

**CORRECTED MINUTES OF THE COMMON COUNCIL – CORRECTED 12/20/16**  
*(Corrected portion of minutes is in italics – Addition of Resolution adopting No-Fault Sewer Backup Policy)*

**ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL  
ACTIONS OF THE COMMON COUNCIL OF THE CITY OF WHITEWATER,  
WALWORTH AND JEFFERSON COUNTIES, WISCONSIN.**

April 7, 2016

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: Wellnitz, Grady, Binnie, Goettl, Kidd, Singer. MEMBERS ABSENT: Langnes. LEGAL COUNSEL PRESENT: McDonell.

It was moved by Binnie and seconded by Goettl to approve the Council minutes of 3/1/16 and acknowledge receipt and filing of the following: Police and fire Commission minutes of 11/19/15 and 1/18/16; the Zoning Update Committee minutes of 2/4/16 and 2/23/16 and the Plan and Architectural Review Commission minutes of 1/11/16 and 2/8/16. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes.

**PAYMENT OF INVOICES.** It was moved by Binnie and seconded by Goettl to approve payment of city invoices in the total sum of \$212,477.96. AYES: Wellnitz, Grady, Binnie, Goettl, Kidd, Singer. NOES: None. ABSENT: Langnes.

**STAFF REPORTS.** Downtown Whitewater gave their quarterly report. A proclamation honoring Dave Saalsaa's contributions to Downtown Whitewater and the community. Newly hired Aquatic & Fitness programmer, Deb Oas, was introduced.

**RESOLUTION AUTHORIZING ISSUANCE AND SALE OF UP TO \$21,605,138 SEWER SYSTEM REVENUE BONDS, SERIES 2016, AND PROVIDING FOR OTHER DETAILS AND COVENANTS WITH RESPECT THERETO, AND APPROVAL OF RELATED \$22,312,638 FINANCIAL ASSISTANCE AGREEMENT.**

**RESOLUTION AUTHORIZING THE ISSUANCE AND  
SALE OF UP TO \$21,605,138 SEWER SYSTEM REVENUE BONDS, SERIES 2016,  
AND PROVIDING FOR OTHER DETAILS AND  
COVENANTS WITH RESPECT THERETO**

WHEREAS, the City of Whitewater, Walworth and Jefferson Counties, Wisconsin (the "Municipality") owns and operates a sewer system (the "System") which is operated for a public purpose as a public utility by the Municipality; and

WHEREAS, pursuant to a resolution adopted on July 16, 1996 (the "1996 Resolution"), the Municipality has heretofore issued its Sewer System Revenue Bonds, Series 1996, dated July 24, 1996 (the "1996 Bonds"), which are payable from the income and revenues of the System; and

WHEREAS, pursuant to a resolution adopted on November 17, 2009 (the "2009 Resolution"), the Municipality has heretofore issued its Sewer System Revenue Bonds, Series 2009, dated December 9, 2009 (the "2009 Bonds"), which are payable from the income and revenues of the System; and

WHEREAS, pursuant to a resolution adopted on January 19, 2010 (the "2010 Resolution"), the Municipality has heretofore issued its Sewer System Revenue Refunding Bonds, Series 2010, dated February 9, 2010 (the "2010 Bonds"), which are payable from the income and revenues of the System; and

WHEREAS, pursuant to a resolution adopted on July 19, 2011 (the "2011 Resolution"), the Municipality has heretofore issued its Sewer System Revenue Bonds, Series 2011, dated July 27, 2011 (the "2011 Bonds"), which are payable from the income and revenues of the System; and

WHEREAS, pursuant to a resolution adopted on May 1, 2012 (the "2012 Resolution"), the Municipality has heretofore issued its Sewer System Revenue Bonds, Series 2012, dated May 17, 2012 (the "2012 Bonds"), which are payable from the income and revenues of the System; and

WHEREAS, the 1996 Bonds, the 2009 Bonds, the 2010 Bonds, the 2011 Bonds and the 2012 Bonds shall collectively be referred to as the "Prior Bonds"; and

WHEREAS, the 1996 Resolution, the 2009 Resolution, the 2010 Resolution, the 2011 Resolution and the 2012 Resolution shall collectively be referred to as the "Prior Resolutions"; and

WHEREAS, certain improvements to the System are necessary to meet the needs of the Municipality and the residents thereof, consisting of the construction of a project (the "Project") assigned Clean Water Fund Program Project No. 4558-02 by the Department of Natural Resources, and as described in the Department of Natural Resources approval letter for the plans and specifications of the Project, or portions thereof, issued under Section 281.41, Wisconsin Statutes, assigned No. S-2014-0552 and dated September 9, 2015 by the DNR; and

WHEREAS, under the provisions of Chapter 66, Wisconsin Statutes any municipality may, by action of its governing body, provide for purchasing, acquiring, constructing, extending, adding to, improving, operating and managing a public utility from the proceeds of bonds, which bonds are to be payable only from the revenues received from any source by such utility, including all rentals and fees; and

WHEREAS, the Municipality deems it to be necessary, desirable and in its best interest to authorize and sell sewer system revenue bonds of the Municipality payable solely from the revenues of the System, pursuant to the provisions of Section 66.0621, Wisconsin Statutes, to pay the cost of the Project; and

WHEREAS, the estimated date that construction of the Project will be completed is May 1, 2018; and

WHEREAS, the Prior Resolutions permit the issuance of additional bonds on a parity with the Prior Bonds upon certain conditions, and those conditions have been met; and

WHEREAS, other than the Prior Bonds, no bonds or obligations payable from the revenues of the System are now outstanding.

