

MEMORANDUM

TO: City Council

FROM: Gregory E. Buckley
City Manager



DATE: November 27, 2024

SUBJECT: Agreement Between City and Blue Heron Condominium Association

I am bringing the above-cited agreement back in front of the Council for its consideration at the December 2 meeting. As you are aware, this agreement addresses provision of certain limited City services within the Blue Heron Condominium Association, where the street and utility infrastructure is all private property.

While the City is not legally required to provide the services addressed in this agreement, there is precedent where the City has entered into similar agreements with other local condo associations to provide several of the services addressed in this agreement, including: routine flushing of the private water and sewer mains within the development and City emergency response to clear blockages in the private sewer mains. In addition, the City made a specific commitment, back when this condo development received City approval for construction in 1992, that the City would be responsible for repair and maintenance of the sewer lift station that serves Blue Heron. Another service to be provided—Fall leaf collection from along the edges of the private streets within the condo association property—is addressed in this Agreement, but is not currently in the agreements with other condo associations.

A big part of the rationale for this agreement is that, while the infrastructure within the condo association is privately owned and a private responsibility, the condominium owners pay the same utility rates as everyone else in the City, and feel that what they pay as ratepayers should get them at least some of the routine utility maintenance services (paid for through water and sewer utility bills) and leaf pickup services (paid for through the Environmental Fee that supports the Solid Waste utility, including leaf collection services) as other local ratepayers.

While the terms for this agreement have been pretty much hammered out between the parties, there is one remaining “sticking point:” language related to video inspection of the sanitary sewer mains within the development (Section 4 of Agreement). The City initially proposed that a video inspection of those mains be performed early in the term of the contract, to identify “baseline conditions.” It was initially proposed that the Condo Association contract and pay for

such an inspection and report, but after further discussion City staff agreed for the utility to arrange for and cover the cost of that initial inspection, with a copy of the resulting report to be furnished to the condo association.

The condo association then sought contract language assuring that the City would do similar inspections in the future, consistent with its practice in the public sewer system. The City proposed language to this effect, but also sought to be held harmless from any claims that might arise from its failure to do such future video inspections of the private sewer mains. That “hold harmless” language was a concern to the condo association.

The attached proposed Agreement, marked up to show recent changes related to the above issue, addresses the matter of video inspections by having the City commit to doing a video inspection **ONCE** during the ten-year term of the contract, within 18 months of signing the contract. This is based on our Public Works Director’s professional opinion, shared at a joint meeting of the condo association board and the Council Finance Committee back in October, that “best practices” for such inspections would be to video-inspect relatively new sewer mains like those at Blue Heron on a ten-year cycle. Then, the proposed language makes clear that the City has **NO OBLIGATION** to conduct any more video inspections during the term of the contract, nor during any of the “automatic one-year extensions” that can occur, per Section 16B of the contract, if the parties fail to sit down and negotiate a new agreement prior to the end of the initial 10-year term.

This seems a reasonable solution to this matter, and it conveys the message that, if any additional video inspections of those private sewer mains are to be done by the City in the future, such service will need to be addressed in a new services agreement.

This latest version of the proposed agreement has been provided to the officers of the Blue Heron Condominium Association, and I expect that they will be present at Monday’s meeting for discussion.

I recommend City Council of the agreement, as presented, as the City’s final offer in this matter.

AGREEMENT FOR PROVISION OF CERTAIN CITY AND UTILITY SERVICES
AND WAIVER AND RELEASE OF CLAIMS

Agreement entered into as of this ____ day of ~~October~~____, 2024, by and between the City of Two Rivers, Wisconsin a municipal corporation (the "City") and the Blue Heron Condominium, An Expandable Condominium Owners Association, LTD., with its principal place of business at P.O. Box 144, Two Rivers, WI 54241 and 1527 Deer Brook Drive, Two Rivers, Wisconsin 54241 (the "Association").

WHEREAS, the City Council of the City has established a policy under which the City provides certain maintenance services to privately owned water and sewer facilities of condominiums and other developments, subject to certain terms and conditions, including a waiver and release of liability against the City; and

WHEREAS, the Association desires to enter into an agreement for provision of such services by the City, and for Fall leaf collection along the private roadways within the Association, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. The Association has requested, and the City hereby agrees to provide the Association, routine flushing services to water mains and sanitary sewer mains owned by the Association, at the Blue Heron Condominium Development, described in Exhibit A attached hereto and made a part hereof, on the same terms and in the same manner as the City provides such service for publicly owned water and sanitary sewer mains in other areas of the City.
2. In addition, the City shall provide emergency services in the event the sewer mains in the Blue Heron Condominium Development become blocked. Such emergency services shall consist of using City's personnel and equipment to make a reasonable effort to clear such blockage. In the event that the blockage cannot be cleared by the City, the Association will be required to make arrangements with outside resources to address such blockage.
3. The City accepted responsibility for the sanitary sewer lift station that serves the Blue Heron Condominium Development in 1992, upon recommendation of its Plan Commission. The City shall be responsible for all maintenance, operational, and capital costs associated with said lift station.

