

TITLE 9

PUBLIC UTILITIES

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CHAPTER 1

Cable Television

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SEC. 9-1-1 SHORT TITLE.

This Chapter shall be known as the “Town of Fond du Lac Cable Communications Ordinance.”

SEC. 9-1-2 PURPOSES.

The purposes of this Chapter are to:

- a) Protect the public health, safety and welfare;
- b) Provide for the granting of one (1) or more Franchises to permit the use of Town streets and other public ways for cable communication systems;
- c) Provide for the regulation by the Town of the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of such systems in, upon, along, across, above, over and under or in any manner connected with the streets or other public ways within the Town, as it now or in the future may exist;
- d) Provide for the payment of fees and other valuable considerations to the Town for the use of Town streets and other public ways by such systems as well as to compensate the Town for costs associated with such use;
- e) Provide for the development of cable communication systems as a means to improve communications between and among, and to otherwise serve, the present and future needs of the citizens, government and private and public institutions, organizations and enterprises of the Town and surrounding communities; and
- f) Provide remedies and prescribe penalties for violations of this Chapter and any Franchise Agreements executed pursuant to this Chapter.

SEC. 9-1-3 CONFLICTING PROVISIONS.

- a) This Chapter is adopted pursuant to the authority of the Town under the Constitutions and Statutes of the State of Wisconsin and the United States of America, including but not limited to the Cable Communications Policy Act of 1984 (47 U.S.C. 521 *cf.*) and 66.0419, Wis. Stats. Where any provision of this Chapter conflicts with any provision of state or federal law, this Chapter shall control to the full extent permitted by law.
- b) In the case of an express conflict or any ambiguity between a provision in this Chapter and either a provision in a Franchise Agreement executed pursuant to this Chapter or a provision in a Franchise Proposal that is incorporated by reference into such Franchise Agreement, this Chapter shall control.

SEC. 9-1-4 DEFINITIONS.

- a) When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number.
- b) For the purposes of this Chapter, the following terms, phrases and words and their derivations

have the meanings given herein, unless it is clearly stated that another meaning is intended.

- 1) Town. The Town of Fond du Lac, County of Fond du Lac, State of Wisconsin, in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.
- 2) Basic Service. Any service tier which includes the retransmission of local television broadcast signals and the access channel(s) herein required.
- 3) Cable System. Coaxial cables, wave guides or other conductors and equipment for transmitting video, audio and data services by cable or through its facilities as herein contemplated, and including closed-circuit special event programs and educational television.
- 4) Control or Controlling Interest. Actual working control or ownership of the cable system in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, group of persons acting in concert (except underwriters during the period in which they are offering securities to the public) or entity of forty-nine percent (49%) or more of the Fond du Lac cable system or the Franchise under which the system is operated. A change in the control or controlling interest of a parent of a Grantee shall constitute a change in the control or controlling interest of the Fond du Lac cable system under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one (1) person, group of persons or entities.
- 5) Board. The present Town Board of the Town or any future body constituting the legislative body of the Town.
- 6) Franchise. An authorization issued by the Town to construct and operate a Cable System.
- 7) Grantee. Any entity including a corporation, joint venture, association, partnership or individual to whom or which a Franchise under this Chapter is granted or lawfully transferred.
- 8) Gross Revenues. Any revenue derived directly or indirectly by a Grantee, its affiliates, subsidiaries, parents and any persons or entities in which a Grantee has a financial interest of five percent (5%) or more, from or in connection with the operation of a grantee's cable system within the Town including, but not limited to, basic subscriber service fees, pay channel service fees, installation and reconnection fees, leased channel fees, converter and remote control rentals, enhanced telecommunication services, studio rentals, production equipment rentals and advertising revenues. The term does not include any taxes or other fees on services provided by a Grantee and imposed directly upon any subscriber or user by the state, Town or other governmental unit and collected by a Grantee on behalf of said unit.
- 9) Street or Public Way. The surface of and space above and below any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway or drive, now or hereafter existing as such within the Town. A Franchise granted under this Chapter shall be deemed to confer only such rights to use property in the Town as the Town may have the right and power to grant in such agreements.
- 10) Subscriber. Any person or entity lawfully receiving for any purpose the cable system services of a Grantee herein.

- c) Any word, phrase or term defined in Section 522 of the Cable Communications Policy Act of 1984 but not defined in this Section shall have the meaning set forth in Section 522 of the Cable Communications Policy Act of 1984 as amended.

SEC. 9-1-5 FRANCHISE TERRITORY.

A Franchise granted under this Chapter is for the present territorial limits of the Town of Fond du Lac, unless otherwise granted by the Board. Any area henceforth added to the Town during the term of the Franchise shall become part of the Franchise territory. For any area within the Franchise territory not served under the Franchise, service under the Franchise must be offered when household density reaches the equivalent of forty (40) households per cable mile, including interconnecting trunk. Nothing in this Section is intended to preclude Grantee from extending its System to other portions of the Town or outside the Town for the purpose of serving the other areas. Upon notice by the Town that an area has met the density requirement stipulated herein, Grantee shall be given one hundred eighty (180) days to construct the extension to those areas which are contiguous to Grantee's existing plant. Grantee shall be given a reasonable period of time to construct the extension to those areas which are not contiguous to Grantee's existing plant.

SEC. 9-1-6 GRANT OF FRANCHISE.

- a) This Chapter allows the Town of Fond du Lac to grant a Franchise to install, maintain and operate a cable system for a term of up to fifteen (15) years, provided that the Grantee conforms to the conditions, limitations and requirements of this Chapter. No portion of a Franchise or any right granted thereunder may be separated or transferred, except as provided in Section 9-1-9.
- b) The Town will use its discretion and judgment to determine if the granting of one (1) or more Franchises under this Chapter will serve the public's needs and protect the public's health, safety and welfare. If the Town determines that the grant of more than one (1) Franchise will serve the public's needs and protect the public's health, safety and welfare, it may grant an additional Franchise, provided, however, that the terms and conditions of such grant are not more favorable or less burdensome to the applicant than those granted pursuant to any existing cable television Franchise.
- c) No provision of this Chapter shall be deemed or construed to require the Board to grant a Franchise.
- d) A Franchise granted under this Chapter shall not take the place of any other license or permit legally required of a Grantee, unless expressly provided in a Franchise Agreement made pursuant to this Chapter.
- e) On or about the fifth (5th) and tenth (10th) anniversaries of the effective date of a Franchise granted under this Chapter, the Town may schedule a public meeting or meetings with the Grantee to review the Franchise performance, plans and prospects. The Town may require the Grantee to make available specified information to determine if the Grantee is supplying a level and variety of services equivalent to those being generally offered in comparable markets.

SEC. 9-1-7 DESCRIPTION OF A SYSTEM.

- a) The minimum capacity for a cable system in Fond du Lac shall be fifty (50) channels.

- b) A Grantee shall, as part of the acceptance of a Franchise, provide the Town with a written description of the cable system within the Town, including technical characteristics, channel capacity, and channel carriage. The Grantee shall provide the Town with an updated description as substantial changes in the system are made.

SEC. 9-1-8 FRANCHISE ACCEPTANCE.

- a) To accept a Franchise granted under this Chapter, a Grantee must file any required bonds, funds and proof of insurance, as well as written notice of acceptance with the Town Clerk within forty-five (45) days of the offer of the Franchise being made by the Town Board.
- b) Such written notice shall include a certification that the Grantee:
 - 1) Will comply with this Chapter, any Franchise Agreements made pursuant to this Chapter, and all applicable Town, county, state and federal regulations in regard to the construction, operation and maintenance of a cable system;
 - 2) Accepts the Franchise relying on its own investigation and understanding of the power and authority of the Town to grant the Franchise and the terms and conditions thereof;
 - 3) Acknowledges that it has not been induced to enter into the Franchise by any understanding or promise or by other statement, whether written or verbal, by or on behalf of the Town or by any other third (3rd) person concerning any term or condition of the Franchise or Chapter not expressed herein;
 - 4) Shall have no recourse whatsoever against the Town for any loss, cost, expense or damage arising out of any provision or requirement of a Franchise or the enforcement thereof, or for the failure of the Town to have authority to grant any or all parts of the Franchise;
 - 5) Agrees that, in the event of any ambiguity in a Chapter, Franchise or Franchise Agreement or any dispute over the meaning of any terms or conditions thereof, the same shall be construed against the Grantee and in favor of the Town; and
 - 6) Will not at any time set up against the Town in a claim for proceeding any condition or term of the Franchise or Chapter as unreasonable, arbitrary or void, or that the Town had no power or authority to make any such term or condition, but shall accept the validity of the terms and conditions of the Franchise and Chapter in their entirety.
- c) Grantees of a Franchise granted or transferred under this Chapter shall, at the time of acceptance of the Franchise, provide an initial payment to the Town in the amount of the City's cost of granting or, in the case of a transfer, transferring the Franchise. The amount of such payment shall be considered as reimbursement for administrative costs incurred before the granting or transferring of the Franchise.

SEC. 9-1-9 TRANSFER OF FRANCHISE.

- a) There shall be no sale, transfer or assignment of a majority ownership or the control of a Franchise granted hereunder, nor shall the title, either legal or equitable, or any right or interest relating to a Franchise or system, pass to or vest in any person or entity without the written permission of the Board, which approval shall not be unreasonably withheld. This Section shall not apply to the granting of a security or mortgage interest in the Grantee's assets by the Grantee to a financing institution for the purpose of financial either the

construction, maintenance or operation of the Cable System. This Section shall also not apply to the Grantee's transfer or assignment of its rights and obligations to any subsidiary or to any partnership of which the Grantee is the controlling managing partner.

- b) A Grantee wishing to transfer control of or a controlling interest in its Franchise or system within the Town shall make a written request to the Town Board for such approval. The Town shall have forty-five (45) days from the time of the receipt of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on Grantee's Subscribers.
- c) Upon receipt of any request contemplated in Subsection (a) of this Section, the Town may require the Grantee or any other party involved in the transfer to provide such information as is necessary to evaluate the transfer.
- d) The Town may approve the transfer, deny the transfer with cause, or conditionally approve the transfer, provided that the Town shall not unreasonably refuse to approve the transfer or condition the transfer upon unreasonable conditions. The conditions the Town may attach to the transfer approval may include, but are not limited to: reimbursement for reasonable and necessary expenses incurred in evaluating the transfer request; remedy of any existing or historical violations of Town ordinances or the Franchise agreement; payment of all fees and penalties owed by the Grantee at the time of transfer approval; and a guarantee by the prospective new Grantee to abide by any and all ordinances, agreements and conditions placed upon the Franchise and system by the Town and existing Grantee, unless mutually removed by the Town and Grantee.
- e) The Town shall approve the transfer, deny the transfer with cause, or conditionally approve the transfer within ninety (90) days of receipt of the notice required in Subsection (b) of this Section. The Town's failure to approve the transfer, deny the transfer with cause, or conditionally approve the transfer within ninety (90) days, by express action of the Board, shall be construed as approval of Grantee's request.
- f) When the Town approves a transfer under this Section, the new Grantee shall indicate acceptance of the Franchise as specified in Section 9-1-8, including the filing of all necessary bonds, funds, proofs of insurance and certifications.

SEC. 9-1-10 FRANCHISE TERM RENEWAL

- a) A Franchise granted pursuant to this Chapter shall be effective for a period of up to fifteen (15) years. The Town may grant a Franchise for a shorter term if the Board deems it in the best interest of the Town to do so.
- b) The Town may decide to renew a Franchise granted under this Chapter if the Grantee files a written request of such a renewal. The Town may use the written request as a signal to update this Chapter and reevaluate the community needs served by the Grantee.
- c) To the extent applicable, Section 546 of the Cable Communications Policy Act of 1984, as amended, shall govern the procedures and standards for renewal of any Franchise awarded pursuant to this Chapter.
- d) To the extent that Section 546 of the Cable Communications Act of 1984, as amended, is not applicable, the Town in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a Franchise, provided that the Town shall not unreasonably refuse to renew the Franchise or unreasonably condition the renewal. The conditions the Town may place on its approval shall include, but are not limited to: reimbursement for

reasonable expenses incurred in evaluating the request for renewal, updating the Chapter and surveying community cable needs, provided, however, that this Section shall not preclude an agreement by the Town and Grantee to share in the costs incurred in evaluating a request for renewal; remedy of historical or existing violations of the Franchise or Chapter which had not been waived previously by the Town; payment of all fees and penalties owed by the Grantee at the time of the renewal; and acceptance of any updated Chapter or Franchise agreement.

- e) Unless otherwise agreed upon, any amended cable ordinance or provision thereunder adopted before the Franchise renewal shall take effect at the Franchise renewal.
- f) When the Town approves a Franchise renewal, the Grantee shall accept the renewed Franchise under the procedures set out in Section 9-1-8.

SEC. 9-1-11 REVOCATION AND EXPIRATION.

- a) The Town shall have the right to revoke a Franchise in the event that the Grantee:
 - 1) Violates any material provision of this Chapter, a Franchise or an applicable Franchise Agreement;
 - 2) Attempts to evade or violate any provision of this Chapter, a Franchise or an applicable Franchise Agreement;
 - 3) Practices any deceit or fraud upon the Town or any subscriber;
 - 4) Performs any act or fails to cure any event that requires the approval or consent of the Town without securing such approval or consent; or
 - 5) Triggers any provision in this Chapter that provides for revocation as a remedy.
- b) If the Board chooses to revoke a Franchise, it shall provide the Grantee with written notice of its intent and describing the reasons constituting cause for revocation. The Grantee shall have at least thirty (30) days, or longer if the Board agrees, to remedy the cause or to provide adequate assurance of performance in compliance with the Franchise. If the Grantee fails to remedy the cause to the satisfaction of the Board during this period, the Board shall, following the thirty (30) day period provided in Subsection (b) above, conduct a public hearing at which the Grantee is provided an opportunity to be heard.
- c) After the public hearing and upon determination by the Board to revoke the Franchise, Grantee shall have a period of thirty (30) days, from the date to the Town's determination, within which to file an appeal with an appropriate state or federal court or agency. During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.
- d) Should a Franchise be revoked or expire and there is no judicial or administrative review of the revocation or expiration taking place, the Grantee shall begin to remove, within ninety (90) days of revocation or expiration, all property owned by the Grantee and placed on a public right-of-way unless permitted by the Town to abandon said property to a purchaser.
- e) In the event that a Franchise has been revoked or has not been renewed, the Town shall have the option, to the extent then permitted by law, to purchase the tangible assets of the Grantee's cable television system previously governed by the Franchise at its fair market value, to assign such rights to purchase, or to require removal of all Grantee's property

located within the public ways of the Town at the Grantee's expense. Such an option must be exercised within ninety (90) days from the date of the revocation or expiration of the Franchise, the entry of a final judgment by a court reviewing the question of the revocation or expiration, or the entry of a final order upon appeal of the same, whichever is later.

SEC. 9-1-12 TOWN RIGHTS.