NOW, THEREFORE, be it resolved by the Governing Body of the Municipality that:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by implication requires otherwise:

(a) "Act" means Section 66.0621, Wisconsin Statutes;

(b) "Bond Registrar" means the Municipal Treasurer which shall act as Paying Agent for the Bonds;

(c) "Bonds" means the \$21,605,138 Sewer System Revenue Bonds, Series 2016, of the Municipality dated their date of issuance, authorized to be issued by this Resolution;

(d) "Bond Year" means the twelve-month period ending on each May 1;

(e) "Current Expenses" means the reasonable and necessary costs of operating, maintaining, administering and repairing the System, including salaries, wages, costs of materials and supplies, insurance and audits, but shall exclude depreciation, debt service, tax equivalents and capital expenditures;

(f) "Debt Service Fund" means the Sewer System Revenue Bond and Interest Special Redemption Fund of the Municipality, which shall be the "special redemption fund" as such term is defined in the Act;

(g) "Financial Assistance Agreement" means the Financial Assistance Agreement by and between the State of Wisconsin by the Department of Natural Resources and the Department of Administration and the Municipality pursuant to which the Bonds are to be issued and sold to the State, substantially in the form attached hereto and incorporated herein by this reference;

(h) "Fiscal Year" means the twelve-month period ending on each December 31;

(i) "Governing Body" means the City Council, or such other body as may hereafter be the chief legislative body of the Municipality;

(j) "Gross Earnings" means the gross earnings of the System, including earnings of the System derived from sewer charges imposed by the Municipality, all payments to the Municipality under any wastewater treatment service agreements between the Municipality and any contract users of the System, and any other monies received from any source including all rentals and fees and any special assessments levied and collected in connection with the Project;

(k) "Municipal Treasurer" means the Treasurer of the Municipality who shall act as Bond Registrar and Paying Agent;

(l) "Municipality" means the City of Whitewater, Walworth and Jefferson Counties, Wisconsin;

(m) "Net Revenues" means the Gross Earnings of the System after deduction of Current Expenses;

(n) "1996 Bonds" means the Municipality's Sewer System Revenue Bonds, Series 1996, dated July 24, 1996;

(o) "1996 Resolution" means a resolution adopted by the Governing Body on July 16, 1996 authorizing the issuance of the 1996 Bonds;

(p) "Parity Bonds" means bonds payable from the revenues of the System other than the Bonds but issued on a parity and equality with the Bonds pursuant to the restrictive provisions of Section 11 of this Resolution;

(q) "Prior Bonds" means the 1996 Bonds, 2009 Bonds, 2010 Bonds, 2011 Bonds and 2012 Bonds, collectively;

(r) "Prior Resolutions" means the 1996 Resolution, 2009 Resolution, 2010 Resolution, 2011 Resolution and 2012 Resolution, collectively;

(s) "Project" means the Project described in the preamble to this Resolution. All elements of the Project are to be owned and operated by the Municipality as part of the System as described in the preamble hereto;

(t) "Record Date" means the close of business on the fifteenth day of the calendar month next preceding any principal or interest payment date;

(u) "System" means the entire sewer system of the Municipality specifically including that portion of the Project owned by the Municipality and including all property of every nature now or hereafter owned by the Municipality for the collection, transmission, treatment, storage, metering and disposal of domestic, industrial and public sewerage and waste, including all improvements and extensions thereto made by the Municipality while any of the Bonds and Parity Bonds remain outstanding, including all real and personal property of every nature comprising part of or used or useful in connection with such sewer system and including all appurtenances, contracts, leases, franchises, and other intangibles;

(v) "2009 Bonds" means the Municipality's Sewer System Revenue Bonds, Series 2009, dated December 9, 2009;

(w) "2009 Resolution" means a resolution adopted by the Governing Body on November 17, 2009 authorizing the issuance of the 2009 Bonds;

(x) "2010 Bonds" means the Municipality's Sewer System Revenue Refunding Bonds, Series 2010, dated February 9, 2010;

(y) "2010 Resolution" means a resolution adopted by the Governing Body on January 19, 2010 authorizing the issuance of the 2010 Bonds;

(z) "2011 Bonds" means the Municipality's Sewer System Revenue Bonds, Series 2011, dated July 27, 2011;

(aa) "2011 Resolution" means a resolution adopted by the Governing Body on July 19, 2011 authorizing the issuance of the 2011 Bonds;

(bb) "2012 Bonds" means the Municipality's Sewer System Revenue Bonds, Series 2012, dated May 17, 2012; and

(cc) "2012 Resolution" means a resolution adopted by the Governing Body on May 1, 2012 authorizing the issuance of the 2012 Bonds.

Section 2. Authorization of the Bonds and the Financial Assistance Agreement. For the purpose of paying the cost of the Project (including legal, fiscal, engineering and other expenses), there shall be borrowed on the credit of the income and revenue of the System up to the sum of \$21,605,138; and fully registered revenue bonds of the Municipality are authorized to be issued in evidence thereof and sold to the State of Wisconsin Clean Water Fund Program in accordance with the terms and conditions of the Financial Assistance Agreement, which is incorporated herein by this reference and the City Manager and City Clerk of the Municipality are hereby authorized, by and on behalf of the Municipality, to execute the Financial Assistance Agreement.

