

CONDITIONAL USE  
PERMIT  
City of Two Rivers

Document Number

Permit No. 3-1-2024

Blue = Change for March 4, 2024 City Council

Before the City Council of the City of Two Rivers, Manitowoc County, Wisconsin, regarding the premises at 15<sup>TH</sup> Street and Washington Street in the City of Two Rivers, Manitowoc County, State of Wisconsin, further described as:

**NE-SE & SE-SE S33 T20N R24E TRACT 7 OF CSM V 15 P 151**

Inspections Department  
City of Two Rivers  
PO Box 87  
Two Rivers, WI 54241-0087

Parcel ID Number: 053-233-404-010.01

Zoning Classification of the Premises is: Industrial District (I-2)/Conditional Use: Battery Energy Storage System

Mailing Address of the Premises Operator: 412 W. 15<sup>th</sup> Street, New York, NY 10011.

Land Owner: City of Two Rivers, Business Industrial Development Corporation, 1717 E Park Street, Two Rivers WI 54241

WHEREAS, the Zoning Code and Zoning District Map of the above named municipality, pursuant to State Statute, state that the premises may not be used for the purpose hereinafter described but that upon petition such use may be approved by the municipality as a Conditional Use in particular circumstances as defined by the standards in the Zoning Ordinance; and

Petition therefore having been made, and public hearing held thereon, and the City Council of the City of Two Rivers having determined that by reason of the nature, character and circumstances of the proposed use, and of the specific and contemporary conditions, permit of such use upon the terms and conditions hereinafter prescribed would be consistent with the requirements of the Zoning Ordinance.

Now, therefore, it is permitted, subject to compliance with the terms and conditions hereinafter stated, that the Premises may be used for the purpose of a Battery Energy Storage System.

Permitted by action of the City Council of the City of Two Rivers on March 4, 2024.

Original filed in the office of the City Clerk of the City of Two Rivers, Wisconsin

The Conditions of this Permit are:

1. This Permit shall become effective upon the execution and recording by the Owner of the Premises as acceptance hereof.
2. This Permit shall be void unless proper application, pursuant to the Building and Zoning Codes of this Municipality, for appropriate Building and Zoning Use Permits in conformity to this Permit, is made within twenty-four (24) months of the date hereof.
3. This Permit is subject to amendment and termination in accordance with the provisions of the Zoning Code of this Municipality.
4. Construction and operation of the use permitted shall be in strict conformity to the approved Site, Architectural, Lighting and Landscaping Plans in connection with the Petition for this Permit and such plans are incorporated herein by reference as if set forth in detail herein.
5. Any substantial change or expansion of the facilities permitted by the initial issuance of this Permit would require approval by the Plan Commission and City Council as an amendment to this Permit.
6. This permit is specifically issued to Hawk Energy Storage, LLC. This permit may be transferred under the same conditions to successors and assigns upon authorization by the Two Rivers City Council, based on any new owner demonstrating to the City's satisfaction its ability to comply with all provisions of the Permit. In considering authorization for such transfers, the City's considerations may include, by way of example but not limitation, the experience of the transferee in the operation of battery storage systems and the ability of the transferee to provide proper surety related to decommissioning. Such authorization by the City Council shall not be unreasonably withheld, **conditioned, or delayed**. This permit shall lapse if the

operation of a battery energy storage system on the Premises ceases for a period of more than twelve (12) months.

7. Conditions/Conditions of Operations:

A. Hours of Operation: Twenty-four hours a day and seven days a week. Batteries will be charging and discharging based on market and other external conditions.

B. All other Conditions in the attached Exhibit A.

**SIGNATURES OF PROPERTY OWNER(S) AND PERMITEE(S):**

**As Owner(s) of the Subject Property, I/we accept and understand the above-described conditions.**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF WISCONSIN  
MANITOWOC COUNTY

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, the above named \_\_\_\_\_ and to be the person(s) who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
Amanda Baryenbruch  
Notary Public, Manitowoc County, Wisconsin  
My commission expires: \_\_\_\_\_

**SIGNATURES - CITY OF TWO RIVERS**

\_\_\_\_\_  
Greg Buckley, City Manager

\_\_\_\_\_  
Amanda Baryenbruch, City Clerk

STATE OF WISCONSIN  
MANITOWOC COUNTY

Personally, came before me this \_\_\_\_\_ day of \_\_\_\_\_ 2024, the above-named Greg Buckley and Amanda Baryenbruch known to be the person(s) who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, Manitowoc County, Wisconsin  
My commission expires: \_\_\_\_\_

THIS INSTRUMENT WAS DRAFTED BY:  
Elizabeth Runge, Community Development Director

EXHIBIT A: CONDITIONAL USE PERMIT  
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**UPDATED**

**Blue = Changes made for March 4, 2024 City Council meeting and review**

**EXHIBIT A**

Safety

1. A Hazard Mitigation Analysis (HMA) will be completed and shared with the fire department, police department - all local emergency responders – prior to the issuance of a building permit.
2. An Emergency Response Plan (ERP) is to be prepared prior to the issuance of a building permit.
3. Local first responders are to be trained and equipped to the extent current equipment is insufficient to respond appropriately to the selected battery technology for the Hawk BESS project, at the Developer’s commercially reasonable expense, prior to the commencement of operation. Refresher training to local first responders shall be required, at the Developer’s expense, at reasonable intervals, at least annually or as requested by the City of Two Rivers Fire Chief, throughout the life of the project.
4. The ERP is to be reviewed annually with local emergency responders throughout the project’s lifespan and modified for best safety practices if necessary.
5. The facility is to be designed, constructed, operated, maintained and decommissioned to meet NFPA 855 standards.
6. Designed to meet Wisconsin and/or national electrical standards.
7. Confirmation that there will be remote monitoring of the BESS 24 hours, 7 days a week.