- a) The Town may amend this Chapter and a Franchise granted hereunder to incorporate amendments to federal law which are applicable to the Grantee's Cable System. Any provision herein in conflict with or preempted by federal law shall be superseded.
- b) The Town reserves the right to further amend this Chapter, or adopt additional ordinances, if it finds it necessary to protect the public health, safety and welfare. Such amendments and new ordinances shall be reasonable and not be in substantial conflict with the rights granted in this Chapter or with federal or state law.
- c) In the event that the Federal government cedes any power vested in the Federal government at the time a Franchise is granted under this Chapter, the Town reserves the right to exercise that power.
- d) During the term of a Franchise and within the Town limits, the Town may, where fixtures necessary for a police and fire alarm system. Such wires and fixtures shall be constructed and maintained to the satisfaction of the Grantee in accordance with standards set out in this Chapter.
- e) The Town may inspect all construction or installation work during such construction or installation, or at any time after completion thereof, in order to insure compliance with the provisions of this Chapter and all other governing ordinances.
- f) A Grantee shall provide free basic service consisting of one (1) outlet to any and all existing public buildings, public libraries, fire stations and schools, whether private, public or parochial, within the Franchise territory provided that such public buildings, public libraries, fire stations and schools are reasonably accessible from Grantee's distribution plant. Additional outlets shall be provided at the Grantee's cost for time and materials. In the event of the addition of a new building eligible for service under this Section during the life of the Franchise, the Grantee shall provide such service as soon as it is reasonably accessible from the Grantee's distribution plant.

SEC. 9-1-13 GRANTEE RULES.

A Grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under the Franchise and to assure uninterrupted service to all its subscribers. However, such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Chapter, other Town Ordinances or the laws of the State.

SEC. 9-1-14 TECHNICAL PERFORMANCE.

- a) The cable system shall be operated to comply with or exceed all guidelines and standards set by the FCC for signal quality and leakage. The Town reserves the right to test the system and independently measure the signal quality. The system shall at all times comply with or exceed standards set by the National Electrical Code of the National Fire Protection Association.

- b) A Grantee shall at all times keep its cables and other appurtenances used for transmitting signals shielded in such a manner that there will be no interference with electronic equipment not connected to the Grantee's service.
- c) The Town reserves the right to adopt and enforce technical standards to the extent allowed by Federal law. If such Town authority is expanded during the duration of a franchise granted under this Chapter, the Town may choose to exercise its authority at its own discretion.

SEC. 9-1-15 CONDITIONS ON STREET OCCUPANCY.

- a) All transmission and distribution structures, lines and equipment erected by a Grantee within the Town shall be so located as not to cause interference with the proper use of streets, alleys and other public ways and places, and not to cause interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways and places.
- b) The Grantee shall obtain permission from the Director of Public Works or other appropriate Town authority before commencing disturbance of pavement, sidewalk, driveway or other public surfacing, and shall, at its own cost and expense and in a manner approved by the Director of Public Works, or other appropriate Town authority, replace and restore all pavement, sidewalk, driveway or other surface of any street or alley disturbed in as good condition as before such work commenced. The Grantee shall comply with all Town ordinances relating to Street openings and utility facility placement and operation. A Grantee shall not charge a Town resident for damage to its underground cable plant if, prior to commencing the activities which resulted in the damage, the resident had made appropriate contact with the relevant locate authority and the resident's activities were not otherwise negligent.
- c) If, at any time during a Franchise, the Town shall elect to alter or change the location or grade of any Street, alley or other public way, the Grantee, upon reasonable notice by the Town, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense. If any construction by the Grantee is in violation of the provisions of Subsection (a), the Grantee shall likewise, upon reasonable notice by the Town, remove, relay and relocate its property in such a manner as to remedy such violation at its own expense.
- d) The Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric, telephone or other fixture, water hydrant or main. All such poles or other fixtures placed in any Street shall be placed between the outer edge of sidewalk and the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on such alley in such a manner as not to interfere with the usual travel on the streets, alleys and public ways. Nothing in this Chapter shall prohibit the use by the Grantee of existing public utility poles where practical, providing mutually satisfactory rental agreements can be entered into.
- e) A Grantee shall, on the request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expenses of such temporary raising or lowering of the wires shall be paid by the person requesting the same, and the Grantee may require such payment in advance. The Grantee shall be given at least two (2) weeks advance notice to arrange for such temporary wire changes.
- f) The Grantee, after obtaining permission from the Town in each instance, may trim trees that overhang streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

SEC. 9-1-16 WORK PERFORMED BY OTHERS.

- a) A Grantee shall give prior notice to the Town specifying the names and addresses of any entity, other than the Grantee, that performs construction services in excess of Ten Thousand Dollars (\$10,000) pursuant to the Franchise, provided, however, that all provisions of the Franchise remain the responsibility of the Grantee.
- b) All provisions of a Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of the Franchise.
- c) Nothing in this Section shall be construed as allowing the transfer of any rights or responsibilities of the Grantee without Town approval.

SEC. 9-1-17 INDEMNITY.

- a) The Grantee shall defend and save the Town and its agents and employees harmless from all claims, damages, losses and expenses, including consultant and attorney's fees, sustained by the Town on account of any suit, judgment, execution, claim or demand whatsoever arising out of:
 - 1) The enactment of this Chapter and granting of a Franchise thereunder, except such claims as may arise from the City's selection of Grantee to be awarded a Franchise pursuant to this Chapter.
 - 2) The installation, operation or maintenance of the cable system except for acts of the Town, its agents or employees, unless said acts are at the request of and under the direction or supervision of the Grantee.
- b) In order for the Town to assert its rights to be indemnified, defended, and held harmless, the Town must, with respect to each claim:
 - 1) Promptly notify Grantee of any claim or legal proceeding which gives rise to such right;
 - 2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; unless, however, the Town determines that its interests cannot be represented in good faith by Grantee; and
 - 3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to Subsection (b)(2) above.
- c) The Grantee shall furnish to the Town, before any Franchise becomes effective, satisfactory evidence in writing that the Grantee has in force and will maintain in force during the term of the Franchise public liability insurance.
- d) A Grantee shall maintain throughout the term of the Franchise a general comprehensive liability insurance policy naming as additional insured the Town, its officers, boards, commissions, agents and employees. The policy shall protect the Town and its agencies and employees against liability for loss or damage for personal injury, death or property damage occasioned by the operations of Grantee under any Franchise granted hereunder, in the amounts of One Million Dollars (\$1,000,000) for bodily injury or death to any one (1) person with the limit however of Ten Million Dollars (\$10,000,000) for bodily injury or death resulting from any one (1) accident, and One Million Dollars (1,000,000) for property

damage resulting from any one (1) accident. The Town reserves the unilateral right to revise the levels of insurance required under this Section to reflect conditions on or about the fifth (5th) and tenth (10th) anniversaries of the effective date of a franchise granted under this Chapter. The Town shall be named as an additional insured under such insurance and a certificate of insurance shall be deposited with the Town Clerk.

SEC. 9-1-18 FRANCHISE FEE AND ANNUAL REPORT.

- a) As compensation for permission to use the streets and public ways of the Town for the construction, operation, maintenance, modification, and reconstruction of a cable system, and for the City's costs in establishing a regulatory program for a Grantee, the Grantee shall pay to the Town an annual amount equal to five percent (5%) of the Grantee's annual Gross Revenues derived from its operations in the Town or, if higher, that amount allowed under Federal law following ninety (90) day's written notice by the Town informing the Grantee of the requirement of such higher amount.
- b) The Franchise fee shall be paid on a semi-annual basis according to the following schedule: revenues for January through June shall be reflected in an August 15 payment; revenues for July through December shall be reflected in a February 15th payment. A Grantee shall provide, with each franchise fee payment, a gross revenue statement showing the revenues received by Grantee for the six (6) month period covered by the payment.
- c) The Town may request on an annual basis a report containing a summary, by type, of customer complaints received during the previous year as well as their resolutions; a summary of material physical changes in the cable system and changes in services offered in the past year; any rate or fee changes; a current listing of each officer, director, and manager of the cable system, and each person or entity holding control or controlling interest in the Grantee; and a summary of the Grantee's plans for the cable system in the coming year.
- d) No acceptance of any payment by the Grantee to the Town shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a Franchise fee or for the performance of any other obligation of the Grantee. Any discrepancy between a franchise fee paid and the amount verified by an independent accounting of Grantee's revenue shall be paid within thirty (30) days of the verification of the discrepancy.

SEC. 9-1-19 RATES CHARGED BY THE GRANTEE.

- a) Rates charged by a Grantee for service under a Franchise granted under this Chapter shall be fair and reasonable. Before any service is sold to any customer, the Grantee shall file with Town Clerk its schedule of rates for installation and monthly service charges, together with a statement of the rights and obligations of subscribers.
- b) Subsequent increases in monthly service rates or additions or amendments to rights and obligations statements shall likewise be filed with the Town Clerk at least twenty-one (21) days before the same become effective. The Grantee must also provide subscribers to the cable system with written notification of any such changes at least fourteen (14) days before the same become effective.
- c) The Town may regulate rates for the provision of cable service provided over the System only to the extent allowed under federal or state law(s).

- d) To the extent allowed by state and federal law, nothing in this Section shall prevent the Grantee from applying a surcharge or late payment penalty to subscriber bills to reflect delinquent balances due the Grantee.

SEC. 9-1-20 OPEN BOOKS AND RECORDS.

- a) A Grantee shall manage all of its operations in accordance with the policy of totally open books and records in respect to the Town. The authorized officers and agents of the Town shall have the right to inspect, upon at least twenty-four (24) hours notice, during normal business hours, all records maintained by Grantee that relate to the operation of the Franchise.
- b) A Grantee shall, at its own expense, prepare and furnish to the Town, at the times and in the form prescribed by the Town, such reasonable reports with respect to its operation, affairs, transactions and property, relating to its system in the Town, as the Town deems necessary for the purpose of regulating the Franchise.
- c) The Town may order an audit of the Grantee's records, which may be conducted by a Town employee or by an independent entity.

SEC. 9-1-21 SUBSCRIBER RIGHTS.

- a) No monitoring of any terminal connected to the system shall take place without, on each occasion, specific written authorization by the user of the terminal in question and written notice to the Town. Written permission shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing, nor shall it prevent the introduction of additional services agreed upon, such as two-way communications and security systems.
- b) A Grantee shall not, except as required by governmental action, provide any data concerning specific subscribers or users or their use of subscriber services except in compliance with the Cable Communications Policy Act of 1984.
- c) Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the Grantee is notified to terminate service. The subscriber shall not be charged any fee for the cancellation or downgrading of cable service.
- d) During standard business working hours, the Grantee's office must be open and able to accept payments; exchange or accept return of converters; schedule and conduct service or technician calls; and answer subscriber inquiries.
- e) The Grantee shall provide subscribers with a local or toll-free line, either staffed or conditions, telephones must be answered within thirty (30) seconds; subscribers should reach a customer service representative within two (2) minutes in all cases. Less than three percent (3%) of callers to the Grantee shall receive a busy signal.
- f) The Grantee shall answer subscribers' service requests within twenty-four (24) hours, including weekends and holidays. Problems should be rectified within forty-eight (48) hours or, in case of a dispute, in fewer than ten (10) days. Customers shall be able to schedule with the Grantee that a service visit occur during a four (4) hour block in either the morning or the afternoon.

- g) Upon notification by a Subscriber of a service interruption, Grantee shall give the Subscriber a credit for each hour that cable service is interrupted if cable service is interrupted for more than four (4) hours in one (1) day and the interruption is not caused by the cable operator.
- h) Upon notification by a Subscriber of a service interruption, Grantee shall give the Subscriber a credit for one (1) day of cable service if cable service is interrupted for more than four (4) hours in one (1) day and the interruption is caused by the Grantee.
- i) Once a cable system is in place, all normal installations must be made within seven (7) business days. Upon initial installation each subscriber shall receive written notice of all services available, rates for such services and all Grantee policies affecting customer services.

SEC. 9-1-22 EMERGENCY ALERT OVERRIDE SYSTEM.

The Grantee shall incorporate into its cable system the capability for a temporary emergency override whereby a designee of the Town, in times of emergencies, may introduce a message on all channels in the system simultaneously. The Grantee shall provide and maintain all equipment necessary for the use of this capability, which shall be capable of being invoked by a telephone line, provided acceptable security for the override can be accomplished.

SEC. 9-1-23 UNAUTHORIZED CONNECTIONS AND MODIFICATIONS.

- a) It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the expressed consent of the Grantee, to make or possess, or to assist in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.
- b) It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency to willfully interfere, tamper, remove, obstruct or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.
- c) Any firm, person, group, company, corporation or governmental body or agency found guilty of violating this Section may be fined not less than Fifty Dollars (\$50.00) and the costs of the action or more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate offense.

SEC. 9-1-24 SEVERABILITY.

Should any word, phrase, clause, sentence, paragraph or portion of this Chapter and or a Franchise thereunder be declared to be invalid by a Court of competent jurisdiction, such adjudication shall not affect the validity of this Chapter and or the Franchise as a whole, but shall only affect the portion thereof declared to be invalid; and the Town Board hereby expressly states and declares that it would nonetheless have passed this Chapter and or granted the Franchise had it known that any such word, phrase, clause, sentence, paragraph or portion of said Chapter and or Franchise were invalid.

SEC. 9-1-25 FORECLOSURE; CONDEMNATION; RECEIVERSHIP.

Upon the occurrence of any event that may lead to the foreclosure, condemnation or receivership of any part of the Fond du Lac cable system, the Grantee shall immediately provide written notification to the Town. Such notification shall be notice of cause for revocation of the Franchise, and the Town may revoke the Franchise under procedures set in this Chapter.

SEC. 9-1-26 NONENFORCEMENT BY THE TOWN.

The Grantee shall not be relieved by obligation by reason of any failure of the Town to enforce prompt compliance with any provision of this Chapter, a Franchise or a Franchise Agreement.

SEC. 9-1-27 GENERAL RIGHTS AND REMEDIES.

All rights and remedies given to the Town under this Chapter, a Franchise and a Franchise Agreement shall be in addition to and cumulative with each other and with any and all other rights or remedies, existing or implied, now or hereafter available to the Town, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the Town in its sole judgment and discretion, and the exercise of one (1) or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right or remedy by the Town shall not release the Grantee from its obligations or any liability under this Chapter, a Franchise or a Franchise Agreement.

SEC. 9-1-28 WAIVER OR EXEMPTION.

The Town reserves the right to waive provisions of this Chapter, or exempt a Grantee from meeting provisions of this Chapter, if the Town determines such waiver or exemption is in the public interest.