Section 3. Terms of the Bonds. The Bonds shall be designated "Sewer System Revenue Bonds, Series 2016" (the "Bonds"); shall be dated their date of issuance; shall be numbered one and upward; shall bear interest at the rate of 2.100% per annum; shall be issued in denominations of \$0.01 or any integral multiple thereof; and shall mature on the dates and in the amounts as set forth in Exhibit B of the Financial Assistance Agreement and in the Bond form attached hereto as Exhibit A as it is from time to time adjusted by the State of Wisconsin based upon the actual draws made by the Municipality. Interest on the Bonds shall be payable commencing on November 1, 2016 and semiannually thereafter on May 1 and November 1 of each year. The Bonds shall not be subject to redemption prior to maturity except as provided in the Financial Assistance Agreement.

The schedule of maturities of the Bonds is found to be such that the amount of annual debt service payments is reasonable in accordance with prudent municipal utility practices.

Section 4. Form, Execution, Registration and Payment of the Bonds. The Bonds shall be issued as registered obligations in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

The Bonds shall be executed in the name of the Municipality by the manual signatures of the City Manager and City Clerk, and shall be sealed with its official or corporate seal, if any.

The principal of, premium, if any, and interest on the Bonds shall be paid by the Municipal Treasurer, who is hereby appointed as the Municipality's Bond Registrar.

Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America by the Bond Registrar. Payment of principal of the final maturity on the Bond will be payable upon presentation and surrender of the Bond to the Bond Registrar. Payment of principal on the Bond (except the final maturity) and each installment of interest shall be made to the registered owner of each Bond who shall appear on the registration books of the Municipality, maintained by the Bond Registrar, on the Record Date and shall be paid by check or draft of the Municipality and mailed to such registered owner at his or its address as it

appears on such registration books or at such other address may be furnished in writing by such registered owner to the Bond Registrar.

Section 5. Security for the Bonds. The Bonds, together with interest thereon, shall not constitute an indebtedness of the Municipality nor a charge against its general credit or taxing power. The Bonds, together with interest thereon, shall be payable only out of the Debt Service Fund hereinafter created and established, and shall be a valid claim of the registered owner or owners thereof only against such Debt Service Fund and the revenues of the System pledged to such fund, on a parity with the pledge granted to the holders of the Prior Bonds. Sufficient revenues are hereby pledged to said Debt Service Fund, and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Prior Bonds, the Bonds and any Parity Bonds as the same becomes due.

Section 6. Funds and Accounts. In accordance with the Act, for the purpose of the application and proper allocation of the revenues of the System, and to secure the payment of the principal of and interest on the Prior Bonds, the Bonds and Parity Bonds, certain funds of the System which were created and established by a Resolution adopted November 20, 1990 are hereby continued and shall be used solely for the following respective purposes:

- (a) Sewer System Revenue Fund (the "Revenue Fund"), into which shall be deposited as received the Gross Earnings of the System, which money shall then be divided among the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund and the Surplus Fund in the amounts and in the manner set forth in Section 7 hereof and used for the purposes described below.
- (b) Sewer System Operation and Maintenance Fund (the "Operation and Maintenance Fund"), which shall be used for the payment of Current Expenses.
- (c) Sewer System Revenue Bond and Interest Special Redemption Fund (the "Debt Service Fund"), which shall be used for the payment of the principal of, premium, if any, and interest on the Prior Bonds, the Bonds and Parity Bonds as the same becomes due. The Reserve Account provided for by the 2010 Resolution and continued by the 2012 Resolution within the Debt Service Fund is not pledged to the payment of principal of or interest on the 1996 Bonds, the 2009 Bonds, the 2011 Bonds or the Bonds, and moneys in the Reserve Account shall under no circumstances be used to pay principal of or interest on the 1996 Bonds, the 2009 Bonds, the 2011 Bonds or Bonds.
- (d) Depreciation Fund, which shall be used to provide a proper and adequate depreciation account for the System.
- (e) Surplus Fund, which shall first be used whenever necessary to meet requirements of the Operation and Maintenance Fund including the one month reserve, the Debt Service Fund including the Reserve Account, and the Depreciation Fund. Any money then remaining in the Surplus Fund at the end of any Fiscal Year may be used only as permitted and in the order specified in Section 66.0811(2), Wis. Stats. Money thereafter remaining in the Surplus Fund may be transferred to any of the funds or accounts created by this section.

Section 7. Application of Revenues. After the delivery of the Bonds, the Gross Earnings of the System shall be deposited as collected in the Revenue Fund and shall be transferred monthly to the funds listed below in the following order of priority and in the manner set forth below:

- (a) to the Operation and Maintenance Fund, in an amount equal to the estimated Current Expenses for such month and if not needed to remedy any deficiency in the Debt Service Fund, for the following month (after giving effect to available amounts in said Fund from prior deposits);
- (b) to the Debt Service Fund, an amount equal to one-sixth (1/6) of the next installment of interest coming due on the Prior Bonds, the Bonds and any Parity Bonds then outstanding and an amount equal to one-twelfth (1/12) of the installment of principal of the Prior Bonds, the Bonds and any Parity Bonds coming due during such Bond Year (after giving effect to available amounts in said Fund from accrued interest, any premium or any other source), and any amount required by the 2010 Resolution, 2012 Resolution or future resolution authorizing Parity Bonds secured by the Reserve Account to fund the Reserve Account; and
- (c) to the Depreciation Fund, an amount determined by the Governing Body to be sufficient to provide a proper and adequate depreciation account for the System; and
- (d) to the Surplus Fund, any amount remaining in the Revenue Fund after the monthly transfers required above have been completed.