Noise

8. A noise study is to be conducted pre and post construction to verify the BESS is in compliance with the City’s noise ordinance.
9. It will be the City’s practice to verify the noise level on this project as it does with all projects within the City.

Operation and Maintenance

10. The project shall be constructed, operated and maintained in compliance with good utility practice. The City will have a third party-reviewer to assist with the review of BESS design (see item 16).
11. Routine maintenance shall be performed on the BESS equipment to ensure proper performance of the technology. The City and local emergency responders are to be contacted if there are concerns that meet any ERP standards in the battery performance.

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Decommissioning

12. The Developer is responsible for the removal of the Project at the end of its useful life. The site is to be restored to its pre-construction condition to the maximum extent possible, within 12 months of ceasing operations.

13. A decommissioning plan must be developed, submitted, and approved by the City prior to the issuance of the building permit. **The City shall not unreasonably withhold, delay, or condition such approval.**

In summary the decommissioning plan is to identify:

- Steps for restoring the site of the project to pre-construction condition to the maximum extent possible;
- Estimated cost for restoration less the project's estimated salvage value. (**"Net Cost for Restoration"**)

14. The decommissioning plan is to be reviewed every 5 years for the purposes of updating the costs for decommissioning and, if applicable, updating the financial agreement identified in #15. Such updates shall be subject to approval by the City. **The City shall not unreasonably withhold, delay, or condition such approval.**

15. An assurance in the form of a bond, letter of credit, or other form, to be established in an agreement between the City and Developer to cover the cost of decommissioning as defined in the decommissioning plan and any updates. The cost of the project's estimated salvage value will be identified in the decommissioning plan.

Third Party Reviewer

16. The City will be seeking the services of a third-party reviewer with expertise in the BESS technology field to assist with the following services (if the CUP is approved by the City Council):

- a. Review of the site and architectural plan, battery technology compliance with NFPA 855 and with other applicable regulatory standards and codes not specifically identified in this memo;
- b. Assist with review of the ERP, completed noise study, decommissioning plan and review of decommission financial security agreement.
- c. Other items the City deems necessary related to BESS technology and project-related questions.
- d. Project inspection for compliance with applicable codes and standards.
- e. Review of decommissioning plan updates.

**In the event that the Developer and the City disagree on any estimate produced for the "Net Cost for Restoration", and cannot resolve such disagreement, then the Developer and City agree that the updated "Net Cost for Restoration" will be the mean of the estimate produced by the Developer's third party consultant and the estimate produced by City's third party consultant.**

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Developer shall be responsible for reimbursing the City for its reasonable costs incurred for the services of said Third Party Reviewer, up to a maximum dollar amount that must be mutually agreed upon by the City and Applicant prior to the City's commencement of plan review for the building permit. The City shall make best effort that the Third Party review does not unreasonably delay the project's permitting or construction process.

Site and Architectural Plans

17. Site and Architectural Plan Approval by the Plan Commission is required per Section 11-1-11 of the Municipal Code, prior to issuance of a building permit. The requirements include the Final Site Plan, a Landscaping Plan, Storm water Management Plan, Lighting Plan and all other items listed in Section 11 - 1-11.

18. Site and Architectural Plan approval by the City's Business and Industrial Development Committee and Community Development Authority is required per the "Declaration of Restrictions and Protective Covenants" applicable to the Woodland Industrial Park, as dated December 21, 1989 and recorded with the Manitowoc County Register of Deeds at Volume 891, pages 402 to 412. Such approval, as well as any required variances from the provisions of said Restrictions and Protective Covenants must be obtained prior to issuance of a building permit.

19. Developer shall at all times be in compliance with the terms of the Real Estate Purchase Option Agreement Between the City of Two Rivers and Swift Energy Storage, LLC, dated July 20, 2021, including all amendments.

20. Following initial completion of the project and the project being put into operation, Developer shall notify the City, in writing, of any battery enclosures being removed or installed at the project. Such notification shall be at least 30 days in advance of the removal or installation, except in cases of emergency, when Developer shall notify the City as soon as practicable. No batteries shall be stored on the premises outside of battery enclosures, with the exception of batteries stored for future use. Any batteries on the premises stored for future use shall be stored to NFPA 855 standards.

**21. This conditional use permit shall not be effective, nor shall the City engage in any plan review relative to this project, until Swift Energy Storage, LLC has assigned its Real Estate Purchase Option for the subject property (as further described in condition 19 above) to Hawk Energy Storage, LLC. Such assignment is subject to approval by the Two Rivers City Council.**