SEC. 9-1-29 TRANSFER OF CABLE TELEVISION FRANCHISE.

a) **History.**

- 1) The Cable television franchise in the Town of Fond du Lac (the “Franchise”) is currently owned and operated by Charter Communications (“Franchisee”).
- 2) The Franchisee has entered into a Purchase Agreement dated November 12, 1993 (the “Purchase Agreement”) between Franchisee and Marcus Cable Partners, L.P. (“Marcus”), and the Town Board has received a request from the Franchisee for approval to assign the franchise and transfer the CATV Ordinance from the Franchisee to Marcus.
- 3) Marcus, as the proposed assignee and transferee of Franchisee, from and after the date of the closing of the transactions described in the Purchase Agreement, shall assume and agree to perform each and every obligation of the Franchisee under the Franchise.
- 4) The Town’s Ordinance requires the Town Board to approve said transfer.

- 5) The Town is not aware of any current default of the terms and conditions of the franchise agreement or CATV ordinance.

b) **Transfer.**

- 1) The sale, transfer and assignment of the rights, responsibilities and benefits of the Franchisee under the Franchise from Franchisee to Marcus is hereby permitted and approved.
- 2) The Franchise (and the related CATV ordinance) is in full force and effect to the date hereof (February 14, 1994) in accordance with the terms and conditions as set forth therein.
- 3) The consent to transfer herein provided shall be effective upon and only effective concurrent with the closing of the transactions described in the Purchase Agreement and Marcus shall notify the Town promptly upon the closing of such transactions.

CHAPTER 2

Sewer Connections

9-2-1	Applicability and Purpose
9-2-2	Definition of Terms
9-2-3	Procedure for Individual Connection Applications
9-2-4	Repayment of Special Assessments in Installments
9-2-5	Connection Requirements and Procedures
9-2-6	Sewer Service Rates
9-2-7	Use of Sewerage System
9-2-8	Miscellaneous Rules and Regulations
9-2-9	Rights of Property Owners

SEC. 9-2-1 APPLICABILITY AND PURPOSE.

- a) **Applicability.** This Chapter shall apply to all Town properties located outside an existing sanitary district, which may or do connect to the City of Fond du Lac sewer system by means of connection of an owner-installed sewer lateral to an abutting sewer main owned by the City of Fond du Lac.
- b) **Purpose.** The purpose of this Chapter is to promote the public health, safety and general welfare of the community through provisions designed to:
 - 1) Provide an orderly procedure for connection of Town properties located outside of sanitary districts to a municipal sewer system where sewer service is available.
 - 2) Discharge the Town's obligations for individual sewer connections as established through arbitration and judicial processes.
 - 3) Defray the immediate costs of sewer connections to Town properties through the establishment of the right to elect an installment method for payment of connection-related costs.
 - 4) Promote residential and commercial development within the Town through the availability of affordable municipal sewer service.

SEC. 9-2-2 DEFINITION OF TERMS.

- a) **General.** For the purpose of this Chapter, the following shall apply throughout the Chapter:
 - 1) The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
 - 2) The present tense includes the future tense and the singular includes the plural.
 - 3) The word "shall" is mandatory, the word "may" is permissive.
 - 4) The word "Town" includes, where applicable, the relevant Town Sanitary District.

b) Definition of Terms.

- 1) Basin Charges. Payment due to the City of Fond du Lac for use of a previously-constructed sewer collection system providing transportation of sewage from a specific area to the treatment facility. Basin charges applicable to individual connections have been determined through arbitration and are set out in arbitration award dated February 17, 1989. Residential basin charges are assessed on a “per unit” basis and commercial basin charges are assessed on a per acre basis. Basin charges are due to the City at or prior to the time of connection to the sewer system.
- 2) City’s Deferred Charges. Charges assessed by the City of Fond du Lac for installation of a sewer line which would have been assessed to the abutting property had the property been located within the City’s corporate boundaries. The City’s deferred charges are currently assessed on a front foot basis, are assessed solely within the discretion of the City and are subject to change by the City. The City’s deferred charges are due to the City at or prior to the time of connection to the sewer system.
- 3) Individual Connections. Connection of residential or commercial properties, which are located within the Town but outside of a sanitary district, to the City’s sewer system, where connection may be made by installation of a privately-owned and installed lateral to an existing City-installed sewer line which abuts the connecting property.
- 4) Lateral. A private sewer line installed at the property owner’s expense for the purpose of connecting the property to a City-installed sewer line which abuts the property to provide municipal sewer service for the property.
- 5) Property. Any property located within the Town but outside of a sanitary district which abuts a City-installed sewer line and for which basin charges and the City’s deferred charges have been previously determined or negotiated by the Town and the City of Fond du Lac.
- 6) Sewer Line. A sewer main or other collector line which has been installed by the City for the purpose of transporting sewage to the treatment plant and which abuts property located within the Town.
- 7) Sewer System. The regional sewage treatment system, including the collection system and the City-owned regional treatment plant.

SEC. 9-2-3 PROCEDURE FOR INDIVIDUAL CONNECTION APPLICATIONS.

- a) **Application Process**. The property owner shall apply to the Town for a connection permit. The application shall be submitted to the Town Clerk, together with an application fee of Thirty-five Dollars (\$35.00), and shall contain the following minimum information:
 - 1) Name and address of the applicant.
 - 2) Address and legal description of the property for which connection is requested.
 - 3) If the property is currently improved, whether the improvement is residential or commercial and the number of units or buildings for which sewer service is requested.

- 4) If the property is unimproved, a description of the proposed development and the number of units for which connection to the sewer system is requested, together with the anticipated commencement date for construction.
- 5) Whether the property is currently subject to any State or local sanitary code enforcement orders or citations.
- 6) Whether repayment of the special assessment to be imposed under this Chapter shall be made in a lump sum or the right to repay in installments is being requested.

b) Application Review.

- 1) The Town Board shall review the application at the next regularly scheduled Town Board meeting, provided the application is received at least fifteen (15) days prior thereto. If the application is received less than fifteen (15) days prior to the next regularly scheduled meeting, it shall be reviewed at the second regularly scheduled meeting following receipt of the application. The Town Board may schedule a special meeting for the purpose of review of an application.
- 2) If the property and the proposed connection are within the rights of the Town as determined by the arbitration and judicial processes and, subject to the discretion reserved to the Town as set forth in this Chapter, the Town Board shall approve the application for connection in accordance with the provisions of this Chapter.

c) Special Assessment.

- 1) As an express condition for approval of a connection application, the property owner shall consent to the imposition of a special assessment against the property and shall waive notice and public hearing thereon in accordance with the provisions of Sec. 66.0703(7)(b), Wis. Stats.
- 2) If the application is approved, a special assessment shall be levied against the property in an amount to the basin charges, the City's deferred charges, and any directly-related administrative charges, as applicable to the connecting property.
- 3) The property owner shall be solely responsible for the installation of a lateral to connect the property to the abutting sewer line and all costs thereof.

d) Compliance With All Applicable Laws. The property owner shall comply with all applicable State, city, county and Town ordinances and regulations governing sewer connections, lateral installations, zoning and any such other ordinances or regulations related to connection of the property to the sewer system and shall obtain any and all required State, city, county and Town permits prior to commencing any work related to connection to the sewer system. Any and all costs associated with compliance shall be the sole responsibility of the property owner. Nothing herein shall be construed as prohibiting the Town from granting such economic incentives to development as the Town Board may determine to be in the best interests of the Town, its residents and property owners.

e) Denial of Application. The Town Board may deny an application when:

- 1) The applicant, the property to be connected, or any other property located within the Town and owned by the applicant, is in violation of any Town ordinance.

- 2) The property is not located within an area for which basin charges or the City's deferred charges have been previously determined or negotiated.
- 3) The property owner does not consent to the imposition of a special assessment against the property as set forth in this Chapter.
- 4) The property owner requests the right to repayment of the special assessment in installments and the Town has insufficient funds available to finance an installment repayment election.
- 5) The City of Fond du Lac refuses to grant a permit for or otherwise refuses to allow the connection.
- 6) The property does not abut an existing sewer line.
- 7) The proposed development of the property to be connected, or the connection of the property, would be in violation of existing zoning or other applicable ordinances or any contracts or intergovernmental agreements to which the Town is a party.
- 8) Other relevant and reasonable conditions exist which the Town Board, in its sole discretion, determines require the denial of the connection request.

SEC. 9-2-4 REPAYMENT OF SPECIAL ASSESSMENTS IN INSTALLMENTS.

a) Installment Periods.

- 1) Whenever the special assessment imposed under this Chapter is in excess of Five Hundred Dollars (\$500.00) and less than Four Thousand Dollars (\$4,000.00), the assessment may be paid in installments over a period not to exceed five (5) years.
- 2) Whenever the special assessment imposed under this Chapter is Four Thousand Dollars (\$4,000.00) or more, the assessment may be paid in installments over a period not to exceed ten (10) years.

b) Installment Billings and Collection.

- 1) Where a property owner elects installment treatment for the special assessment as provided in this Chapter, the first installment shall include a proportionate amount of the principal of the special assessment determined by the number of installments, together with interest for the period of one (1) year computed from the date of the imposition of the special assessment, and each subsequent installment shall include a like proportion of the principal and one (1) year's interest upon the unpaid principal portion of the assessment.
- 2) The interest rate on the unpaid principal of the special assessment shall be subject to amendment by the Town.
- 3) Installments shall be entered on the tax roll, paid and collected in the manner set forth in Chapter 66, Wis. Stats.

c) Limitations on Installments.

- 1) Where the special assessment to be imposed under this Chapter is less than Five Hundred Dollars (\$500.00), the assessment shall be paid in a lump sum prior to connection of the property to the sewer system and the property owner shall have no right to elect installment treatment for the assessment.
- 2) The Town may deny the property owner's request for installment treatment of the special assessment if the Town, as determined by the Town Board, has insufficient funds available to finance the special assessment. Nothing in this Chapter shall be construed as requiring the Town to borrow any funds for the purpose of financing individual, connections to the sewer system.

SEC. 9-2-5 CONNECTION REQUIREMENTS AND PROCEDURES.

- a) **Rules.** The rules, regulations and sewer rates of the Town set forth in this Chapter or in the minutes of the meetings of the Town Board shall be considered a part of the contract with every person who is connected with the sewer system to the Town and every such person, by connecting with the sewer system, shall be considered as expressing his or their assent to be bound thereby. The Board reserves the right to change the rules, regulations and sewer rates from time to time as they may deem advisable; and to make special rates and contracts in all proper cases.
- b) **Indemnification of Town.** All plumbers, pipe fitters or other persons permitted to do any work in connection with the sewer system as set forth in this Chapter shall indemnify and hold harmless the Town and the Town Board from all liability for accidents and damages arising from any negligence or lack of skill in doing or protecting his work, or from any unfaithful or inadequate work done in the pursuance of his license; and that he will restore the street, sidewalk and pavement over any piping he lays, and seal all excavations to be made by him so as to leave said street, sidewalk and pavement in as good a state and condition as he found them, and will keep and maintain the same in good order to the satisfaction of said Town Board and any other authority having jurisdiction; and that he will pay all fines that may be imposed on him as set forth in Section 9-2-8, for a violation of any rules and regulations adopted by the Town or the Town Board and in force during the terms of said plumber's license.
- c) **Permit Required.** No person shall uncover, make any connections with or disturb any sewer or appurtenance thereof without first obtaining a written permit in accordance with this Chapter.
- d) **Inspection Required.** All individual laterals and connections to the sanitary sewer must be inspected by a plumbing inspector or some other person authorized by the Town before any excavation is backfilled.
- e) **Separate Connections Required.** A separate and independent sewer shall be provided for every individual building. No user shall allow others or other services to connect to the sewer system through his lateral. All cost and expense incident to the installation and connection of the building sewer shall be born by the owner.
- f) **Material Standards.** Building sewer size, gradient, installation and materials used shall be in conformance with the relevant requirements of the Wisconsin Administrative Code set forth in COMM 1-86, as amended. The foregoing notwithstanding, all lateral installations shall utilize, as a minimum material standard, Schedule 40 gauge PVC pipe. Only approved pipe materials and joints will be allowed. Existing building sewer materials will be allowed for extension only if the material and joints meet existing requirements as determined by inspection and testing. If non-acceptable material had been used in the past, the entire line

will have to be replaced with acceptable material. All sewers shall be tested in accordance with the relevant Code requirements.

g) **Excavations.**

- 1) All excavations for building sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of work shall be restored in a manner satisfactory to the Town.
- 2) When excavating in streets or highways for laying service pipe or making repairs, the surface material and earth removed must be deposited in a manner that will occasion the least inconvenience to the public and provide for the passage of water into road ditches or other drainage areas.
- 3) No person shall leave any excavation made in any street or highway open at any time without barricades; and during the night, warning lights must be maintained at all excavations.
- 4) When refilling the excavation after the service pipes are laid, the earth must be laid in layers of not more than nine (9) inches in depth, and each layer thoroughly rammed or puddled to prevent settling. All work, including replacement of sidewalks and paving, must be done so as to make the street at least as good as before it was disturbed, and satisfactory to the Town Board and any other authority having jurisdiction over the street.

h) **Private System Abandonment.** At the time of connection to the sewer system, any existing septic tank, holding tank or seepage pit located on the premises shall be pumped, and the contents disposed of in accordance with Ch. NR 113, Wis. Adm. Code, and after pumping, shall either be removed and disposed of, or shall be abandoned in accordance with Ch. Comm 83, Wis. Adm. Code.

i) **Service Pipe Responsibility.** All sewer system users shall keep their own service pipes in good repair and protected from frost at their own risk and expense; and shall prevent any unnecessary waste of water and overburdening of the sewer system. All expenses relating to the introduction of sewer into buildings or private premises, and connection with the sewer system, shall be paid by the applicant. It is expressly stipulated that no claim shall be made against said Town or Town Board by reason of the breaking, clogging, stoppage, backup, or freezing of any service pipe.

j) **Inspection Right.** The inspector for the Town or any other person authorized by the Town Board of the Town and bearing proof of such, shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this Chapter. Residents of the Town must at all times, frankly and without concealment, answer all questions put to them relevant to the sanitary sewer.

SEC. 9-2-6 SEWER SERVICE RATES.

a) **Unit of Service.**

- 1) Premises shall be classified as residential, apartments, commercial and industrial. A residence shall be considered the basic unit of service for billing purposes. Individual

apartments within apartment buildings shall be classified as a single unit of service separate and distinct from other users.

- 2) The costs of the Town's administrative expenses, payments to the City of Fond du Lac and any and all other liabilities of the Town related to individual sewer connections shall be divided among the various units of service as determined by the Town Board.
- b) **Sewer Service Billing.** Bills for sewer service and all other charges provided for in this Chapter shall be billed, as a minimum, on a quarterly basis. Payment of bills shall be due within thirty (30) days after the billing date, unless otherwise indicated on the billing statement. All delinquent accounts shall be charged interest at the rate of one and one-half percent (1-1/2%) per month on the unpaid balance, including interest. Such interest shall accrue starting with the 31st day following the date of the bill.
 - c) **Meter Requirement.** All premises are required to install Town-furnished meters at their own expense. The sewage disposal charge shall be based upon the amount of water used as metered.
 - d) **Responsibility for Payment.**
 - 1) The property owner is held primarily responsible for all sewer bills on premises that he or she owns whether or not owner-occupied. In the case of rental properties, all delinquent sewer bills and notices of any nature, relative to the sewer service, will be addressed to the property owner in addition to the tenant. Change of ownership or occupancy of premises delinquent under this Chapter shall not be cause for reduction or elimination of charges due.
 - 2) Every reasonable care will be exercised in the proper delivery of sewer bills. Failure to receive a sewer bill, however, shall not relieve any person (whether property owner or tenant) of the responsibility for payment of sewer charges within the prescribed period, nor exempt any person from any penalty imposed for delinquency in the payment thereof.