Transfers from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund, the Depreciation Fund and the Surplus Fund shall be made monthly not later than the tenth day of each month, and such transfer shall be applicable to monies on deposit in the Revenue Fund as of the last day of the month preceding. Any other transfers and deposits to any fund required or permitted by subsection (a) through (d) of this Section, except transfers or deposits which are required to be made immediately or annually, shall be made on or before the tenth day of the month. Any transfer or deposit required to be made at the end of any Fiscal Year shall be made within sixty (60) days after the close of such Fiscal Year. If the tenth day of any month shall fall on a day other than a business day, such transfer or deposit shall be made on the next succeeding business day.

It is the express intent and determination of the Governing Body that the amounts transferred from the Revenue Fund and deposited in the Debt Service Fund shall be sufficient in any event to pay the interest on the Prior Bonds, the Bonds and any Parity Bonds as the same accrues and the principal thereof as the same matures, and to meet the Reserve Requirement established by the 2010 Resolution, 2012 Resolution or future resolution authorizing the issuance of Parity Bonds to be secured by the Reserve Account.

Section 8. Deposits and Investments. The Debt Service Fund shall be kept apart from monies in the other funds and accounts of the Municipality and the same shall be used for no purpose other than the prompt payment of principal of and interest on the Prior Bonds, the Bonds and any Parity Bonds as the same becomes due and payable. All monies therein shall be deposited in special and segregated accounts in a public depository selected under Chapter 34, Wisconsin Statutes and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes. The other funds herein created

(except the Sewer System CWFPP Project Fund) may be combined in a single account in a public depository selected in the manner set forth above and may be temporarily invested until needed in legal investments subject to the provisions of Section 66.0603(1m), Wisconsin Statutes.

Section 9. Service to the Municipality. The reasonable cost and value of services rendered to the Municipality by the System by furnishing sewer services for public purposes shall be charged against the Municipality and shall be paid in monthly installments as the service accrues, out of the current revenues of the Municipality collected or in the process of collection, exclusive of the revenues derived from the System; that is to say, out of the tax levy of the Municipality made by it to raise money to meet its necessary current expenses. The reasonable cost and value of such service to the Municipality in each year shall be equal to an amount which, together with other revenues of the System, will produce in each Fiscal Year Net Revenues equivalent to not less than the annual principal and interest requirements on the Prior Bonds, the Bonds, any Parity Bonds and any other obligations payable from the revenues of the System then outstanding, times the greater of (i) 110% or (ii) the highest debt service coverage ratio required with respect to any obligations payable from revenues of the System then outstanding. However, such payment out of the tax levy shall be subject to (a) approval of the Public Service Commission, or successors to its function, if applicable, (b) yearly appropriations therefor, and (c) applicable levy limitations, if any; and neither this Resolution nor such payment shall be construed as constituting an obligation of the Municipality to make any such appropriation over and above the reasonable cost and value of the services rendered to the Municipality and its inhabitants or to make any subsequent payment over and above such reasonable cost and value.

Section 10. Operation of System; Municipality Covenants. It is covenanted and agreed by the Municipality with the owner or owners of the Bonds, and each of them, that the Municipality will perform all of the obligations of the Municipality as set forth in the Financial Assistance Agreement.

Section 11. Additional Bonds. The Bonds are issued on a parity with the Prior Bonds as to the pledge of revenues of the System. No bonds or obligations payable out of the revenues of the System may be issued in such manner as to enjoy priority over the Bonds. Additional obligations may be issued if the lien and pledge is junior and subordinate to that of the Bonds. Parity Bonds may be issued only under the following circumstances:

(a) Additional Parity Bonds may be issued for the purpose of completing the Project and for the purpose of financing costs of the Project which are ineligible for payment under the State of Wisconsin Clean Water Fund Program. However, such additional Parity Bonds shall be in an aggregate amount not to exceed 20% of the face amount of the Bonds; or

(b) Additional Parity Bonds may also be issued if all of the following conditions are met:

(1) The Net Revenues of the System for the Fiscal Year immediately preceding the issuance of such additional bonds must have been in an amount at least equal to the maximum annual interest and principal requirements on all bonds outstanding payable from the revenues of the System, and on the bonds then to be issued, times the greater of (i) 1.10 or (ii) the highest debt service coverage ratio to be required with respect to the Additional Parity Bonds to be issued or any other obligations payable from the revenues of the System then outstanding. Should an increase in permanent rates and charges, including those made to the Municipality, be properly ordered and made effective during the Fiscal Year immediately prior to the issuance of such additional bonds or during

that part of the Fiscal Year of issuance prior to such issuance, then Net Revenues for purposes of such computation shall include such additional revenues as an independent certified public accountant, consulting professional engineer or the Wisconsin Public Service Commission may certify would have accrued during the prior Fiscal Year had the new rates been in effect during that entire immediately prior Fiscal Year.

(2) The payments required to be made into the funds enumerated in Section 6 of this Resolution must have been made in full.

(3) The additional bonds must have principal maturing on May 1 of each year and interest falling due on May 1 and November 1 of each year.

(4) The proceeds of the additional bonds must be used only for the purpose of providing extensions or improvements to the System, or to refund obligations issued for such purpose.

Section 12. Sale of Bonds. The sale of the Bonds to the State of Wisconsin Clean Water Fund Program for the purchase price of up to \$21,605,138 and at par, is ratified and confirmed; and the officers of the Municipality are authorized and directed to do any and all acts, including executing the Financial Assistance Agreement and the Bonds as hereinabove provided, necessary to conclude delivery of the Bonds to said purchaser, as soon after adoption of this Resolution as is convenient. The purchase price for the Bonds shall be paid upon requisition therefor as provided in the Financial Assistance Agreement, and the officers of the Municipality are authorized to prepare and submit to the State requisitions and disbursement requests in anticipation of the execution of the Financial Assistance Agreement and the issuance of the Bonds.

