City of Stoughton, 207 S. Forrest Street, Stoughton WI 53589

RESOLUTION OF THE COMMON COUNCIL

Approving a financial agreement between the State of Wisconsin and the City of Stoughton for costs associated with the reconstruction of S. Fourth Street from Milwaukee Street to Isham Street scheduled to be constructed in 2025.

Committee Action: Finance Committee

Fiscal Impact: City - $621,691 (estimate)
Stoughton Utilities – $1,004,7000 (estimate – scope TBD)

File Number:	R-20-2023	**Date Introduced**	February 14, 2023

WHEREAS, the City of Stoughton was awarded partial grant funding through the Surface Transportation Program – Urban , which allocated funding from the Bipartisan Infrastructure Law (BIL) program, to reconstruct Fourth St. from Milwaukee St to Isham; and

WHEREAS, in cooperation with the City, the Wisconsin Department of Transportation (DOT) is scheduled to reconstruct S. Fourth Street from Milwaukee Street to Isham Street, in 2025 (the "Project"); and

WHEREAS, a financial agreement has been prepared for the City's contribution to the project; and

WHEREAS, up to $834,469 of Federal Funding is available for this project; and

WHEREAS, the City's portion is estimated to be $621,691; and

WHEREAS, Stoughton Utilities is evaluating their systems for possible inclusion in the project; and

BE IT RESOLVED by the Common Council of the City of Stoughton that the State/Municipal Financial Agreement For A State –Let STP-Urban Project (S. Fourth Street from Milwaukee Street to Isham Street), is hereby approved, Mayor Swadley is authorized and directed to execute the Agreement on behalf of the City, and the City Finance Director is authorized to pay the Wisconsin Department of Transportation pursuant to such Agreement.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____
Tim Swadley, Mayor Date

Council Action: _____ ☐ **Override** **Vote** _____

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CITY OF STOUGHTON
DEPARTMENT OF
PLANNING & DEVELOPMENT
207 S. Forrest Street, Stoughton, WI. 53589

(608) 873-6619 www.ci.stoughton.wi.us

RODNEY J. SCHEEL
DIRECTOR

Date: February 2, 2023

To: Finance Committee

From: Rodney J. Scheel
Director of Planning & Development

Subject: State/Municipal Financial Agreement (SMFA) – S. Fourth Street from Milwaukee Street to Isham Street

On November 15, 2021, the Bipartisan Infrastructure Law (BIL) was approved by the United States Congress and signed into Law by President Joe Biden. This law allocated funding to the states to distribute to various forms of government within the state for infrastructure improvements. The City of Stoughton applied for, and was awarded partial funding to reconstruct S. Fourth St, from Milwaukee St to Isham St through the Surface Transportation Program – Urban (STP), which was the vehicle that allocated the BIL funding at the state level.

All work will be administered through the Wisconsin Department of Transportation (DOT), in coordination with City of Stoughton staff. Furthermore, all project engineering, water and sanitary work is not included in the grant and must be paid for by the City, which includes Stoughton Utilities. Construction on S. Fourth St is scheduled to begin in 2025.

The grant award is for 60% of the project cost, not to exceed $834,469. The preliminary design includes reconstruction of the street with a 10-foot shared-use path to be installed on the west side of the street (the existing sidewalk will be removed). The City's estimated share of the cost is $621,691.

Stoughton Utilities is evaluating their system and may be part of this project.

A resolution and Agreement is included for your consideration

If you have any questions, please contact me.

WisDOT Division of Transportation System Development
Southwest Region – La Crosse Office
3550 Mormon Coulee Road
La Crosse, WI 54601

Governor Tony Evers
Secretary Craig Thompson
wisconsindot.gov
Telephone: (608) 789-7879
FAX: (608) 785-9969
Email: robert.winterton@dot.wi.gov

January 26, 2023

BRETT HEBERT
DIRECTOR OF PUBLIC WORKS
CITY OF STOUGHTON
2439 COUNTY RD A
STOUGHTON, WI 53589

Mr. Hebert:

Enclosed for signature is the project agreement for the following project that has approved funds in the FFY 2023-2026 Bipartisan Infrastructure Law (BIL) STP-Urban Program.