SEC. 9-2-7 USE OF SEWERAGE SYSTEM.

- a) **Industrial Wastes.**
 - 1) Industrial wastes shall be metered, sampled and analyzed to assure compliance with the City of Fond du Lac requirements for waste discharged to the treatment plant. If wastes do not comply, pretreatment will be required to produce a waste acceptable to the City. No explosive, toxic, poisonous or corrosive waste or any waste which may be detrimental to personnel, sewer lines or equipment may be discharged to the sanitary sewer.
 - 2) If a user of the sewerage system discharges any substance therein which is deemed by the Town or City to be injurious to the operation of the sewerage system, such user shall be required to discontinue the discharge of such substance in the sewerage system.
- b) **Prohibited Connections.** No person shall connect any roof drain, cistern overflow, sump pump, area drain, surface drain, cooling water line, or any other type of drain line which would allow surface water, ground water, rain water, or any other type of unpolluted water to enter the sanitary sewer. Existing prohibited clear water connections must be removed from the building sewer before connection to the sanitary district sewer system.

c) **Prohibited Discharges.**

- 1) No person shall discharge or cause to be discharged to the sanitary sewer system, any substance which is flammable or explosive, nor any waste which could be toxic or poisonous to personnel or treatment processes. Waters with a pH lower than five and one-half (5.5) or greater than nine and one-half (9.5), corrosive waste, waters with fats, wax or grease in concentrations greater than one hundred (100) mg/l, and large substances capable of plugging sewers shall be prohibited.
- 2) Wastewater discharges must in every respect comply with the requirements and provisions of the City of Fond du Lac Sewer Ordinance.

d) **Discharge Interceptors.**

- 1) Grease, oil and sand interceptors shall be provided when in the opinion of the Town, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sands, and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of the type and capacity approved by the Town and shall be located as to be readily and easily accessible for cleaning and inspection.
- 2) Grease, oil and sand interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which when bolted in place shall be gastight and watertight.
- 3) Where installed, all grease, oil, and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times.

e) **Disconnection of Service.**

- 1) Whenever a building which is served by the system is partially or completely destroyed by fire or other event which renders the building temporarily or permanently uninhabitable, the owner of said building shall notify the Town Board, or its designated representative, of such condition within three (3) days of the event. The service pipe connecting the building to the system shall be capped and sealed so as to be watertight within five (5) days of the event and shall remain capped until such time as the building is repaired and reoccupied, at which time connection shall again be made to the system. The foregoing notwithstanding, if the building is to be demolished, the service pipe shall be capped and sealed so as to be watertight prior to the commencement of demolition. The service pipe shall remain capped unless and until such time as a new building is erected and occupied, at which time connection shall again be made to the system.
- 2) The above notice and capping requirements shall also apply in the event a building which is served by the system is to be voluntarily demolished in order to erect a new building.
- 3) The owner of the building shall, upon initial notification to the Town Board or its representative, also inform the District as to the date and time the service pipe shall be capped. The capping of the line shall be inspected and approved by the District prior to any covering of the service line or cap. The owner shall notify the Town Board or its representative prior to any reconnection to the system. Reconnection shall be in

accordance with the provisions of this Chapter and shall be subject to the procedures and inspections applicable to new connections.

SEC. 9-2-8 MISCELLANEOUS RULES AND REGULATIONS.

- a) **Lien for User Charges.** Sewer user charges are a lien on property. Sewer service charges, quarterly service charges, standby charges, or any other form of charge imposed by the Commissioners shall be collected and taxed and shall be a lien upon the property served in the same manner as prescribed and in accordance with the provisions of Sec. 66.0809, Wis. Stats., as amended. The provisions of said Sec. 66.0906, Wis. Stats., are incorporated by reference and shall apply as if fully set forth herein.
- b) **Maintenance Responsibility.**
 - 1) All sewer services from the point of connection to the system to and throughout the premises must be maintained free of defective conditions, by and at the expense of the owner or occupant of the property. If the property owner does not repair, within twenty-four (24) hours, any break between the property line and the building, the service may be repaired by the Town and back charged to the property owner.
 - 2) The Town shall have the right of recovery from all persons, any expense incurred by the Town for the repair or replacement of any sewer pipe damaged in any manner by any person by the performance of any work under their control, or by any negligent act. No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the sewerage works.
- c) **Code Violations.** Any person who shall violate any of the provisions of this Chapter or rules or regulations of the Town or who shall connect a service pipe without first having obtained a permit therefore; or who shall violate any provisions of the Wisconsin Statutes, Wisconsin Administrative Code or any other materials which are incorporated by reference, shall upon conviction thereof be fined not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) and costs of prosecution. Each day during which the violation occurs shall be deemed a separate offense.
- d) **State Law Adopted.** There is hereby adopted all the rules and regulations of the State Plumbing and State Building Codes and the building rules of the State Department of Commerce insofar as the same are applicable to the Town.

SEC. 9-2-9 RIGHTS OF PROPERTY OWNERS.

Nothing in this Chapter shall not be construed as creating a vested right in any property owner to connect to the sewer system. All individual connections shall be subject to such awards, orders and judgments as have been or may be rendered through or as a result of the arbitration and judicial processes between the Town and the City of Fond du Lac.

CHAPTER 3

Town Water Supply Protection

9-3-1	Purpose; Applicability
9-3-2	Definitions
9-3-3	Notice Requirements
9-3-4	Filing of Reports
9-3-5	Costs Incident to Well Construction
9-3-6	Groundwater Protection Fund
9-3-7	Emergency Water Provisions
9-3-8	Nonexclusivity
9-3-9	Enforcement
9-3-10	Interpretation

SEC. 9-3-1 PURPOSE; APPLICABILITY.

This Chapter shall regulate test wells or permanent wells within the Town intended to be used as part of a community water system, a municipal water system, or a high capacity water system as the same are defined herein. The purpose of this Chapter is to (a) provide advance notice of the installation or construction of a test well or permanent well for the previously described systems and (b) to provide security to protect Town residents and property owners against injury caused by the installation or operation of a test well or permanent well as defined herein.

SEC. 9-3-2 DEFINITIONS

- a) **Adequate Water Supply.** A water supply which has a yield, where obtainable, and the pump capacity to provide the quantity of water which is reasonably necessary to maintain use for drinking, culinary, personal hygiene, and other purposes for which the water is reasonably intended to be used. This Chapter is intended to protect the existing water supply of Town residents.
- b) **Community Water System.** As defined by NR 811.02(9) of the Wisconsin Administrative Code which is incorporated herein as if fully set forth.
- c) **Contaminant.** Any matter which may render water bacteriologically or chemically impure or turbid so as to make it unfit for human consumption.
- d) **Distribution System.** All pipes or conduits by which water is delivered to consumers or municipalities located outside the Town boundaries, except piping inside buildings served and service pipes from a building to a distribution main or pipe.
- e) **Drawdown.** The extent of lowering the water level when water is pumped or flows from a private well.

- f) **Groundwater.** Subsurface water which is within the zone of saturation, including but not limited to, perched water tables, shallow regional groundwater tables and aquifers or zones that are seasonally, periodically or permanently saturated.
- g) **Groundwater Source.** All groundwater obtained from horizontal collectors, infiltration lines, springs and dug, drilled or other types of test wells or permanent wells.
- h) **High Capacity Water Supply or System.** As defined by NR 812.07(53), Wis. Adm. Code, which is incorporated herein as if fully set forth.
- i) **Living Unit.** A domicile located within the Town's boundaries.
- j) **Municipality.** Any City, Town, Village, County, County Utility District, Town Sanitary District, Town Utility District, School District or Metropolitan Sewage District or any other public entity created under Wisconsin law and having authority to collect, obtain, store, treat or convey water for domestic, commercial or industrial use.
- k) **Municipal Water System.** As defined by NR 811.02(20), Wis. Adm. Code, which is incorporated herein as if fully set forth.
- l) **Person.** An individual, corporation, company, association, cooperative, trust, institution, partnership, state, municipality, or federal agency.
- m) **Private Water Supply.** One (1) or more sources of groundwater, including facilities for storage and conveyance of groundwater, such as wells, springs, pumps, pressure tanks and reservoirs, on one (1) property, other than those serving a public water system.
- n) **Public Water System.** As defined by NR 811.02 (25), Wis. Adm. Code, which is incorporated herein as if fully set forth.
- o) **Specific Capacity.** The continuance yield of a well at a given well water or pressure drawdown expressed in gallons per minute, per foot of drawdown.
- p) **Supplier of Water.** Any person who owns or operates a public water system.
- q) **Utility.** A public utility as defined in Chapter 196, Wis. Stats., and as the same may be modified or amended.
- r) **Waterworks or Water System.** Any facility installed or constructed to obtain, store, treat or convey water for drinking or domestic, commercial or industrial use for a public water system.
- s) **Well.** An excavation or opening into the ground made by digging, boring, drilling, driving or other methods for the purpose of obtaining groundwater or for monitoring groundwater movement. This definition applies to all wells, whether for test purposes or for permanent use.
- t) **Well Driller.** Any person, firm or corporation, whether private or public, employed in obtaining groundwater from a well by digging, boring, drilling, driving or other methods for the purpose of obtaining groundwater.
- u) **Yield.** The quantity of water which may flow or be pumped from the well per unit of time.

SEC. 9-3-3 NOTICE REQUIREMENTS.

- a) No test well or permanent well shall be constructed in the Town if such well is intended as part of a community water system, a municipal water system, a public water system, or a high capacity water system, unless written notice of such well and its intended use is given to the Town:
 - 1) Within ten (10) days of the submission of preliminary plans and specifications to the Wisconsin Department of Natural Resources under NR 108.04; or
 - 2) Thirty (30) days prior to the commencement of any test or permanent well construction; whichever is earlier. Said notice shall be provided to the Town Clerk and shall contain the following information:
 - a. The name of the supplier of water and/or owner of the well;
 - b. The type of water system for which the well will be used;
 - c. The location of the well and the name of the owner of the site location;
 - d. The description and location of the distribution system for the water system, identifying affected roads, rights-of-way, and easements to be utilized in transporting the water to its ultimate user;
 - e. The name and address of the well driller;
 - f. Identification of all existing wells located in the Town, whether public, private, municipal, community and/or high capacity, within a two (2) mile radius of the well site;
 - g. The estimated specific capacity of the well, whether a test or permanent well;
 - h. The estimated yield of the test and/or permanent well(s), utilizing calculations based on per minute yields, per day yields, and annual yields;
 - i. The groundwater source to be utilized by the well;
 - j. The estimated time for completion of the permanent water supply and distribution systems;
 - k. The estimated useful life of the well and water system;
 - l. The contact person having authority to respond to inquiries regarding the application.
- a) Any information identified above which is not available at the time of the required submission of the Notice shall be supplied immediately as the same becomes available or determinable. The Notice required by this Section shall be in addition to any and all reports, applications and/or Notices required elsewhere in any Town ordinance applicable to wells or the location of wells. The applicant shall be responsible for supplementing or updating the submitted application as new information is obtained or as circumstances change.

SEC. 9-3-4 FILING OF REPORTS.

If the water system proposed or under construction is a reviewable project under Chapter NR 108(2), Wis. Adm. Code, copies of any and all reports required to be filed with the Wisconsin Department of Natural Resources shall be filed simultaneously with the Town Clerk.

SEC. 9-3-5 COSTS INCIDENT TO WELL CONSTRUCTION.

- a) The provisions of this and any other Town ordinance notwithstanding, each well owner and supplier of water subject to this Chapter shall be solely responsible for all costs of repairs to roads, public rights-of-ways, topography or other surfaces or locations damaged or disturbed in any manner due to the construction of any well and/or water distribution system servicing a community water system, municipal water system, public water system and/or high capacity water system. The plans and specifications for all water distribution systems located within the Town shall be filed with the Town Clerk sixty (60) days prior to commencement of construction of any such distribution system or portion thereof. The information to be submitted shall include specification of the size, type and exact location the distribution system and its appurtenances and shall indicate whether such is to be located within private or public lands and shall indicate the owners of all lands upon which the system shall be located. The well owner and water supplier shall be solely responsible for obtaining the necessary easements, public or private, for location of the well and distribution system and for conformance to all Town, State and Federal requirements governing the same. The Town Board may limit and/or regulate the location of wells and distribution systems in conformance with applicable zoning ordinances and uses allowed in accordance therewith.
- b) The plans and specifications for all water distribution systems described in Subsection (a) above shall be accompanied by an application and inspection fee of Two Hundred Dollars (\$200.00) and a performance bond in an amount which the Town Board determines to be reasonably necessary to secure the proper performance and completion of the construction of the relevant water distribution systems located within the Town. Said bond shall be determined in light of the nature of the improvements and the contents of the plans and specifications filed with the Town Clerk as set forth in Subsection (a) above. Performance bonds used in conjunction with the applicant's well construction project are sufficient to meet the requirements of this Section provided the bonds designate the Town as an additional insured or beneficiary.
- c) In addition to all other requirements set forth herein, the permit applicant shall perform, at its cost, static and pumping operating levels for all wells of whatever depth within a two (2) mile radius. Thereafter, the well permittee shall perform follow-up well surveys within the same areas at two (2) year intervals. The follow-up surveys shall be performed during the same month or season as the initial well surveys in order to maintain comparability in the data. The Town shall assist the permit applicant or permittee by providing a letter addressed to the relevant Town residents requesting cooperation in the well surveys.
- d) Any water system other than a system administered by the Town of Fond du Lac may not sell water to any private residents, businesses or corporations located in the Town of Fond du Lac.

SEC. 9-3-6 GROUNDWATER PROTECTION FUND.

- a) The existence of wells servicing community water systems, municipal water systems, public water systems and/or high capacity water systems in the Town may have future adverse

effects on the groundwater and groundwater sources utilized by Town residents. Protection of groundwater and groundwater sources is necessary for the maintenance of the health, welfare and economic well-being of the Town and its residents. There presently exists the scientific knowledge and expertise necessary to reasonably determine the effect of such wells on prior, existing, normal capacity private wells and the groundwater sources for such private wells. To protect Town property owners from adverse effects of the existence and location of community, public, municipal and/or high capacity wells in the Town, and to provide for reasonable compensation for any losses which may be incurred thereby, there is hereby established a Groundwater Protection Fund, to be administered as set forth herein.