Section 13. Application of Bond Proceeds. The proceeds of the sale of the Bonds shall be deposited by the Municipality into a special fund designated as "Sewer System CWFPP Project Fund." The Sewer System CWFPP Project Fund shall be used solely for the purpose of paying the costs of the Project as more fully described in the preamble hereof and in the Financial Assistance Agreement. Moneys in the Sewer System CWFPP Project Fund shall be disbursed within three (3) business days of their receipt from the State of Wisconsin and shall not be invested in any interest-bearing account.

Section 14. Amendment to Resolution. After the issuance of any of the Bonds, no change or alteration of any kind in the provisions of this Resolution may be made until all of the Bonds have been paid in full as to both principal and interest, or discharged as herein provided, except: (a) the Municipality may, from time to time, amend this Resolution without the consent of any of the owners of the Bonds, but only to cure any ambiguity, administrative conflict, formal defect, or omission or procedural inconsistency of this Resolution; and (b) this Resolution may be amended, in any respect, with a written consent of the owners of not less than two-thirds (2/3) of the principal amount of the Bonds then outstanding, exclusive of Bonds held by the Municipality; provided, however, that no amendment shall permit any change in the pledge of revenues derived from the System or the maturity of any Bond issued hereunder, or a reduction in the rate of interest on any Bond, or in the amount of the principal obligation thereof, or in the amount of the redemption premium payable in the case of redemption thereof, or change the terms upon which the Bonds may be redeemed or make any other modification in the terms of the payment of such principal or interest without the written consent of the owner of each such Bond to which the change is applicable.



Section 15. Defeasance. When all Bonds have been discharged, all pledges, covenants and other rights granted to the owners thereof by this Resolution shall cease. The Municipality may discharge all Bonds due on any date by irrevocably depositing in escrow with a suitable bank or trust company a sum of cash and/or bonds or securities issued or guaranteed as to principal and interest of the U.S. Government, or of a commission, board or other instrumentality of the U.S. Government, maturing on the dates and bearing interest at the rates required to provide funds sufficient to pay when due the interest to accrue on each of said Bonds to its maturity or, at the Municipality's option, if said Bond is prepayable to any prior date upon which it may be called for redemption, and to pay and redeem the principal amount of each such Bond at maturity, or at the Municipality's option, if said Bond is prepayable, at its earliest redemption date, with the premium required for such redemption, if any, provided that notice of the redemption of all prepayable Bonds on such date has been duly given or provided for.

Section 16. Rebate Fund. Unless the Bonds are exempt from the rebate requirements of the Internal Revenue Code of 1986, as amended (the "Code"), the Municipality shall establish and maintain, so long as the Bonds and any Parity Bonds are outstanding, a separate account to be known as the "Rebate Fund." The sole purpose of the Rebate Fund is to provide for the payment of any rebate liability with respect to the Bonds under the relevant provisions of the Code and the Treasury Regulations promulgated thereunder (the "Regulations"). The Rebate Fund shall be maintained by the Municipality until all required rebate payments with respect to the Bonds have been made in accordance with the relevant provisions of the Code and the Regulations.

The Municipality hereby covenants and agrees that it shall pay to the United States from the Rebate Fund, at the times and in the amounts and manner required by the Code and the Regulations, the portion of the "rebate amount" (as defined in Section 1.148-3(b) of the Regulations) that is due as of each "computation date" (within the meaning of Section 1.148-3(e) of the Regulations). As of the date of this Resolution, the provisions of the Regulations specifying the required amounts of rebate installment payments and the time and manner of such payments are contained in Sections 1.148-3(f) and (g) of the Regulations, respectively. Amounts held in the Rebate Fund and the investment income therefrom are not pledged as security for the Bonds or any Parity Bonds and may only be used for the payment of any rebate liability with respect to the Bonds.

The Municipality may engage the services of accountants, attorneys or other consultants necessary to assist it in determining the rebate payments, if any, owed to the United States with respect to the Bonds. The Municipality shall maintain or cause to be maintained records of determinations of rebate liability with respect to the Bonds for each computation date until six (6) years after the retirement of the last of the Bonds. The Municipality shall make such records available to the State of Wisconsin upon reasonable request therefor.

Section 17. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Municipality and the owner or owners of the Bonds, and after issuance of any of the Bonds no change or alteration of any kind in the provisions of this Resolution may be made, except as provided in Section 14, until all of the Bonds have been paid in full as to both principal and interest. The owner or owners of any of the Bonds shall have the right in addition to all other rights, by mandamus or other suit or action in any court of competent jurisdiction, to enforce such owner's or owners' rights against the Municipality, the Governing Body thereof, and any and all officers and agents thereof including, but without limitation, the right to require the Municipality, its Governing Body and any other authorized body, to fix and collect rates and charges fully adequate to carry out all of the provisions and agreements contained in this Resolution.

Section 18. Continuing Disclosure. The officers of the Municipality are hereby authorized and directed, if requested by the State of Wisconsin, to provide to the State of Wisconsin Clean Water Fund Program and to such other persons or entities as directed by the State of Wisconsin such ongoing disclosure regarding the Municipality's financial condition and other matters, at such times and in such manner as the Clean Water Fund Program may require, in order that securities issued by the Municipality and the State of Wisconsin satisfy rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended and as it may be amended from time to time, imposed on brokers and dealers of municipal securities before the brokers and dealers may buy, sell, or recommend the purchase of such securities.