Project I.D.: 5998-00-00/01/02
City of Stoughton, S Fourth Street
Milwaukee Street to Isham Street

Please sign and return one (1) copy of the agreement. Electronic signatures are acceptable. Return the copy of the agreement by e-mail to the Department with signatures by **Friday, February 24, 2023** to this address:

michael.erickson@dot.wi.gov

Note the cost ratios for each project phase and any federal/state funding limits which may exist. The Municipality is responsible for the entire cost of non-participating items as well as any costs which exceed the funding limits, if applicable.

An agreement is not considered fully approved unless it has been approved by both the Municipality and the State, and it is not considered fully executed unless a fully approved copy has been returned to the Municipality.

The Municipality and its consultants (or any other parties hired by the Municipality) ***MUST NOT*** begin work on a federal/state-funded project phase until the State has provided notice of project authorization. Any such work would be ineligible for federal/state funding. Authorization will coincide with the currently scheduled year that is stated in the agreement.

Our office will be working with the local sponsor as we move forward with these design and construction projects. Mark Sponem is the Local Program Project Manager (LPPM) for these projects, and you can contact her at: (608) 245-2627 or mark.sponem@dot.wi.gov .

If you have any questions regarding the agreement or need an extension to the submittal date, please call me at (608) 789-7879 or e-mail robert.winterton@dot.wi.gov.

Sincerely,

Robert Winterton

Robert Winterton, P.E.
Local Programs Engineer – SW Region

STATE/MUNICIPAL AGREEMENT FOR A STATE- LET STP-URBAN PROJECT **Program Name: STP-Urban** **Population Group: 200,000+** **Sub-program #: 206** **Cycle: FFY 2023-2026 BIL**	Date: **January 26, 2023** I.D.: **5998-00-00/01/02** Road Name: **Fourth Street** Limits: **Milwaukee Street to Isham Street** County: **Dane** Roadway Length: **0.30 miles** Functional Classification: **Urban Collector** Project Sponsor: **City of Stoughton**

The signatory, **City of Stoughton**, hereinafter called the Municipality, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the highway or street improvement hereinafter described.

The authority for the Municipality to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Municipality agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Existing Facility - Describe and give reason for request: **The existing roadway is a 2-lane Urban Collector. It is a 40-foot wide facility with an urban cross section constructed of asphalt pavement. The roadway was last improved in 1996. The roadway has a pavement rating of 3.5 with significant transverse and longitudinal cracking. There are existing sidewalks on one side of the roadway and no bicycle accommodations.**

Proposed Improvement - Nature of work: **A reconstruction project from Milwaukee Street to Isham Street is proposed. The project will be 0.30 miles in length constructed of asphalt pavement with an urban cross section that is 33 to 39 feet wide. A new 10-foot wide multi-use path will replace the existing sidewalk on the west side. Storm sewer, sanitary sewer and water main will be replaced. Real estate acquisition is not anticipated.**

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal requirements: **Municipal sanitary sewer and water main.**

The Municipality agrees to the following FFY 2023-2026 BIL STP-Urban project funding conditions:

Project ID 5998-00-00 design costs are funded 100% by the Municipality including state review.

Project ID 5998-00-01 construction costs are funded with up to 60% federal funding up to a funding limit of $834,469. The Municipality agrees to provide the remaining 40% and any funds in excess of the $834,469 federal funding limit. Non-participating costs are 100% the responsibility of the Municipality. Any work performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

Project ID 5998-00-02 construction costs for sanitary sewer and water main are funded 100% by the Municipality including state review.

This project is currently scheduled in State Fiscal Year **2025.** Sunset date: **June 30, 2030.**

Sunset Date is determined based on the date a project is scheduled to be authorized. Sunset date is calculated as six years from the beginning of the state fiscal year (SFY) in which a project is initially scheduled. Extensions may be available upon approval of a written request by or on behalf of the Municipality to State per WisDOT Change Management policy. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary of Costs Table below are estimates. The final Municipal share is dependent on the final federal participation, and actual costs will be used in the final division of cost for billing and reimbursement. In no event shall federal funding exceed the estimate of $834,469 in the Summary of Costs Table, unless such increase is approved in writing by the State through the State's Change Management Policy prior to the Municipality incurring the increased costs.