- b) A special permit shall be required prior to the installation and operation of all permanent wells servicing community, municipal, public and/or high capacity water systems located within the Town. An applicant for a special permit shall submit his or her request on forms to be supplied by the Town Clerk. The Town shall act on the permit application within forty-five (45) days of receipt.
- c) There shall be imposed upon all new permanent wells servicing community, municipal, public and/or high capacity water systems an initial special permit fee payable to the Town prior to the installation of said permanent well in an amount of Twenty-five Thousand Dollars (\$25,000). Furthermore, there shall be imposed upon all new permanent wells servicing community, municipal, public and/or high capacity water systems an annual operation fee payable to the Town no later than February 1 of the year following each year, or fraction thereof, such a well is operating in the Town in an amount of One Thousand Dollars (\$1,000). The special permit fee and the annual operation fee shall be escrowed pursuant to the terms of Subsection (d) below.
- d) The initial special permit fees and the annual operation fees shall be deposited into a separate interest-bearing insured account(s) denominated "Groundwater Protection Fund Well No. _____." The account(s) may be in the name of and controlled by the permittee, provided no withdrawals occur except as authorized by mutual agreement between the Town Board and the permittee or by direction of the Arbitration Panel as provided herein. The annual operation fee of One Thousand Dollars (\$1,000) per well shall continue to be paid until the account balance, including accumulated interest thereon, reaches a balance of Fifty Thousand Dollars (\$50,000). The permittee shall be entitled to the interest earned on the account after the Fifty Thousand Dollar (\$50,000) balance has been met. In the event the account balance falls below Fifty Thousand Dollars (\$50,000), the annual operation fee shall resume and earned interest shall be retained until such time as the Fifty Thousand Dollar (\$50,000) balance has been restored. The Groundwater Protection Funds shall be administered as follows:
 - 1) Disbursements to be made from the Groundwater Protection Fund to private well owners who incur damages or expenses as a result of any adverse effect(s) created by wells subject to the jurisdiction of this Chapter. Such damages or expenses shall include, but are not limited to, the following:
 - a. Contamination of private water supply;
 - b. Depletion of groundwater sources resulting in the drawdown of private wells;
 - c. Depletion of groundwater sources resulting in a significant lowering of well water level in private wells;
 - d. Such other and similar expenses or damages reasonably shown to have been caused by wells regulated under this Chapter.

- 2) Any damages or expenses found to be compensable under “A” above which occur within a two (2) mile radius of any wells subject to this Chapter shall be presumed to have been caused by the operation of the community, public, municipal and/or high capacity well. Damages or expenses incurred by private well owners outside the two (2) mile radius area may be compensable under this Section if sufficient evidence is presented to reasonably establish a causal connection between the damage or expense and the community, municipal, public and/or high capacity well. The presumptions set forth above may be rebutted by clear and satisfactory evidence presented by hearing before the Arbitration Panel described below.
- 3) Distributions from the Groundwater Protection Fund shall be made upon submission by the private well owner of evidence of damages or expenses incurred, or to be incurred. The private well owner’s submission shall include two (2) bids identifying the work required and the cost thereof. Compensable expenses shall be limited to the following:
 - a. Obtaining an alternate water supply for a maximum period of one (1) year after the date of the written request for a distribution from the Groundwater Protection Fund, or until a replacement water supply has been obtained.
 - b. A replacement water supply.
 - c. Equipment used for treating the contaminated private water supply only if it is not feasible to remedy the contamination with a replacement water supply.
 - d. Other costs as deemed necessary by the Town Board to accomplish the purposes of this Chapter.
- 4) Distributions from the Groundwater Protection Fund shall not be made for the following ineligible costs:
 - a. The replacement of a sand point well with a drilled well unless:
 - 1) The Town Board determines that replacement with another sand point well is not feasible;
 - 2) The Town Board determines that the claimant had no knowledge or reason to believe the sand point well would become contaminated at the time it was constructed; and
 - 3) The well serves a principal residence.
 - b. Any costs incurred prior to the date of this Chapter.
 - c. A replacement well greater than seven (7) inches in diameter.
 - d. A replacement well screen greater than ten (10) feet in length.
 - e. Any consulting or cost estimate fees.
 - f. Any state, county or local permit fees.
 - g. Relocation, replacement or abandonment of sewer piping, buried gasoline or fuel oil tanks, or similar items.

- h. Mileage, phone, postage, and other miscellaneous costs incurred by the claimant.
 - i. Any other well construction costs which exceed the dollar limits set forth in Ch. NR 123(21)(3), Wis. Adm. Code.
- 5) Within ten (10) days of receipt of a private well owner's claim, but in no event prior to approval or disapproval of said claim, the Town shall notify the relevant permittee by certified mail of the filing of a compensation claim. The notice to the permittee shall include all supporting documentation filed by the private well compensation claimant. The permittee shall have fourteen (14) days to object to the compensation claim filed with the Town. All objections shall be in writing setting forth the grounds thereto with specificity. Upon receipt of a timely objection, the Town, the permittee and the claimant shall attempt to resolve the dispute on a voluntary basis. If the parties are unable to resolve the dispute within thirty (30) days, the matter shall be submitted to a third person Arbitration Panel for resolution as follows:
- a. The Town and the permittee shall each designate a representative to serve on the Panel. The two (2) designated representatives shall name a third Panel member. If the two (2) designated representatives are unable to agree on a third Panel member, they shall contact the Department of Natural Resources for a list of five (5) qualified individuals. Names shall be stricken from the list on an alternate basis in order to arrive at the third Panel member.
 - b. The Arbitration Panel shall meet within thirty (30) days for the purpose of resolving the compensation claim dispute. The meetings shall be informal and shall not be subject to the procedural requirements set forth in Chapter 68, Wis. Stats. Notwithstanding the informal nature of the hearings, all parties shall be given the opportunity to present evidence in support of their positions.
 - c. The Arbitration Panel shall rule on the compensation claim within thirty (30) days of the close of the meeting described in Subsection (5)b, above. In making its determination, the Arbitration Panel shall consider the evidence and argument of the parties consistent with the remedial purposes of this Chapter.
 - d. The award of the Arbitration Panel shall be final and binding. The successful party may petition Fond du Lac County Circuit Court for Judgment affirming the award pursuant to the provisions of Chapter 788, Wis. Stats.
 - e. The permittee shall be responsible for the costs of the arbitration proceedings unless it is the prevailing party, in which event, it shall be reimbursed by the relevant Groundwater Protection Fund for the fees and disbursements of the third Arbitrator.
- 6) Distributions from the Groundwater Protection Fund shall be in addition to and not in lieu of, other compensations which may be available to a private well owner, but in no case shall distributions be made other than for actual damages and/or expenses for which compensation or reimbursement has not been received from another source.
- 7) Nothing in this Chapter or the Groundwater Protection Fund created hereunder shall be deemed to be a property right of a property well owner. Distributions from the Groundwater Protection Fund are qualified by and limited to available monies. Nothing contained herein shall obligate the Town to maintain a fund in amounts sufficient to compensate private well owners.

SEC. 9-3-7 EMERGENCY WATER PROVISIONS.

The Town Board shall have authority under this Chapter to require a permittee to provide emergency water supplies to Town residents, including farms for livestock use, in all cases where it is reasonably determined by the Town Board that the operation of the community, municipal, public and/or high capacity water system has depleted, contaminated, or has otherwise caused the loss of an adequate water supply. The exercise of the emergency powers herein are in addition to all other powers granted to the Town Board under this Chapter or as authorized by law.

SEC. 9-3-8 NONEXCLUSIVITY.

- a) Adoption of this Chapter does not preclude the Town Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matters. The jurisdiction and duties defined herein shall not preclude the Town Board or any other Town officer from proceeding under any ordinance or law or by any other enforcement method to enforce any ordinance, regulation or order.
- b) This Chapter is to operate in conjunction with the previously adopted Town Zoning Ordinance applicable to Exclusive Agricultural District Zoning.

SEC. 9-3-9 ENFORCEMENT.

The Town Board shall have the authority to institute the appropriate action or proceedings to prevent, restrain, correct or abate a violation of this Chapter. Enforcement remedies created by this Chapter are cumulative and shall be in addition to all other remedies available under law. Any person who violates any provision of this Chapter or any order, rule, or regulations promulgated shall, upon conviction, be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000), for each offense, together with the costs of prosecution. Each day that a violation continues shall be considered a separate offense.

SEC. 9-3-10 INTERPRETATION.

The provisions of this Chapter shall be considered minimum requirements. Where the provisions of this Chapter impose greater restrictions than any statute, other regulation, ordinance, or covenant, the provisions of this Chapter shall prevail. Where the provisions of any statute, other regulation, ordinance or covenant impose greater restrictions than the provisions of this Chapter, the provisions of such statute, other regulation, ordinance or covenant shall prevail.

CHAPTER 4

Connections To and Use of Town Municipal Water Distribution System

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SEC. 9-4-1 AUTHORITY.

This Chapter is enacted pursuant to authority granted under Chapter 60, Wis. Stats., and authority granted pursuant to the police powers of the Town.

SEC. 9-4-2 PURPOSE AND APPLICABILITY.

- a) **Purpose.** The purpose of this Chapter is to regulate the use of the Town's municipal water distribution system ("the Water System"); to ensure that all connections made to the Water System are made in a safe and orderly manner and in compliance with all applicable ordinances and regulations of other municipalities having authority or jurisdiction over such connections; and to protect and promote the health, safety and welfare of Town residents and Town property owners.
- b) **Applicability.** This Chapter applies to all connections and proposed connections to the Town's Water System and to all persons making or requesting such connections.

SEC. 9-4-3 DEFINITIONS.

As used in this Chapter:

- a) **Building Lateral.** A privately-owned water lateral connected to the Water system main at the curb stop and extended to a building connected to the Water System.
- b) **Individual Water Service.** The tap-in to the Water System main, the shut-off box and curb stop, installed from the main to the curb (or to the property line).
- c) **Water System.** The municipal water distribution system consisting of water mains, hydrants, valves and related appurtenances, up to and including the curb stop, constructed and owned by the Town of Fond du Lac, and connected to the water system owned by the Village of North Fond du Lac (“the Village”) for the purpose of providing municipal water service to certain areas of the Town of Fond du Lac. The Water System is owned and operated by the Town. Individual customers connected to the Water System are treated as direct retail customers of the Village.
- d) **PSC.** All references to the “PSC” mean the Public Service Commission of Wisconsin.

SEC. 9-4-4 OTHER APPLICABLE REGULATIONS.

In addition to the provisions of this Chapter, all connections made or proposed to be made to the Water System, and all persons making or requesting such connections, shall be subject to all applicable provisions of:

- a) Other Town Ordinances, rules and policies;
- b) The Village of North Fond du Lac Municipal Code, including all regulations and policies governing the Village Water Utility; and
- c) All applicable State of Wisconsin and PSC statutes, codes and rules.

SEC. 9-4-5 PERMIT REQUIREMENTS.

- a) **Permit Required.** No connection may be made to the Water System without first obtaining connection permits from both the Town and the Village. The Town Board may establish a fee for the connection permit and may adjust the fee from time to time in its sole discretion. The fee for the Town connection permit is separate from and in addition to the Water System special assessment levied against all properties connecting to the Water System and is also separate from and in addition to any applicable Town or Village connection, meter, tap-in, inspection, or water usage fees.
- b) **Application For Permit.** Permit applications shall be obtained from and shall be filed with the Town Permit Issuer not less than forty-five (45) days prior to the proposed connection date. A single permit application shall be submitted for both Town and Village permits. Within thirty (30) days of receipt of the application, the Town will notify the applicant of the amount of all applicable Town and Village Fees. Both Town and Village fees will be collected by the Town. The Town will remit the Village fees directly to the Village on behalf of the applicant. By submitting an application for a connection permit, the applicant agrees to be bound by and comply with the provisions of this Chapter and of all other applicable statutes, rules, codes and regulations, including the rules, regulations and codes of the Village. At a minimum, the permit application shall contain the following:

- 1) Name, address and telephone number of the applicant;
 - 2) Address of requested connection;
 - 3) Name, address and telephone number of landowner, if different from the applicant;
 - 4) Identification of type of building to be connected (e.g., private residence, restaurant, retail establishment, grocery store, etc.);
 - 5) Date connection is proposed to be made;
 - 6) Name, address, telephone number and license number of plumber who will be making the connection;
 - 7) The name, address and telephone number of the contractor who will be installing the individual water service required] and the building lateral;
 - 8) A site plan showing both water and sanitary sewer building laterals and material specifications for the installation of the laterals must be attached;
 - 9) If the connection is for a residential building, the number of residential units;
 - 10)The connection is for a commercial building, such other information as may be set forth in the permit application.
- c) **Permit Standards.** A Town connection permit will be granted only if the following conditions are met:
- 1) The location of the proposed connection is within an area designated as either a Town Growth Area or a Town Planning Area as defined under any Intergovernmental Agreements entered into between the Town, the Village, and the City of Fond du Lac;
 - 2) The special assessment attributable to the proposed connection has been levied pursuant to the Town's Ordinance Providing For Levying Of Special Assessments For Town Water Distribution System, and the assessment has been paid in full (\$780.00) or less], or the property owner has notified the Town of his/her intention to pay the assessment in installments, than Seven Hundred Eighty Dollars (\$780.00)].
 - 3) The Town's consulting engineers or the Village Water Utility have approved the individual water service plans (where the individual water service is to be installed by the applicant's contractor) and the building lateral plans;
 - 4) Provision of water service will not violate the terms of the Intergovernmental Agreement Between the Village and the Town to Provide Municipal Water Service To Portions of the Town, dated June 9, 1997;
 - 5) The Village has approved the application and has indicated that it will issue a Village permit for the premises;
 - 6) All applicable Town and Village permit and connection fees have been paid; and
 - 7) No conditions described in Subsection (d) regarding refusal of service exist.

- d) **Denial of Application for Service.** In addition to any and all other conditions set forth in this Chapter under which service may be refused, an application for service may be deemed and a request for service refused under the following conditions:
- 1) To the extent permitted by the rules of the PSC, the failure to pay a delinquent Village Water Utility account or failure to comply with the terms of deferred payment agreement entered into with the Village;
 - 2) Failure to pay an outstanding account balance with the Village Water Utility owing at a previous address for which there is no agreement or arrangement for payment and the account is not in dispute but remains outstanding;
 - 3) Failure to comply with deposit or guarantee arrangements authorized as a condition to service under applicable Wisconsin Public Service Commission codes and regulations;
 - 4) Failure to comply with the terms of any applicable Town or Village ordinance or code, or with applicable Wisconsin statutes or the rules or orders of the PSC;
 - 5) Failure to provide any information required in the Application For Service;
 - 6) Failure to provide credit information necessary to evaluate the need for a deposit or deferred payment agreement;
 - 7) Any other conditions for refusal of service permitted or mandated under the rules of the PSC.