Section 19. Conflicting Resolutions. All ordinances, resolutions (other than the Prior Resolutions), or orders, or parts thereof heretofore enacted, adopted or entered, in conflict with the provisions of this Resolution, are hereby repealed and this Resolution shall be in effect from and after its passage. In case of any conflict between this Resolution and the Prior Resolutions, the Prior Resolutions shall control as long as any of the respective Prior Bonds are outstanding.

Resolution introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Grady. AYES: Grady, Binnie, Kidd, Wellnitz. NOES: Goettl, Singer. ABSENT: Langnes. ADOPTED: April 7, 2016.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**RESOLUTION AUTHORIZING APPLICATION FOR WISCONSIN DEPARTMENT OF NATURAL RESOURCES FOR TWO RETENTION PONDS.**

**URBAN NONPOINT SOURCE GRANT PROGRAM  
RESOLUTION NO: N/A**

A RESOLUTION authorizing the submittal of a state grant application by the City of Whitewater and the subsequent appropriation of City funds for Urban Nonpoint Source projects for planning, design, and construction of two (2) a stormwater detention facilities located southwest of the intersection of Endeavor Drive and Prospect Drive, and northwest of the intersection of Janesville Street and Harper Street.

WHEREAS, the City of Whitewater is qualified, willing and able to carry out all activities described in the state grant application; and

WHEREAS, in this action the Whitewater City Council has declared its intent to conduct the Stormwater Management projects described in the application; and,

WHEREAS, the City of Whitewater will maintain records documenting all expenditures made during the Urban Nonpoint Source Grant project; and,

WHEREAS, the City of Whitewater will submit a final report to the Department which describes all Urban Nonpoint Source project activities, achievements and data collected, and documentation of the project costs.

IT IS THEREFORE RESOLVED THAT:

The Whitewater City Council requests the funds and assistance available from the Wisconsin Department of Natural Resources under the Urban Nonpoint Source Grant Program will comply with state rules for the program, and,

BE IT FURTHER RESOLVED THAT the City of Whitewater will meet the obligations of the planning, design, and construction projects including timely publication of the results and meet the financial obligations under this grant including the prompt payment of our commitment to planning, design, and construction project costs.

Resolution introduced by Councilmember Goettl, who moved its adoption. Seconded by Councilmember Binnie. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes. Adopted this 7<sup>th</sup> day of April, 2016 by a vote of 6 in favor, 0 against, 0 abstain and 1 absent.

Cameron Clapper, City Manager

Michele R. Smith, City Clerk

**RESOLUTION AUTHORIZING GENERAL OBLIGATION PROMISSORY NOTES TO COMMERCIAL BANK AND FIRST CITIZENS STATE BANK.** Proposed was borrowing of \$1,350,000 from each the Commercial Bank and the First Citizens State Bank, to fund the George Street, Center Street, Boone Court, and Summit Street reconstruction projects.

Resolutions introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Goettl. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**RESOLUTION SUPPORTING A STUDY BY WALWORTH COUNTY OF ALTERNATIVE LONG-TERM SERVICE DELIVERY OPTIONS RELATIVE TO FIRE AND/OR EMS SERVICES.**

**RESOLUTION ENCOURAGING AND SUPPORTING THE UNDERTAKING OF A STUDY BY WALWORTH COUNTY ON ALTERNATIVE LONG-TERM SERVICE DELIVERY OPTIONS RELATIVE TO FIRE AND/OR EMERGENCY MEDICAL (EMS) SERVICES**

WHEREAS, the majority of Walworth County receives fire and EMS services through volunteer municipal departments who have and continue to demonstrate their commitment to their respective communities through these volunteer efforts; and

WHEREAS, a number of factors such as more volunteers working outside of the community and therefore unavailable for daytime incidents, increases in call volume (especially in the area of emergency medical responses) making it harder for local businesses to allow an employee to respond during working hours, and increases in training requirements are stressing volunteer systems; and

WHEREAS, there is a significant correlation, dependent on the nature of the call, between response time and effectiveness of the response and as such effective primary and secondary response areas may transcend corporate boundaries; and

WHEREAS, fire and EMS services are a County-wide concern and viewing long-term alternative delivery service options from this larger geographical area may enhance the process of identifying primary and secondary response areas from a broader “best practices” response perspective;

NOW THEREFORE, BE IT RESOLVED that the Common Council of the City of Whitewater hereby stands with neighboring municipalities in requesting that the Walworth County Board consider undertaking a County-Wide study on long-term alternative service delivery options relative to Fire and/or Emergency Medical (EMS) services.

