 13.109 of the Municipal Code requires a maintenance agreement between the City and the permittee for the future maintenance of the required storm water management practices.

Options/Alternatives: None

Respectfully submitted:



Andrew J. Vickers, MPA
City Administrator

Prepared:



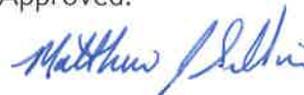
Ashley Kiepczynski, PE
Assistant City Engineer

Fiscal Review:



Maxwell Gagin, MPA
Deputy City Administrator / Finance Officer

Approved:



Matthew J. Sullivan, PE
Assistant City Administrator/Engineer

Attachments: Resolution No. 12471-020624, Storm Water Management Maintenance Agreement

RESOLUTION NO. 12471-020624

BY: _____

RESOLUTION APPROVING A STORM WATER MANAGEMENT PRACTICES
MAINTENANCE AGREEMENT FOR THE EDGEMONT ESTATES SUBDIVISION

TAX KEY NO. 958-9995-006

(5TH ALDERMANIC DISTRICT)

WHEREAS, SWITCHBACK ENTERPRISES, LLC (Owner), requires onsite storm water management practices for their proposed Edgemont Estates Subdivision, and,

WHEREAS, the City requires that the Owner enter into a Storm Water Management Practices Maintenance Agreement, and,

WHEREAS, the required Storm Water Management Practices Maintenance Agreement has been prepared and signed by the Owner,

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the City of Oak Creek that the attached Storm Water Management Practices Maintenance Agreement, as signed by the Owner, is hereby approved by the City.

BE IT FURTHER RESOLVED that the Mayor and the City Clerk are hereby authorized and directed to execute the attached agreement on behalf of the Common Council of the City of Oak Creek and upon execution by both the City of Oak Creek and the Owner, the City Attorney is hereby authorized and directed to record the same in the Office of the Register of Deeds in and for Milwaukee County, Wisconsin.

Introduced at a regular meeting of the Common Council of the City of Oak Creek held this 6th day of February, 2024.

Passed and adopted this 6th day of February, 2024.

Common Council President Kenneth Gehl

Approved this 6th day of February, 2024.

Mayor Daniel J. Bukiewicz

ATTEST:

Catherine A. Roeske, City Clerk

VOTE: Ayes ____ Noes ____



COMMON COUNCIL REPORT

Item: License Committee Report

Recommendation: That the Common Council grant the various license requests as listed on the 2/6/24 License Committee Report.

Fiscal Impact: License fees in the amount of \$2,150.00 were collected.

- Critical Success Factor(s):**
- Active, Vibrant and Engaged Community
 - Financial Stability and Resiliency
 - Thoughtful Growth and Prosperous Local Economy
 - Clean, Safe & Welcoming
 - Inspired, Aligned, and Proactive City Organization
 - Quality Infrastructure, Amenities, and Services
 - Not Applicable

Background:

1. Grant an Operator’s license to (favorable background reports received):
 - * Rechal Nisham (Ayra’s)
 - * Justin J. Bohn (Woodman’s)
 - * Kara D. DiSalvo (Pick ‘n Save)
 - * Sharon M. Angeli (Route 41)
 - * Nicole M. Driscoll (Woodman’s)

2. Grant a 2024 Transient Merchant solicitor licenses to the following solicitors offering home solar products for Everlight Solar, 1155 Clarity St., #203, Verona, WI (business previously approved and favorable background reports received).
 - * Keenan Brummett
 - * Cole A. Lengenfeld

3. Grant a 2024 Transient Merchant company license to Wisco Roofing & Windows, 1507 Plainfield Ave., Janesville, WI, and to the following solicitors (favorable background reports received).
 - * Richard Torres
 - * Alexandra Torres

4. Grant a 2024 Transient Merchant company license to Mad City Windows & Baths, 17044 W. Victor Rd., New Berlin, WI, and to the following solicitors (favorable background reports received).
 - * Mike J. Richards
 - * Greg J. Kartes
 - * Marqitis D. McLaurin
 - * David I. Sanchez

5. Grant a 2024 Temporary Class “B” beer / “Class B” wine license to Rev. Robert Kacalo, St. Stephen’s Catholic Church, 1441 W. Oakwood Rd., for the Lenten Fish Fry’s to be held on 2/16, 2/23, 3/1, 3/8, 3/15, 3/22, and 3/29.