SEC. 9-4-6 INDIVIDUAL WATER SERVICE AND BUILDING LATERAL INSTALLATIONS.

- a) **Responsibility for Construction.** No individual water service or building lateral may be installed, or construction thereof commenced, before issuance of a connection permit by the Town. All installations and connections must be inspected by an authorized representative of the Town or by the Village Water Utility. Building services shall be constructed as follows:
- 1) If the required building lateral size is larger than one (1) inch, the property owner is responsible for installation of the individual water service at his sole cost.
 - 2) If the required lateral size is one (1) inch or smaller, the individual water service may be installed by the Village or by the property owner. If the property owners prefer to have the Village install the individual water service, the property owner shall be responsible for making the necessary arrangements for installation with the Village and will be responsible for the Village's applicable installation, meter and tap-in fees in accordance with Village codes, rules and regulations.
 - 3) The property owner is solely responsible for the cost of installation of the building lateral, including costs of inspection and any related Town or Village costs.
- b) **Construction Standards.** The following construction standards shall apply to all owner-installed individual water services and to all building laterals:

- 1) All laterals shall utilize materials and installation specifications meeting the then-current requirements of applicable State of Wisconsin Codes. Only the following types of materials may be used for building laterals: ductile iron, PVC; PE; or Type K copper.
 - 2) Where multiple meters will be installed in a building served by a single building lateral, neither the branch service connection nor piping between branch connections and meters may be covered or buried, but must be accessible and available for inspection at all times. Each branch service connection must be supplied with a shut-off valve located prior to the meter installation point. If the required shut-off valve is not installed, the entire building will be treated as a single customer for purposes of water usage billing by the Village;
 - 3) All meters shall be located a minimum of three (3) feet off of the surface of the floor and a minimum of one (1) foot away from all walls and shall be kept free and clear of any obstructions that would interfere with or hamper meter readings, tests, repair or replacement;
 - 4) All individual water services and building laterals shall be constructed in accordance with the provisions of this Chapter and all applicable Village, State of Wisconsin and PSC statutes, codes and regulations.
- c) **Inspection.** All individual water services and all building laterals installed by the property owner shall be inspected by an authorized representative of the Town or by the Village water utility before any excavation is backfilled. All costs of inspection shall be borne by the property owner. The property owner shall notify the Town or the Village water utility at least three (3) working days prior to beginning excavation.
- d) **Excavations.** All excavations in streets or highways for installation of individual water services or laying building laterals or making repairs shall be done in a good and workmanlike manner and in a manner that causes the least inconvenience to the public. All road materials and earth removed must be deposited in a manner that will occasion the least inconvenience to the public and that will permit free flow of water in any abutting ditches. The work zone shall be signed in accordance with the Manual On Uniform Traffic Control Devices (MUTCC). All excavations shall be barricaded and warning lights shall be maintained during non-daylight hours. In refilling the opening after the service pipes are laid, the earth must be laid in layers of not more than nine (9) inches in depth, and each layer mechanically compacted to prevent settling. All work, including replacement of sidewalks, ballast and paving, must be done so as to make the street as good, at least, as before it was disturbed, and satisfactory to the Town or other authority having jurisdiction over the area. Streets, sidewalks, parkways and other public property disturbed in the course of work shall be restored in a manner satisfactory to the Town or to any other authority having jurisdiction over the area. The property owner is solely responsible for obtaining all necessary State, County, Town or Village permits required for work to be done within the roadway or road rights-of-way.
- e) **Maintenance of Building Laterals.** The property owner is solely responsible for maintenance of the building lateral from the point of use in the building up to and including the connection to the curb stop. The Town is responsible for maintenance of the pipe from the water main up to and including the curb stop. The Village may require that the Town turn off the water if the property owner fails to repair a leaking or broken lateral from the curb stop to the point of metering or use within a reasonable period of time. The Village may bill property owners for water that is wasted by defective pipes and fixtures, regardless of whether the water has passed through the meter. Neither the Town, the Village, nor their

respective governing bodies, agents or employees shall be responsible for any damage to person or property resulting from by the breaking, clogging, stoppage, backup, or freezing of any building lateral.

- f) **Meters Required.** All connection to and all use of water from the Water System shall be metered. Meters shall be owned by, obtained from and installed, maintained, repaired and replaced by the Village. Unless specifically authorized by the Town or the Village water superintendent, no water service will be turned on until a meter is installed. Only a representative of the Town, or a Village Water Utility employee, may turn on the water service to a building. When buildings serviced by a meter provided by Town Sanitary District No. 3 or used in conjunction with Sanitary District sewage service connect to the Water System, the meter shall be replaced with a meter provided by the Village. Replacement of existing Sanitary District meters with Village-supplied meters is required in order to permit meter readings by the Village for water billing purposes. Water meter readings will also be used for purposes of sewer user billings by the Sanitary District. No person shall tamper with, replace or disconnect the water meter. All provisions of the Village Water Utility Code and PSC regulations shall apply to and govern meter installations, maintenance, testing and service.

SEC. 9-4-7 FUTURE WATER MAIN EXTENSIONS.

This Section applies to all future connections which require construction of additional water mains to connect to the Water System. If the Town, in its sole discretion, agrees to undertake and finance the costs of extension of additional water mains, the project will be considered a Town Project. All other projects are deemed to be Private Projects. No Private Project may be undertaken without the prior express, written approval of the Town. In addition to all other applicable statutory, code or ordinance requirements, any property owner or developer requesting an extension of the public water main, or approval of a Private Project for construction of additional mains to connect to the Water System, shall comply with the following requirements:

- a) The party requesting the extension, whether as a Town Project or as a Private Project, must submit to the Town an approved final plat or certified survey map specifically identifying all lands to be serviced by the requested extension, specific information regarding the proposed use of the lands to be serviced, and a certification from the appropriate town and county zoning officials that the land is zoned for the proposed use, prior to the design and construction of the extension.
- b) The party requesting the extension, whether as a Town Project or as a Private Project, shall submit to the Town information identifying the total projected water consumption for the area proposed to be served by the extension.
- c) The Town shall, in its sole discretion, designate the engineering consultant who will design any and all Private Projects. All plans and specifications for a Private Project must be reviewed and approved by all applicable reviewing authorities, including the Town and the Village, prior to commencement of construction. The Town's engineering consultant shall perform construction inspection and construction contract administration for all Private Projects.
- d) For Private Projects, all costs related to the design, construction, approval for construction of and acceptance by the Town of the completed water main extension, including but not limited to, engineering, accounting, legal and inspection fees, shall be borne by the party requesting the extension. The party requesting approval for a Private Project shall establish a

funded escrow account, or other security mechanism approved by the Town, in an amount equal to one hundred twenty-five percent (125%) of the estimated amount of the total cost of the extension. The Town, in its sole discretion, shall determine the amount to be escrowed or otherwise secured. The escrow account or other security established shall permit the Town to withdraw funds to pay for the costs of completion of the Private Project, at such times as the Town deems necessary and appropriate.

- e) The party requesting approval for a Private Project shall be solely responsible for securing all required utility easements. All easements shall be recorded and in a form approved by the Town prior to recording of the easement.
- f) In addition to any project costs related to the new extension that may be assessed, all connections (or potential connections such as lots in a new subdivision) to the Water System through connection of the new extension to the Water System shall be subject to a special assessment for use of the Water System in accordance with the terms of the Town's Ordinance Providing For Levying Of Special Assessments For Town Water Distribution System.
- g) No extensions will be permitted if the area to be serviced by the extension is located outside of a Town Growth Area or Town Planning Area, or if the water usage projected for the area serviced by the extension would cause the Town to exceed the permitted total Town water usage as set forth in the Intergovernmental Agreement Between the Village and the Town to Provide Municipal Water Service To Portions of the Town, dated June 9, 1997, or if any of the conditions identified in Section 16 exist.

SEC. 9-4-8 HYDRANTS.

- a) **Use of Hydrants.** No person shall use or open any fire hydrant without the express authorization of the Town, the Town or Village Fire Departments, or the Village Water Utility superintendent. Authorization for private use of hydrants shall be at the sole discretion of the Town and Village. Any authorized or unauthorized use of water from hydrants shall be subject to billing for water usage in accordance with the applicable, established Village water rates.
- b) **Damage to Hydrants.** Any person defacing or damaging any hydrant, by motor vehicle or otherwise, shall be responsible for the cost of repair of the hydrant. The Town shall not be responsible for damage to any person or personal property resulting from damage to the hydrant caused by a third (3rd) party.
- c) **Damage Resulting From Unauthorized or Improper Use of Hydrants.** Any person who:
 - 1) opens or uses any fire hydrant without prior, express authorization; or
 - 2) is authorized to open or use a fire hydrant, and negligently or improperly opens, uses or closes a fire hydrant,

shall be solely responsible for any and all damages incurred by the Town, the Village or to the Town Water system, or incurred by third parties or to third parties' property, as a result of the unauthorized or improper use of the fire hydrant. Any such damages incurred as a result of the use of a fire hydrant by a member of a local fire department in the course of fighting a fire shall be charged to the municipality sponsoring the fire department, or to the fire department if it is an independent entity. Neither the Town, the Village nor its representatives, employees or agents, shall be liable, directly or indirectly, for any loss or damage caused by or incurred as a result of

the authorized or unauthorized use of Town fire hydrants, except where such damages result from the authorized but improper or negligent use by its representatives, employees or agents.

SEC. 9-4-9 BILLING FOR WATER USAGE.

- a) **Village Billing.** Until such time as the Town establishes itself as an independent water utility, all customers of the Water System will be treated as direct retail customers of the Village Water Utility and will be billed directly by the Village. Water rates shall be charged in accordance with the Village's retail rates as filed with and approved by the PSC. Customers are solely responsible for payment of all billings, including any Village Public Fire Protection Charges, in accordance with all applicable Village and PSC codes, policies, rules and regulations. The Town shall be responsible for any rate surcharge imposed by the Village.
- b) **Delinquent Bills.** Delinquent bills shall be subject to such penalties and late payment charges as may be imposed under applicable Village and PSC codes, rules and regulations. In accordance with such codes, rules and regulations, the Village may direct that service be disconnected as permitted under PSC rules, codes and regulations. The Town will assist the Village in effecting such disconnection upon receipt of notification from the Village. The Town will, upon request of the Village, assist the Village in collection of delinquent billings by placing such billings on the real estate tax roll in accordance with the procedures authorized by State statute and will remit any collections of billings from the tax roll to the Village.

SEC. 9-4-10 VACATED BUILDINGS.

Whenever a building which is connected to the Water System is wholly or partially destroyed, or otherwise rendered temporarily or permanently uninhabitable, abandoned or vacated, the owner of the building shall notify the Town or the Village water utility within one (1) working day of the event. Neither the Town, the Village, nor their governing bodies, agents or employees shall be responsible for any damage to the building resulting from the destruction, abandonment or vacation of the building. The owner of the building and the owner of the real estate shall be jointly and severally liable for any damage to the Water System or to the Village's water system resulting from a failure to promptly notify the Town or Village water utility of the destruction, abandonment or vacation of the building.

SEC. 9-4-11 REPAIRS TO WATER MAINS.

- a) **Responsibility for Repairs.** The Town shall be solely responsible for effecting repairs to the water mains and Water System appurtenances and the cost of such repairs, except where damage is caused by the negligent or intentional acts of a third (3rd) party. The cost of repairs necessitated by the negligent or intentional acts of a third (3rd) party shall be charged to such party.
- b) **Notice of Repairs.** The Town, of its authorized agent, will make reasonable efforts to notify affected customers in advance of the time and duration of service interruptions if the water service must be interrupted in order to effect repairs or to routine maintenance of the Water System. Where practicable, notice may be given by radio, newspaper announcement or other appropriate means. Where interruptions in service are required, the Town or Village, as the case may be, will endeavor to re-establish service with the shortest possible delay consistent with safety to their employees or agents, customers, and the general public. Neither the

Town, the Village, nor their governing bodies, agents or employees shall be responsible for any damage to persons, buildings, pipes, fixtures or personal property resulting from the interruption of water service.

SEC. 9-4-12 MANDATORY CONNECTIONS.

- a) Existing Buildings. All residential buildings in existence at the date of completion of a Water Main Extension serving the property may continue to use their private well if the property owner obtains a Well Operation Permit from the Town. The property owner does not need to demonstrate a need for continued use of the private well. The property owner shall only be required to connect to the Water System if:
- 1) The well has a history of bacteriologically unsafe water, or
 - 2) The well needs to be deepened or reconstructed, or
 - 3) The property owner chooses to connect to the water system.

All commercial, industrial, or public authority buildings in existence at the date of completion of a Water Main Extension serving the property shall connect to the Water System no later than one (1) year after the date the Water Main Extension became operational. Private wells may continue to be used after connection to the Water System only in accordance with the expressed provisions of this Chapter.

- b) Future Buildings. All buildings constructed or completed after the date of the Water Main Extension became operational shall connect to the Water System prior to occupancy of the building.

SEC. 9-4-13 CROSS-CONNECTIONS.

- a) **Cross-Connection Defined**. A cross-connection is any physical connection or arrangement between the municipal Water System and any private water source, where there may be a flow from one (1) system to the other.
- b) **Cross-Connections Prohibited**. No person shall establish or maintain any cross-connection. No person shall establish or maintain an interconnection, whereby water from a private, auxiliary or emergency water supply other than the municipal water supply may enter the Water System, unless the private water supply, the connection method, and the use of the private water supply have been approved by the Town, the Village, and any State agency having jurisdiction or authority over such interconnection or private water supply.

SEC. 9-4-14 ABANDONMENT OF PRIVATE WELLS.

- a) **Abandonment Required**. Unless a well operation permit has been issued in accordance with the provisions of this Chapter, all private wells shall be abandoned no later than thirty (30) days after the date of connection to the Water System.
- b) **Abandonment Procedures**. All wells abandoned pursuant to the requirements of this Chapter shall be abandoned in accordance with the procedures and methods required by the Wisconsin Administrative Code. The well owner shall notify the Town at least two (2) working days prior to commencement of any abandonment activities. The Town, or its representative, shall observe and inspect the abandonment. A copy of the abandonment report

form, supplied by the Wisconsin Department of Natural Resources, shall be submitted to the Town and to the DNR within ten (10) days of completion of the well abandonment.

- c) **Well Operation Permit.** The Town may grant a permit for continued operation of a private well under the following conditions:
- 1) The well and pump installation meet or are upgraded to meet the requirements of the Wisconsin Administrative Code governing private wells; and
 - 2) The well has a history of producing bacteriologically safe water as evidenced by at least two (2) samplings taken a minimum of two (2) weeks apart; and
 - 3) There are no cross-connections or interconnections between the well and pump installation and the municipal Water System; and
 - 4) The property owner demonstrates a need for continued current use of the private well.
- d) **Duration of Well Operation Permit.** Well operation permits shall be issued for a period of two (2) years. Permits may be renewed provided that all of the requirements of Subsection (c) are and continue to be met. The Village will perform water sampling and tests in accordance with the requirements of Subsection (c) in conjunction with requests for initial issuance and renewals of the well operation permit. Failure to permit the Village to perform the required water sampling and tests will result in denial of an initial permit application (or a renewal request) and issuance of an order requiring that the well be abandoned.