Resolution introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Goettl. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes. ADOPTED: April 7, 2016.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**ADOPTION OF NO-FAULT SEWER BACKUP POLICY.** *Councilmember Kidd inquired whether there was any interest in making the policy retroactive to the beginning of the year. It was noted that this possibility was briefly discussed at the Task Force meetings, but it was suggested that consideration of that matter be brought up at a later date.*

### **RESOLUTION**

#### **A Resolution Establishing a No-Fault Sanitary Sewer Backup Damage Reimbursement Policy.**

*WHEREAS, the City of Whitewater has determined that it is necessary to increase citizen awareness of the operational dynamics of wastewater collection systems and their responsibilities relative to maintenance and protection against potential property damage from sewer backups, and*

*WHEREAS, the City of Whitewater is responsible for maintaining sewer mains, manholes, pump stations and force mains that are in City rights-of-way and on City property, and*

*WHEREAS, the City of Whitewater expends significant resources, through an extensive preventive maintenance program, to keep the sewer system in a good state of repair. Occasionally, however, forces of nature or conditions develop within the system that may cause sewage to back up into a residence or business which are beyond the City’s control, and*

*WHEREAS, the City of Whitewater desires to reduce health hazards by encouraging property owners who have experienced a sewer backup to get it appropriately cleaned up as quickly as possible, and*

*WHEREAS, the City of Whitewater desires to provide a method for assisting homeowners with the financial burden of a sewer backup even when the City is not legally liable for the resulting damage.*

*NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of Whitewater that the City will reimburse sanitary sewer customers as set forth in the City's No-Fault Sanitary Sewer Backup Damage Reimbursement Policy.*

*Resolution introduced by Councilmember Kidd, who moved its adoption. Seconded by Councilmember Binnie. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: None. ADOPTED: April 7, 2016.*

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**FINAL READING OF ORDINANCE AMENDING CHAPTER 16.14, GREASE TRAP ORDINANCE.** It was agreed that the second reading of this ordinance would be waived.

**AN ORDINANCE AMENDING SECTIONS 16.14.580, 16.14.585 and 16.14.586 CONCERNING GREASE, OIL AND SAND INTERCEPTORS**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do ordain as follows:

SECTION 1. Whitewater Municipal Code Chapter 16.14 Section 16.14.580 is hereby amended to read as follows:

The requirement to install grease, oil or sand interceptors is set forth in the Wisconsin Dept. of Commerce Administrative Code (DCOM 82.34). Units shall be installed by the user at their expense according to this standard. All new, altered or remodeled plumbing systems receiving grease, fats, oils or similar products from cooking or food preparation, along with car wash facilities, require grease/sand interceptors with the exception of residential dwelling units. Installations must be done in a manner to allow for easy accessibility for inspections, maintenance and repair. In addition, the city may require a grease interceptor where an onsite drain system is reduced or filled due to congealed grease per DCOM 82.34 (5)(b)(3).

SECTION 2. Whitewater Municipal Code Chapter 16.14 Section 16.14.585 is hereby amended to read as follows:

Where installed, grease, oil and sand interceptors shall be maintained at the owner's expense and shall be kept in continuous and efficient operation. At a minimum, cleaning must be done at least once in a twelve-month period regardless of manufacturer recommendations. The calendar year for inspection purposes runs from January 1st through December 31st. Cleaning practices cannot be performed "in house" per NR113.04. All maintenance needs to be performed by a Wisconsin Sanitary License holder as defined in NR113.03(74). The city reserves the right to increase the required maintenance frequency if sufficient cause is observed. Receipts of required maintenance shall be forwarded to the city clerk's office by January 1st of each year. Failure to comply with the maintenance procedures will result in reinspections and the fees that accompany this procedure per Whitewater Ordinance 1.29.020.

SECTION 3. Whitewater Municipal Code Chapter 16.14 Section 16.14.586 is hereby amended to read as follows:

The introduction of grease or fat emulsifiers into a grease interceptor is prohibited as set forth in DCOM 82.34(5)(e). In addition, enzyme additives, flushing with hot water or steam are prohibited means with regard to required maintenance of grease interceptors within the city.

Ordinance introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Goettl. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes. ADOPTED: April 7, 2016.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**FINAL READING OF ORDINANCE AMENDING ZONING CODE CHAPTER 19.21 (MULTI-FAMILY RESIDENCE DISTRICT) WHICH INCLUDES, BUT IS NOT LIMITED TO, CHANGES TO LOT COVERAGE RESTRICTIONS, YARD SIZE REQUIREMENTS AND LOT IMPERVIOUS SURFACE REGULATIONS.**

City Attorney McDonell prepared the proposed ordinance, which relates to impervious surface and yard requirements in the R-3 zoning district. It was noted that approval of this ordinance will be considered a “second reading.”

**AN ORDINANCE AMENDING CHAPTER 19.21 OF THE MUNICIPAL CODE (R-3 ZONING DISTRICT).**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do ordain as follows:

SECTION 1. Whitewater Municipal Code Chapter 19.21 is hereby amended to read as follows:

19.21.050 Lot Width

Minimum lot width in the R-3 district is:

- A. One-family and two-family dwellings 66 feet for all improved lots existing at the time of adoption of the ordinance codified in this section;
- B. One family, 66 feet for all new single-family dwellings constructed after the adoption of the ordinance codified in this section;
- C. Two-family, 80 feet (80') for all newly constructed two-family dwellings;
- D. Multi-family dwellings, one hundred (100) feet.

19.21.060 Yard Requirements for One-Family and Two-Family Dwellings, located in the R-3.

- A. Front, thirty (30) feet first floor (not more than 40% of the yard may be an impervious surface except as a conditional use).
- B. Side, fifteen (15) feet; corner lots twenty-five (25) feet.
- C. Rear, thirty (30) feet (not more than 40% of the yard may be an impervious surface except as a conditional use).
- D. Shore, seventy-five (75) feet. All Shoreland shall be in compliance with Chapter 19.46, and in addition, may require DNR approval.

19.21.065 Yard Requirements for R-3 Multi-Family Dwelling Units.

- A. Front, thirty (30) feet first floor (a lesser front yard may be allowed by a conditional use permit).
- B. Side, fifteen (15) feet; corner lots twenty-five (25) feet, a lesser side yard may be allowed by a conditional use permit).
- C. Rear, thirty (30) feet (a lesser rear yard may be allowed by conditional use permit).