	SUMMARY OF COSTS				
PHASE	**Total Est. Cost**	**Federal Funds**	**%**	**Municipal Funds**	**%**
ID 5998-00-00					
Design	**$0**	**$0**	0%	**$0**	100%
State Review	**$39,326**	**$0**	0%	**$39,326**	100%
Project totals	*$39,326*	*$0*		*$39,326*	
ID 5998-00-01*					
Participating Construction	**$1,295,760**	**$742,549.96**	60%	**$553,210.04**	40% + BAL
Non-Participating Construction	**$0**	**$0**	0%	**$0**	100%
Construction Engineering	**$140,000**	**$80,228.59**	60%	**$59,771.41**	40% + BAL
State Review	**$20,400**	**$11,690.45**	60%	**$8,709.55**	40% + BAL
Project totals	*$1,456,160*	*$834,469*		*$621,691*	
ID 5998-00-02					
Non-Participating Construction	**$994,750**	**$0**	0%	**$994,750**	100%
State Review	**$9,950**	**$0**	0%	**$9,950**	100%
Project totals	*$1,004,700*	*$0*		*$1,004,700*	
Total Est. Cost Distribution	**$2,500,186**	**$834,469**	N/A	**$1,665,717**	N/A

*Construction ID# 5998-00-01 federal funding is limited to $834,469.

This request is subject to the terms and conditions that follow and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signatures certify the content has not been altered by the municipality. Signed for and in behalf of: **City of Stoughton** (please sign in blue ink.) Name Title Date
Signed for and in behalf of the State: Name Title Date

GENERAL TERMS AND CONDITIONS:

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.

2. Work prior to federal authorization is ineligible for federal funding.

3. The Municipality, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:

    a. Environmental requirements, including but not limited to those set forth in the 23 U.S.C. 139 and National Environmental Policy Act (42 U.S.C. 4321 et seq.)

    b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The municipality agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Municipality agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The Municipality agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.

    c. Prevailing wage requirements, including but not limited to 23 U.S.C 113.

    d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.

    e. Competitive bidding and confidentiality requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06. This includes the sharing of financial data prior to the conclusion of the competitive bid period.

    f. All applicable Disadvantaged Business Enterprise (DBE) requirements that the State specifies.

    g. Federal statutes that govern the Surface Transportation Program (STP), including but not limited to 23 U.S.C. 133.

    h. General requirements for administrating federal and state aids set forth in Wis. Stat. 84.03.

STATE RESPONSIBILITIES AND REQUIREMENTS:

4. Funding of each project phase is subject to inclusion in Wisconsin's approved FFY 2023-2026 BIL STP-Urban program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:

    a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.

    b. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.

    c. Storm sewer mains necessary for the surface water drainage.

    d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.

    e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).

    f. Signing and pavement marking.

    g. New installations or alteration of street lighting and traffic signals or devices.

    h. Landscaping.

    i. State review services for construction ID 5998-00-01.

5. The work will be administered by the State and may include items not eligible for federal participation.

6. As the work progresses, the State will bill the Municipality for work completed that is not chargeable to federal/state funds. Upon completion of the project, a final audit will be made to determine the final division of costs subject to funding limits in the Summary of Costs Table. If reviews or audits show any of the work to be ineligible for federal/state funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

7. Work necessary to complete the FFY 2023-2026 BIL STP-Urban improvement project to be <u>financed entirely</u> by the Municipality or other utility or facility owner includes the items listed below.

    a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.

    b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.

    c. Detour routes and haul roads. The municipality is responsible for determining the detour route.

    d. Conditioning, if required and maintenance of detour routes.

    e. Repair of damages to roads or streets caused by reason of their use in hauling materials incidental to the improvement.

    f. All work related to underground storage tanks and contaminated soils.

g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).

h. Real estate for the improvement.

i. Preliminary engineering and design.

j. Stage review services for design ID 5998-00-00 & construction ID 5998-00-02.

k. Other 100% Municipality funded items: None.

8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.

9. Work to be performed by the Municipality without federal funding participation necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Municipality but must be coordinated with all other work undertaken during construction.