SEC. 9-4-15 AUTHORITY OF INSPECTORS.

The inspector for the Town or any other person authorized by the Town, the Village Water Utility, or the PSC, and bearing proof of such, shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, testing and billing in accordance with the provisions of this, or any other applicable, ordinance, rule or regulation.

SEC. 9-4-16 WATER SERVICE AREA.

Only properties located within Town Growth or Town Planning Areas as they existed on September 8, 2008 may connect to the Water System. The Town expressly reserves the right to further limit connections to the Water System, even for properties located within Town Growth or Town Planning Areas, if, in the sole determination of the Town, any of the following factors are present:

- a) The area of the proposed connection cannot adequately be served by the Water System at a service level permitting adequate fire flows;
- b) The proposed connection is not in accord with the Town's Comprehensive Plan;
- c) The area proposed to be served cannot reasonably be served with sanitary sewer service through the Town or a Town Sanitary District;
- d) Other essential services cannot be extended to the area of the proposed connection without unduly burdening the Town or the Town tax base;

- e) Connection would cause the Town to exceed the water usage limits set forth in the Intergovernmental Agreement Between the Village and the Town to Provide Municipal Water Service To Portions of the Town, dated June 9, 1997, as amended.
- f) Connection would require the construction of additional water mains in or through an area where the Town, in its sole discretion, determines that it is not economically or otherwise feasible for the Town to construct the additional mains and the party requesting connection is unwilling to bear the cost of the required main extensions.
- g) The proposed connection would adversely affect service to existing customers or to potential customers located within the area of a previously-approved connection.
- h) The proposed connection would violate the provisions of any applicable statutes, codes, regulations, ordinances or policies, or would violate the terms of any intergovernmental agreements entered into between the Town and any other municipal entity.

SEC. 9-4-17 REMEDIES AND PENALTIES.

- a) **Remedies.** If any structure is or is proposed to be connected to the Water System in violation of this Chapter, the appropriate authorities of the Town of Fond du Lac may in addition to other remedies, institute appropriate action or proceedings to prevent, restrain, correct or abate such violation, including (but not limited to) action to disconnect the structure from municipal water service if permitted under applicable State Statutes and Codes.
- b) **Penalties.** Any person who violates any provision of this Chapter or any order, rule or regulation made hereunder shall, upon conviction, be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each offense, together with the costs of prosecution and reasonable attorneys' fees expended by the Town in conjunction with enforcement of the Chapter. Each day that a violation continues shall be considered a separate offense.

SEC. 9-4-18 INTERPRETATION.

In their interpretation and application, the provisions of this Chapter shall be considered minimum requirements. Where the provisions of this Chapter impose greater restrictions than any statute, other regulation, ordinance or covenant, the provisions of this Chapter shall prevail. Where the provisions of any statute, other regulation, ordinance or covenant impose greater restrictions than the provisions of this Chapter, the provisions of such statute, other regulation, ordinance or covenant shall prevail. Nothing in this Chapter shall be interpreted so as to conflict with other Town of Fond du Lac or Village of North Fond du Lac ordinances not mentioned or made inapplicable by the express provisions of this Chapter.

CHAPTER 5

Special Assessments for Town Water Distribution System

9-5-1	Authority
9-5-2	Purpose
9-5-3	Applicability
9-5-4	Exercise of Police Powers
9-5-5	Description of the Construction Project
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9-5-7	Calculation of Assessed Costs
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9-5-13	Interpretation
Appendix A	Calculation of Excluded and Assessed Portion of Project Costs

SEC. 9-5-1 AUTHORITY.

This Chapter is enacted pursuant to authority granted under Sec. 66.0701, Wis. Stats.

SEC. 9-5-2 PURPOSE.

The purpose of this Chapter is to provide a method of levying special assessments for recovery of portions of the cost of construction of the Town's municipal water distribution system from properties benefiting from the construction.

SEC. 9-5-3 APPLICABILITY.

The method for levying special assessments as described in this Chapter applies throughout the Town of Fond du Lac unless otherwise determined by the Town Board.

SEC. 9-5-4 EXERCISE OF POLICE POWERS.

All special assessments levied under this Chapter are levied against properties that are directly benefited by the construction by the Town of the Water System and are levied as an exercise of the police powers of the Town of Fond du Lac.

SEC. 9-5-5 DESCRIPTION OF THE CONSTRUCTION PROJECT.

- a) **General Project Description.** The project generally consists of the construction of a municipal water distribution system, including water mains, hydrants, valves, a flow metering station and individual water services (from main to curb stop) for buildings in existence at the time of construction, from the current terminus of the Village of North Fond du Lac (“Village”) water system to provide for distribution of Village municipal water service to properties located within the Town.
- b) **Water Service Area.**
 - 1) Town properties to be served by the Water System are generally located in the following areas:

West of Esterbrook Road to approximately the Town line, both north and south of State Highway 23; and the area located from Esterbrook Road easterly to U.S. Highway 41 and south of State Highway 23 to approximately Forest Avenue.
 - 2) Service is available only to parcels that are located within Town Growth or Town Planning Areas as designated under the Intergovernmental Agreement Among the City of Fond du Lac and the Towns of Fond du Lac, et al, dated as of July 3, 1996 and the Intergovernmental Agreement Among the Village of North Fond du Lac, the Town of Fond du Lac and Town Sanitary District No. 3 of the Town of Fond du Lac To Provide For Orderly Growth and Development Within Agreed-Upon Municipal Boundaries, dated June 9, 1997, and any amendments thereto. Connection to the Water System may be further limited in accordance with the Town’s Ordinance Regulating Connections To And Use Of Town Municipal Water Distribution System.

SEC. 9-5-6 PROPERTY SUBJECT TO ASSESSMENT.

- a) **Connection to Water System.** All parcels connecting directly or indirectly to the Water System are subject to special assessment levy pursuant to this Chapter. A separate assessment shall be levied for each structure located upon a parcel that has a separate building lateral connected to the Water System. A connection shall be deemed to be made to the Water System if the parcel is directly serviced by the Water System mains, or if the parcel is serviced by a different main and that service main is connected to a Water System main. Special assessments levied pursuant to this Chapter shall be levied in the following circumstances:
 - 1) In conjunction with the connection of individual structures to the Water System, prior to issuance of a permit to connect to the Water System (provided that all other requirements for issuance of the connection permit are met);
 - 2) In conjunction with approval of a request for extension of additional mains to be connected to the Water System to provide service to a new subdivision.
- b) **Assessment for Individual Water Services.** In addition to the special assessment for a proportionate share of the project costs related to construction of the Water System, a separate assessment shall be levied for each connection that is made to an individual water service where the water service (from the main to the curb stop) was constructed as part of the Town’s Water System construction project. The assessment for the individual water price service shall be Seven Hundred Ten Dollars (\$710.00) per connection, which is the contract price charged to the Town

for this construction, plus a proportionate share of the interest on the project debt attributable to the water services share of the project costs.

c) Assessment Separate From Water Usage and Other Charges.

- 1) The special assessments levied pursuant to this Chapter are separate and distinct from:
 - a. Any and all charges for actual water usage charged to properties connected to the water system;
 - b. Any assessment levied in conjunction with other utility construction projects;
 - c. Any permit fees;
 - d. Any applicable Village or Town connection, meter, tap-in, or inspection fees;
 - e. The cost of installing the building lateral.
- 2) Payment of the special assessments levied pursuant to this Chapter shall not relieve any property owner from the obligation to pay all water use charges, both fixed and variable, imposed after connection has been made to the water system.

SEC. 9-5-7 CALCULATION OF ASSESSED COSTS.

- a) **Assessed Project Costs.** Each connection to the Water System will be assessed for a proportionate share of the total project cost (including interest on project debt) less certain Excluded Costs. Excluded Costs are:
- 1) Fire Protection Service Costs. Costs directly related to maintenance of fire protection service, consisting of fire hydrants, hydrant leads, one-half (1/2) of the cost of the dual-meter metering system, and the proportionate share of project debt interest attributable to these construction costs;
 - 2) Costs Recoverable Through Future Sales. Costs that may be recovered through future sale of a portion or portions of the Water System to adjoining municipalities, consisting of costs related to that portion of the system that is installed within (or abutting) Village of North Fond du Lac Growth Areas, as those Areas are defined in the Intergovernmental Agreement between the Town and the Village dated June 9, 1997, and the proportionate share of project debt interest attributable to these construction costs;
 - 3) Individual Water Services Costs.
 - a. Costs of providing individual water services to be installed as part of the project, consisting of a total of sixteen (16) one (1) inch water laterals from the water main to the property line complete with corporation, curb stop and box in place, and the proportionate share of project debt interest attributable to these construction costs. The cost of individual water services will be separately assessed to the property connecting to the individual water service.
 - b. The share of project costs to be assessed is determined by subtracting the Excluded Costs from the total project costs.

b) **Calculation of Excluded Costs.** In order to calculate the assessed portion of the project costs, it is necessary to first identify the amount of the Excluded Costs. Cost calculations at the time of adoption of this Chapter are based upon bid prices for the project. The Town Board may, by Resolution, amend this Chapter to revise the cost allocation after completion of the construction project to make any necessary adjustments to reflect actual project quantities and prices. A detailed explanation of the calculation of Excluded Costs is incorporated into this Chapter as Appendix A. Excluded Costs are summarized as follows:

1) Fire Protection Costs.

One-half of cost of flow metering station:	\$ 7,000
Hydrants and Hydrant Leads:	27,451
Proportionate Share of Interest on Project Debt:	<u>5,344</u>
Total, Fire Protection Costs:	\$ 39,795

2) Costs Recoverable Through Future Sales

4,820 feet of 8” water main:	\$ 74,460
Hydrants and hydrant leads:	9,299
Valves:	3,850
Proportionate Share of Engineering and Administrative Project Costs:	14,758
One-Half Easement Acquisition Costs:	10,000
Proportionate Share of Interest on Project Debt:	<u>17,435</u>
Total, Recoverable Costs:	\$129,802

3) Cost of Individual Water Services

16 Individual Water Services @ \$615/each:	\$ 9,840
Proportionate Share of Interest on Project Debt:	<u>1,530</u>
Total, Individual Water Services:	\$11,370

c) **Calculation of Specially-Assessed Portion of Project Costs.** The amount of the project costs to be assessed to connecting properties is calculated as follows:

Total Project Cost (including interest on project debt)	\$629,704
Less, Fire Protection Project Costs:	(39,795)
Less, Recoverable Costs	(129,802)
Less, Individual Water Service Costs:	<u>(11,370)</u>
Project Costs to be Assessed:	\$448,737

SEC. 9-5-8 CALCULATION OF INDIVIDUAL ASSESSMENTS.

- a) **Base Assessment.** Individual assessments will be based upon the number of Residential Equivalent Units (REUs) per connection. No assessment will be based upon less than one (1) REU.
- b) **Determination of Base REUs.** The base number of REUs that may be served by the Water System has been determined by the Town’s engineering consultants. It has been determined that a total of one thousand three hundred seventy (1,370) acres of land could be served with adequate fire flow pressure and volume by the Water System. Taking into consideration areas to be dedicated for roadways, green space and other public purposes, as well as environmentally-sensitive areas unsuitable for construction, it is determined that the land ratio of single family dwellings to total acreage is one to one (1:1). That is, a total of one thousand three hundred seventy (1,370) single family dwellings could be constructed upon the one thousand three hundred seventy (1,370) acres within the water service area.
- c) **Determination of Assessable REUs.** For purposes of this Chapter and the determination of special assessments hereunder, one REU is defined as follows:

one (1) residence = three (3) people = one hundred fifty (150) gallons per day water usage = thirteen thousand six hundred fifty (13,650) gallons per quarter water usage, or fifty-four thousand six hundred (54,600) gallons per year. In the development area, a total of six hundred fifty-seven (657) acres are currently zoned or are anticipated to be zoned for residential use. A total of seven hundred thirteen (713) acres are zoned or anticipated to be zoned for commercial use. Certain commercial uses may generate annual water demands equivalent to a single family residence, while other commercial uses generate higher demands. In order to determine the total water demand on an REU basis, the mixture of higher-use commercial and single family residential uses must be considered. Actual water meter readings and actual parcel sizes for existing commercial properties located within Town Sanitary District No. 3 were reviewed to determine an average commercial water usage per acre. Based upon this review, it is determined that the average commercial water demand is one and one-half (1.5) REU per acre. Total REUs are then calculated as follows:

<u>Acres in Development Area</u>	<u>REU Equivalent</u>	<u>Total REUs</u>
657 Acres Residential	1	657
713 Acres Commercial	1.5	<u>1,069</u>
Total Assessable REUs:		1,726

d) **Determination of Assessment Per REU.** The base assessment per REU is calculated as follows:

Assessed Project Costs:	\$448,737
Divided by Total Serviceable REUs:	<u>1,726</u>
Equals Base Assessment Per REU:	\$259.99

Round To: \$260.00/REU

e) **Determination of Individual Assessments.**

- 1) Residential Parcels. All residential connections shall be assessed on the basis of one (1) REU, or Two Hundred Sixty Dollars (\$260.00)/REU [plus Seven Hundred Ten Dollars (\$710.00) if the building service was installed as part of the Water System project.] Multi-family dwellings, including duplexes, shall be assessed for one (1) REU per dwelling unit.
- 2) Existing Improved Commercial Parcels. Commercial structures in existence at the date of adoption of this Chapter shall be assessed on the basis of the number of REUs as determined by the actual, average annual water usage records for the structure for the four (4) quarters prior to the date of connection to the water system. The average annual water use shall be determined from the records of Town of Fond du Lac Sanitary District No. 3, which has been providing individually-metered sanitary sewer service to all existing improved commercial parcels that are subject to special assessments. For example, an existing commercial use that has an average annual water use of five hundred forty-six thousand (546,000) gallons shall be assessed on the basis of ten (10) REUs, or a total assessment of Two Thousand Six Hundred Dollars (\$2,600.00) [plus Seven Hundred Ten Dollars (\$710.00) if the building service was installed as part of the Water System project].
- 3) New Commercial Improvements. Assessments against parcels with newly-constructed commercial improvements (improvements not existing on the date of adoption of this Chapter) shall be determined as follows:

<u>Classification</u>	<u>Number of REUs</u>
General Business/Office	One REU per 20 employees
Shopping Center/Supermarket	One REU per 4,000 sq. ft. of floor space
Motel with Laundry	One REU = bed space x % of occupancy 6
Motel without Laundry	One REU = bed space x % of occupancy 8
Bowling Alley with Bar	½ REU per alley

Service Station	One REU
Church	One REU
School – Preschool, Elementary, Middle or Junior High	One REU per 30 students
High School	One REU per 20 students
Tavern	One REU per 40 seats
Tavern with Food Service	One REU per 10 seats
Family-Style Restaurant	One REU per 10 seats
Family-Style Restaurant with Separate Bar Area	One REU per 10 seats for Restaurant Area, and One REU per 40 seats for Bar Area
Fast-Food Restaurant	One REU per 6 seats
Country Club	One REU per 25 members
Health/Fitness Club	One REU per 40 members
Child Care/Daycare Center	One REU per 16 children
Manufactured Housing Community	One REU per lot
Other Commercial or Industrial Use	To Be Determined by the Town Board on a Case-by-Case Basis

- 4) Adjustments to Initial REU Calculation. All REU computations shall be rounded upward to the nearest ½ REU. Where the REU determination is based upon the number of employees or members, the property will be subject to an additional assessment if the initial employee or member count supplied by the property owner is found to be understated by 10% or more. Where the REU is based in part upon an occupancy percentage, the occupancy percentage will be determined in accordance with the developer’s pre-construction market studies or similar study prepared in conjunction with the developer’s decision to proceed with construction of the facility. Future expansions that occur after the initial determination of the special assessment for a commercial structure will be subject to an additional assessment if the expansion requires the installation of a larger individual water service (building lateral) than that installed at the time of the original connection.