6. Grant a 2024 Temporary Class “B” beer / “Class B” wine license to Paula Nevarez, Oak Creek Tourism Commission for Pop Up Beer Gardens to be held at Drexel Town Square on June 13–16, July 11–13, and August 15–17.

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7. Grant a 2024 Temporary Class "B" beer / "Class B" wine license to Paula Nevarez, Oak Creek Tourism Commission for the Kites in Flight event to be held at Lake Vista Park, 4159 E. Lake Vista Parkway, on October 5, 2024.

Options/Alternatives: None

Respectfully submitted:



Andrew J. Vickers, MPA
City Administrator

Prepared:



Christa J. Miller CMC/WCMC
Deputy City Clerk

Fiscal Review:



Maxwell Gagrin, MPA
Deputy City Administrator / Finance Officer

Attachments: none

COMMON COUNCIL REPORT

Item: Vendor Summary Report

Recommendation: That the Common Council approve the January 10, 2024 Vendor Summary Report in the total of \$997,864.34

Fiscal Impact: Total claims paid of \$997,864.34. Of this grand total paid, \$464,927.06 will affect fiscal year 2023. The remaining amount of \$532,919.28 will affect fiscal year 2024.

Critical Success Factor(s):

- Active, Vibrant and Engaged Community
- Financial Stability and Resiliency
- Thoughtful Growth and Prosperous Local Economy
- Clean, Safe & Welcoming
- Inspired, Aligned, and Proactive City Organization
- Quality Infrastructure, Amenities, and Services
- Not Applicable

Background: Of note are the following payments:

1. \$5,827.00 to ACP Creativit LLC (pg #7) for message archiver support and e-mail filtering.
2. \$8,725.00 to Best Technology Systems, Inc. (pg #1) for range cleaning and disposal of hazardous waste.
3. \$69,771.68 to Bestco UA (pg #8) for February retiree insurance.
4. \$44,913.24 to Compass Minerals Company (pg #10) for salt inventory.
5. \$6,575.19 to Douglas Essers (pg #11) for tax overpayment refund.
6. \$304,357.25 to Edgerton Contractors, Inc. (pg #2) for work on Lakefront Bluff Stabilization. Projects #23006.
7. \$21,359.73 to Edgewater Resources, LLC (pg #2) for construction observation on Lakefront Bluff Stabilization. Project #23005.
8. \$106,090.45 to GFL Environmental (pg #12) for January trash and recycling.
9. \$13,125.00 to Intradyn (pg #14) for e-mail archiver support and IT software projects. Project #24007.
10. \$5,167.72 to Jessie Wiczorek (pg #14) for tax overpayment refund.
11. \$13,397.31 to Kansas City Life Insurance Co. (pg #15) for February disability insurance.
12. \$8,400.65 to Lakeside International Truck (pg #15) for truck repairs.
13. \$6,663.52 to Lereta, LLC (pg #15) for tax overpayment refund.
14. \$13,398.12 to MADACC (pg #16) for 1st quarter animal control operating costs.
15. \$71,355.35 to Oak Creek Water & Sewer Utility (pg #3) for Digger's Hotline services and water/sewer quarterly fees.

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16. \$5,000.00 to Pitney Bowes Bank Reserve Account (pg #18) for postage refill.
 17. \$6,303.73 to Poms Tire Service (pg #18) for tires.
 18. \$17,334.69 to Ray O'Herron Co., Inc. (pg #17) for patrol and MIRT armor, ammo replacement. Projects #19011 & #23020.
 19. \$17,482.13 to Reliant Fire Apparatus, Inc. (pg #18) for FD vehicle maintenance.
 20. \$10,190.33 Ruekert/Mielke (pg #4) for 2023 pavement ratings.
 21. \$6,090.19 to Securian Financial Group, Inc. (pgs #18 & 19) for February employee life insurance.
 22. \$15,456.00 to Titledown Drones, LLC (pg #20) for drones. Project #24012.
 23. \$15,993.00 to Visionary Light Shows, LLC (pg #5) for 2023 Christmas display.
 24. \$100,864.23 to WE Energies (pgs #24-25) for street lighting, electricity & natural gas.

Options/Alternatives: None

Respectfully submitted:



Andrew J. Vickers, MPA
City Administrator

Prepared:



Rory T. Vircks
Staff Accountant

Fiscal Review:



Maxwell Gaglin, MPA
Deputy City Administrator / Finance Officer

Attachments: 01/31/2024 Invoice GL Distribution Report