4. The City shall have the sanitary sewer system within the Development inspected by means of closed-circuit televising (CCTV) equipment or other method that will provide real-time documentation as to the condition of the sanitary sewer system. Such inspection shall be completed within eighteen months following the date of execution of this Agreement. ~~Additional such inspections shall be completed by the City in the future, when other such inspections are completed in the area. The City shall not be subject to any claims or liability if it declines to make such additional inspections. It is agreed that the City shall have no obligations regarding the maintenance or repair of the sanitary sewer system within the Development beyond what is expressly stated in this Agreement.~~ A copy of the inspection report resulting from such an inspection shall be provided to the Association upon written request. The City shall not be responsible for any additional such inspections during the term of this Agreement, or during any of the automatic one-year extensions of this Agreement as addressed in Section 16B hereof.
5. The Association will be responsible for repairing all water main and sanitary sewer main defects, including but not limited to, leaks, breaks, inoperable equipment and valves, access structures, adjustments, and covers which are identified during routine flushing service, inspections, or during emergency service responses.
6. In addition, the City shall collect leaves from along the edges of the private roadways (identified as Blue Heron Drive and Deerbrook Drive) within the development, on the same schedule, terms, and manner as Fall leaf collection services are provided to properties abutting public streets in other areas of the City.
7. The Association hereby grants to the City an easement providing the City with access to the private roadways identified herein and extending for a distance of six feet past the edge of pavement on those roadways as necessary for the City to provide the services identified above.
8. If the services identified herein are provided by the City, the Association, for itself, its heirs, personal and legal representatives, successors, and assigns, including any condominium unit owners, waives and releases any and all claims, damages, causes of action, or liabilities of any natures whatsoever, known or unknown, ("Claims") against the City, its officers, officials, agents, and employees arising therefrom, relating to or arising from the

provision of such services, except only such claims as arise from the reckless or intentional acts of a City employee or the City, and shall indemnify and hold the City harmless from any such Claims.

9. This provision shall not be deemed a waiver of the limitation of amounts recoverable against the City, its officers, officials, agents, and employees provided under § 893.80(3) of the Wisconsin Statutes or other applicable law, nor shall it be deemed a waiver of the City's ability to claim immunity as provided in § 893.80(4) of the Wisconsin Statutes, or other applicable law. In addition, this provision does not constitute a waiver of the requirements imposed by § 893.80 of the Wisconsin Statutes, or any other applicable law, for bringing claims against the City, its officers, officials, agents, or employees.
10. The Association agrees to obtain and maintain at all times insurance providing coverage against any claims of the kind described in Section 8 hereof, if available, on terms and with policy limits and insurers acceptable to the City. The City shall not be liable under this Agreement for any damages covered by such insurance.
11. The invalidity of any provision of this Agreement or portion of a provision shall not affect the validity of any other portion of this Agreement, or the remaining portion of the applicable provision. Each provision is separable.
12. The Association agrees that it shall comply with all applicable state, federal and local laws, rules and regulations in the construction, operation and maintenance of its sewer and water facilities.
13. Except as specifically set forth herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any other person or entity other than the parties hereto and their successors and assigns any rights or remedies under or by reason of this Agreement. Neither party to this Agreement shall be deemed to be the agent of the other, except as expressly stated herein.
14. The Association may not assign its rights or obligation under this Agreement without the written consent of the City.
15. This Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal and legal representatives, successors, and assigns.
16. This Agreement shall remain in full force and effect for a term of ten (10) years following signature by the City and the Association; provided further that:

- A. The Association and the City hereby declare their intent to meet and review the terms of this Agreement within the six-month period preceding the end of such ten-year period, with the intent of negotiating a new Agreement; and
- B. If neither party to this Agreement notifies the other party of its intention to not renew this Agreement, at least 120 days in advance of its ten-year anniversary, then this Agreement shall be automatically extended for an additional one-year term; this Agreement shall similarly be automatically extended for one-year terms thereafter if such notice to notice to not renew is not provided at least 120 days in advance of the end of any such one-year extension; and
- C. Either party to this Agreement may terminate this Agreement at any time, without cause, upon 120 days written notice to the other party.

CITY OF TWO RIVERS

BY: _____ Dated: _____
GREGORY E. BUCKLEY, CITY MANAGER

BY: _____ Dated: _____
AMANDA BARYENBRUCH, CITY CLERK

BLUE HERON CONDOMINIUM, AN EXPANDABLE CONDOMINIUM OWNERS ASSOCIATION, LTD.

BY: _____ Dated: _____
Print Name and Sign Below