10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.

11. The Municipality will include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. 51.01 (5), sexual orientation as defined in Wis. Stat. 111.32 (13m), or national origin.

12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed federal/state financing commitments or are ineligible for federal/state financing. To guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.

13. In accordance with the State's sunset policy for STP-Urban projects, the subject FFY 2023-2026 BIL STP-Urban improvement must be constructed and in final acceptance within six years from the beginning of the state fiscal year (SFY) in which a project is initially scheduled. Extensions may be available upon approval of a written request by or on behalf of the Municipality to State. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred on behalf of the project.

15. The Municipality will at its own cost and expense:

    a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, sidewalks and parking lanes [including snow and ice removal]) for such maintenance in a manner consistent with reasonable industry standards, and will make ample provision for such maintenance each year.

    b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.

    c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.

d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the project.

e. Provide complete plans, specifications, and estimates to State upon request.

f. Provide relocation orders and real estate plats to State upon request.

g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.

h. Provide maintenance and energy for lighting.

i. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

16. It is further agreed by the Municipality that:

a. The Municipality assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the state and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this agreement.

b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse State if State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.

c. The Municipality will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.

d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Municipality or by others, will be in conformity with such *Manual of Uniform Traffic Control Devices* as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.

e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under federal aid highway regulations, posters, billboards, roadside stands, or other private installations prohibited by federal or state highway regulations will not be permitted within the right-of-way limits of the project. The Municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.

f. The Municipality is responsible for any damage caused by legally hauled loads, including permitted oversize and overweight loads. The contractor is responsible for any damage caused to haul roads if the contractor does not obey size and weight laws, use properly equipped and maintained vehicles, and does not prevent spilling of materials onto the haul road (WisDOT *Standard Specifications* 618.1, 108.7, 107.8). The local maintaining authority can impose special or seasonal weight limitations as defined in Wis. Stat. 349.16, but this should not be used for the sole purpose of preventing hauling on the road.

The bid item 618.0100 Maintenance and Repair of Haul Roads (project) is ineligible for federal funding on local program projects as per the State/Municipal Agreement. The repair of damages as a result of hauling materials for the project is the responsibility of the Municipality as specified in the State/Municipal Agreement Terms and Conditions under "Municipal Responsibilities and Requirements."

LEGAL RELATIONSHIPS:

17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.

18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Municipality and its sureties; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.

19. Contract modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of either this State/Municipal Agreement or any of its attachments may be changed, waived or terminated orally.

20. Binding effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third-party enforcement rights.

21. Choice of law and forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

PROJECT FUNDING CONDITIONS

22. Non-appropriation of funds: With respect to any payment required to be made by the State under this State/Municipal Agreement, the parties acknowledge the State's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Municipality or the State may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.

23. Maintenance of records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Municipality, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the State. The State reserves the right to audit and inspect such records and accounts at any time. The Municipality shall provide appropriate accommodations for such audit and inspection.

    In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

24. The Municipality agrees to the following FFY 2023-2026 BIL STP-Urban project funding conditions:

a. ID 5998-00-00: Design is funded 100% by the Municipality. This phase includes plan development and state review. The work includes project review, approval of required reports and documents and processing the final Plan, Specification & Estimate (PS&E) document for award of the contract. Costs for this phase include an estimated amount for state review activities, to be funded 100% by the Municipality.

b. ID 5998-00-01: Construction: Roadway

   i. Costs for participating construction items are funded with 60% federal funding up to a funding limit of $834,469, when the Municipality agrees to provide the remaining 40%, and any funds in excess of the $834,469 federal funding limit.

   ii. Non-participating costs for non-participating construction items are funded 100% by the Municipality. Costs include construction delivery.

   iii. Costs for this phase include an estimated amount for state review activities, to be funded 60% with federal funding and 40% by the Municipality.

c. ID 5998-00-02: Construction: Sanitary Sewer and Water Main

   i. Non-participating costs for sanitary sewer and water main are funded 100% by the Municipality. Costs include construction delivery.

   ii. Costs for this phase include an estimated amount for state review activities, to be funded 100% by the Municipality.

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