D. Shore, seventy-five (75) feet, all Shoreland shall be in compliance with Chapter 19.46, and in addition may require DNR approval.

19.21.070 Lot Coverage.

A. Three hundred fifty (350) square feet of usable open space shall be required per each dwelling unit for structures with two (2) or more units.

1. Usable open space. Usable open space is that part of the ground level of a zoning lot, other than in a required front or corner side yard, which is unoccupied by driveways, drive aisles, service drives, off-street parking spaces, and/or loading berths and is unobstructed to the sky. This space of minimum prescribed dimension shall be available to all occupants of the building and shall be usable for greenery, drying yards, recreational space, gardening and other leisure activities normally carried on outdoors. Where and to the extent prescribed in these regulations, balconies and roof areas, designed and improved for outdoor activities, may also be considered as usable open space. The usable open space shall be planned as an assemblage or singularly designed area that maximizes the size for open space usage.
2. EXAMPLE: A four Unit building is required to have 1,400 square feet of usable open space.

B. The maximum impervious surface:

1. Maximum lot coverage (principal and accessory structures) for one-family and two-family dwellings in the R-3 is thirty percent (30%).
  - a. Maximum impervious surface for one-family and two-family dwellings located in the R-3:
    1. Not more than forty percent (40%) of the front yard shall be impervious surface except as a conditional use. Not more than forty percent (40%) of the rear yard shall be impervious surface except as a conditional use.
    2. The following chart shall be used to determine the maximum percent of allowed impervious surface to determine the threshold for stormwater mitigation plan requirements on one-family and two-family lots in the R-3 District.

Maximum Impervious Surface	
Less than 7,000 sq. ft.	65%
7,000 sq. ft to 8,499 sq ft.	60%
8,500 sq ft. to 9,999 sq. ft.	55%
10,000 sq. ft. and over	50%

3. Percentage of impervious surface shall be calculated by taking the total surface area of the existing and proposed impervious surface and dividing it by the total lot area (note the minimum lot requirement for new lots in R-3 is eight thousand square feet for single-family and twelve thousand square feet for two-family).

2. Maximum Impervious surface for multi-family dwellings:

Review by engineering staff and approval by the neighborhood services Department or the plan and Architectural Review Commission shall be required.

3. The principals and standards set forth in the City of Whitewater Erosion Control and Stormwater Management requirements policy which includes the City's stormwater management ordinance (Chapter 16.16) and the City's construction site control ordinance (16.18), shall be used as a guide by the property owner and staff for drafting and reviewing stormwater management plans.

Ordinance introduced by Councilmember Goettl, who moved its adoption. Seconded by Councilmember Binnie. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes. ADOPTED: April 7, 2016.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**AGREEMENTS IN LIEU OF CONDEMNATION AND EASEMENT AGREEMENTS WITH ARACELI PARTIDA, THAYER COBURN, AND ANNE FLEMMING COBURN – ANN STREET BASIN CONSTRUCTION PROJECT.**

Agreements and Easements were presented relating to the Ann Street basin construction project. It was moved by Grady and seconded by Goettl to approve the agreements and easements with A. Partida and Thayer and Anne Flemming Coburn. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes.

**DOWNTOWN WHITEWATER, INC. REQUEST FOR STREET CLOSURES.**

Downtown Whitewater, Inc. has requested closure of Whitewater Street, from the eastern edge of the Fremont Street / Whitewater Street intersection to just west of the Denny K's parking lot and closure of Second Street, from Whitewater Street to the southern edge of the Second Street / Center Street intersections. Street closures would occur on Tuesdays, from 3:00 p.m. until 8:00 p.m., from May 3 through October 25, 2016. Downtown Whitewater groups have contacted most affected businesses, and the group will contact the few businesses that have not yet been consulted. It was moved by Binnie and seconded by Goettl to approve closure of the Streets as requested. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes.

**CITY OF WHITEWATER – WHITEWATER FIRE DEPARTMENT AGREEMENT.**

The City of Whitewater and the Whitewater Fire Department have been negotiating an agreement for city fire and emergency medical services. It was determined that the agreement was not yet in final form. It was moved by Binnie and seconded by Goettl to postpone action on the proposed agreement, with the matter to return to the Common Council no later than the May 3, 2016 Council meeting. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes. It was agreed that although Councilmember Ken Kidd, who was attending his last meeting as a councilmember, would continue to serve on the Fire / Rescue Task Force meeting in the event they had to meet again.

**OAK STREET LIFT STATION.**

The Oak Street lift station needs upgrading as the existing controller at this location is no longer available should a failure occur. Also necessary is a new level indicator. It was moved by Binnie and seconded by Goettl to approve the upgrade to the controls at the Oak Street lift station, to be completed by L.W. Allen of Madison, Wisconsin, for



a total cost of \$21,285. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes.

**PURCHASE OF POLICE CAR.** It was moved by Binnie and seconded by Goettl to approve the purchase of a police car from Ketterhagen Motors, Inc. in the sum of \$25,095.65. (2016 Ford Taurus). AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes.

**REQUESTS FOR FUTURE AGENDA ITEMS.** Patrick Singer requested discussion of the Knox box ordinance at the May 3, 2016 meeting. Discussion of the Fire Department contract was also discussed.

**ADJOURNMENT.** It was moved by Singer and seconded by Goettl to adjourn the meeting. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: Langnes. The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Michele R. Smith, Clerk