SEC. 9-5-9 LEVY OF SPECIAL ASSESSMENTS.

- a) **Assessment to Be Levied Prior to Connection.** No connection shall be made to the Water system, and no connection permit shall be issued by the Town, unless and until the special assessment for the connection has been determined and levied in accordance with the provisions of this Chapter.
- b) **Adoption of Assessment Levy Resolution.** When the final REU determination is made for a requested connection to the Water System in accordance with the provisions of this Chapter, the Town Board, in the exercise of its police powers, shall adopt a Resolution identifying the

special assessment for the affected parcel(s) and by such Resolution shall levy the special assessment(s) so determined. The Town Clerk shall give notice by mail to the last known address of the owner of every parcel subject to assessment pursuant to the assessment Resolution not less than ten (10) days prior to the meeting at which the Resolution will be considered and possibly adopted.

- c) **Appeal Rights.** Any person having an interest in the land subject to the special assessment may appeal the assessment within forty (40) days of adoption of the assessment Resolution, in the manner set forth in Sect. 66.62(2), Wis. Stats. The notice of the meeting at which the assessment Resolution may be adopted shall contain a notification to the property owner of the appeal right hereunder.
- d) **Waiver of Notice and Hearing.** The notice requirements of this Section shall not be applicable to the levy of any special assessment for which the property owner has consent to the levy of the special assessment and has specifically waived, in writing, the right to notice and hearing prior to levy of the special assessment.
- e) **Date of Lien of Special Assessment.** All special assessments levied by the assessment Resolution shall be a lien upon the property from the date of adoption of the Resolution.

SEC. 9-5-10 INSTALLMENT PAYMENT OPTIONS.

Assessments based upon three (3) or less REUs must be paid in full upon issuance of a permit for connection to the Water System. Assessments based upon more than three (3) REUs may be paid in not more than five (5) annual installments of principal. Because interest on the project debt has already been included in the total assessed costs, no interest will be charged on the individual assessment installments. The annual principal installment will be placed on the tax roll, commencing with the real estate tax levy year of the year of application for a connection permit. The outstanding balance of an assessment that is initially paid in installments may be paid in full at any time.

SEC. 9-5-11 REMEDIES AND PENALTIES.

- a) **Remedies.** If any structure is or is proposed to be connected to the Water System in violation of this Chapter, the appropriate authorities of the Town of Fond du Lac may in addition to other remedies, institute appropriate action or proceedings to prevent, restrain, correct or abate such violation, including (but not limited to) action to disconnect the structure from municipal water service if permitted under applicable State Statutes and Codes.
- b) **Penalties.** Any person who violates any provision of this Chapter or any order, rule or regulation made hereunder shall, upon conviction, be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each offense, together with the costs of prosecution and reasonable attorneys' fees expended by the Town in conjunction with enforcement of the Chapter. Each day that a violation continues shall be considered a separate offense.

SEC. 9-5-12 COLLECTION OF ASSESSMENTS.

In addition to any and all other remedies and penalties that may be imposed for violation of this Chapter, the provisions of the Wisconsin Statutes governing the collection of special assessments, including various alternative collection rights and procedures and provisions for imposition of penalties and interest charges for delinquent assessments, shall apply to all special assessments levied pursuant to this Chapter.

SEC. 9-5-13 INTERPRETATION.

In their interpretation and application, the provisions of this Chapter shall be considered minimum requirements. Where the provisions of this Chapter impose greater restrictions than any statute, other regulation, ordinance or covenant, the provisions of this Chapter shall prevail. Where the provisions of any statute, other regulation, ordinance or covenant impose greater restrictions than the provisions of this Chapter, the provisions of such statute, regulation, ordinance or covenant shall prevail. Nothing in this Chapter shall be interpreted so as to conflict with other Town of Fond du Lac ordinances not mentioned or made inapplicable by the express provisions of this Chapter.

APPENDIX A

CALCULATION OF EXCLUDED AND ASSESSED PORTION OF PROJECT COSTS

1. Detail of Total Project Costs

Total Construction, including contingency	\$441,450
Engineering/Legal/Administrative costs	\$ 82,400
Accounting Fees	\$ 1,300
Easement Purchases	<u>\$ 20,000</u>
Total:	<u>\$545,150*</u>

*Net of additional \$75,000 borrowed for Project as special contingency for rock removal. The special contingency fund was not needed for the Project and the \$75,000 will be used to make a partial prepayment on the Project debt on May 1, 1998 (the first available prepayment date.)

2. Detail of Interest On Project Debt

Total Town 1997 General Obligation Note:	\$650,000*
Portion Attributable to Water System Project:	\$620,150*
Ratio of Water Project Debt to Total Debt is \$620,150/650,000 or:	95%
Total Interest on 1997 GO Note:	\$ 89,004
Water Project share at 95%	\$ 84,554

*Before \$75,000 partial prepayment to be made on May 1, 1998.

3. Total Project Costs

Total Construction, Engineering, etc.:	\$545,150
Water Project Share of Interest:	<u>\$ 84,554</u>

Total Project Costs: \$629,704

4. Detail of Excluded Costs

A. Fire Protection

One-Half of Flow Meter Station: \$ 7,000

24.5 Hydrants @ \$950/each
(Some hydrants are located in areas
such that they will be ultimately shared
by Town and Village) \$23,275
174' of hydrant leads @ \$24/ft: \$ 4,176

Total Fire Protection Costs: \$39,795

B. Costs Recoverable Through Future Sales

Approx. 4,820' of water main abuts Village
Growth Areas (from connection point, through
Steenberg lands, and 1/2 of pipe abutting Kramer
lands).

4,766' water main @ \$15/ft: \$ 71,490
54' water main (bored) @ \$55/ft: \$ 2,970

8.5 Hydrants @ \$950/each \$ 8,075

51' Hydrant Leads @ \$24/ft: \$ 1,224

7 Valves @ \$550/each: \$ 3,850

1/2 of Easement Cost (Steenberg) \$ 10,000

Total Construction: \$ 97,609

Share of Engineering, Legal and
Administrative Costs calculated as follows:
\$97,609/\$545,150 Total Construction Cost =
17.91%; \$82,400 Engineering, etc. costs x 17.91%= \$ 14,758

Total Construction and Engineering, etc.: \$112,367

Share of Debt Interest calculated as follows:

\$112,367 Recoverable Construction Cost/\$545,150
Total Construction = 20.62%; \$84,554 Total Interest
x 20.62% = \$ 17,435

Total Recoverable Costs: \$129,802

C. Cost of Individual Water Services

16 Individual Services, complete with corporation, curb stop and box in place @ \$615/each:	\$ 9,840
\$9,840 Water Services Construction	
\$545,150 Total Construction = 1.81%;	
\$84,554 Total Interest x 1.81% =	<u>\$ 1,530</u>
Total, Individual Water Services:	\$ 11,370

CHAPTER 6

Illicit Discharge and Connection

9-6-1	Purpose/Intent
9-6-2	Definitions
9-6-3	Applicability
9-6-4	Responsibility for Administration
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9-6-6	Severability
9-6-7	Ultimate Responsibility
9-6-8	Discharge Prohibitions
9-6-9	Watercourse Protection
9-6-10	Compliance Monitoring
9-6-11	Requirement to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices
9-6-12	Notification of Spills
9-6-13	Violations, Enforcement, and Penalties
9-6-14	Penalties
9-6-15	Enforcement
9-6-16	Cost of Abatement of the Violation
9-6-17	Violations Deemed a Public Nuisance
9-6-18	Remedies Not Exclusive
9-6-19	Adoption of Ordinance

SEC. 9-6-1 PURPOSE/INTENT.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town through the regulation of non-storm water discharges to the MS4 to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDFS) permit process. The objectives of this ordinance are:

- a) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
- b) To prohibit illicit connections and discharges to the MS4.
- c) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance,

SEC. 9-6-2 DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

- a) Authorized Enforcement Agency. Employees or designees of the director of the municipal agency designated to enforce this ordinance.

- b) Best Management Practices (BMPs). Structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
- c) Contaminated storm water. Storm water that comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts or industrial machinery in the source areas listed in NR 216 (effective August 1, 2004).
- d) Department (DNR). The Wisconsin Department of Natural Resources.
- e) Discharge. As defined in Wisconsin Statutes Chapter 283, when used without qualification includes a discharge of any pollutant.
- f) Discharge of pollutant or discharge of pollutants. As defined in Wisconsin Statutes Chapter 283 (November 1, 2005), means any addition of any pollutant to the waters of this state from any point source.
- g) Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- h) Illicit Discharge. Any discharge to a municipal separate storm sewer system that is not composed entirely of storm water except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit such as landscape irrigation, individual residential car washing, fire-fighting, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, flows from riparian habitats and wetlands, and similar discharges.
- i) Illicit Connections. An illicit connection is defined as either of the following:
 - 1) Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the MS4 including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,
 - 2) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

- j) Industrial Activity. Activities subject to WPDES Industrial Permits per NR 216 (effective August 1, 2004) and Wisconsin Statutes Chapter 283.
- k) Municipality. Any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes, storm water or other wastes.
- l) Municipal Separate Storm Sewer System (MS4). As defined in Wisconsin Administrative Code NR 216 (effective August 1, 2004), means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:
 - 1) Owned or operated by a municipality.
 - 2) Designed or used for collecting or conveying storm water.
 - 3) Which is not a combined sewer conveying both sanitary and storm water.
 - 4) Which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
- m) Non-Storm Water Discharge. Any discharge to the MS4 that is not composed entirely of storm water.
- n) Owner. Any person or entity holding fee title, an easement or other interest in property.
- o) Outfall. The point at which storm water is discharged to waters of the state or to a storm sewer.
- p) Person. An individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.
- q) Pollutant. As defined in Sections 283.01 (13), Wisconsin Statutes, means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.
- r) Pollution. As defined in Sections 283.01 (14), Wisconsin Statutes means any man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.
- s) Pollution prevention. Taking measures to eliminate or reduce pollution.
- t) Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

- u) Storm Water. Runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.
- v) Storm Water Management Plan/Stormwater Pollution Prevention Plan. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.
- w) Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.
- x) Watercourse. A natural or artificial channel through which water flows. These channels include: all blue and dashed blue lines on the USGS quadrangle maps, all channels shown on the soils maps in the NR.CS soils book for Fond du Lac County, all channels identified on the site, and new channels that are created as part of a development The term watercourse includes waters of the state as herein defined.
- y) Waters of the state. As defined in Wisconsin Statute 283 (November 1, 2005), means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.
- z) Wisconsin Pollutant Discharge Elimination System (WPDES) Storm Water Discharge Permit. A Wisconsin pollutant discharge elimination system permit issued pursuant to Wisconsin Statute 283 (November 1, 2005).

SEC. 9-6-3 APPLICABILITY.

This ordinance shall apply to all water entering the MS4 generated on any lands unless explicitly exempted by an authorized enforcement agency.

SEC. 9-6-4 RESPONSIBILITY FOR ADMINISTRATION.

The Town Board or its designed Code Enforcement Office and/or its agents shall administer, implement, and enforce the provisions of this ordinance Any powers granted or duties imposed upon the Code Enforcement Office may be delegated by the Code Enforcement Officer to persons or entities acting in the beneficial interest of or in the employ of the agency.

SEC. 9-6-5 COMPATIBILITY WITH OTHER REGULATIONS.

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

SEC. 9-6-6 SEVERABILITY.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

SEC. 9-6-7 ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

SEC. 9-6-8 DISCHARGE PROHIBITIONS.

a) Prohibition of Illicit Discharges.

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water.

b) Allowed Discharges.

- 1) Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.
- 2) Discharges or flow from firefighting, and other discharges specified in writing by the Code Enforcement Office as being necessary to protect public health and safety.
- 3) Discharges associated with dye testing.
- 4) Any non-storm water discharge permitted under an WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Wisconsin

Department of Natural Resources. Any person subject to such a WPDES storm water discharge permit shall comply with all provisions of such permit.

c) Prohibition of Illicit Connections.

- 1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- 2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- 3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- 4) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Code Enforcement Office.
- 5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Code Enforcement Office requiring that such locating be completed. Such notice shall specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Code Enforcement Office.

SEC. 9-6-9 WATERCOURSE PROTECTION.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SEC. 9-6-10 COMPLIANCE MONITORING.

a) Right of Entry: Inspecting and Sampling.

The Code Enforcement Office shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

- 1) If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Code Enforcement Office.
- 2) Facility operators shall allow the Code Enforcement Office ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.
- 3) The Code Enforcement Office shall have the right to set up on any facility such devices as are necessary in the opinion of the Code Enforcement Office to conduct monitoring and/or sampling of the facility's storm water discharge.
- 4) The Code Enforcement Office has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy,
- 5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Code Enforcement Office and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- 6) Unreasonable delays in allowing the Code Enforcement Office access to a facility is a violation. A person who is the operator of a facility commits an offense if the person denies the Code Enforcement Office reasonable access to the facility for the purpose of conducting any activity authorized or required by this ordinance.

b) Special Inspection Warrant

If the Code Enforcement Office has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Code Enforcement Office may seek issuance of a special inspection warrant per Wis. Stat. § 66.0119, as amended.

SEC. 9-6-11 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The owner or operator of any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the MS4, or waters of the State shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal MS4 or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premise, that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4 Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section, These BMPs shall be part of a Storm Water Management Plan (SWMP)/Stormwater Pollution Prevention Plan (SWPPP) as necessary for compliance

SEC. 9-6-12 NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water, the MS4, or waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Code Enforcement Office in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Code Enforcement Office within 5 business days of the phone notice, If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least 3 years.

Failure to provide notification of a release as provided above is a violation of this ordinance.

SEC. 9-6-13 VIOLATIONS, ENFORCEMENT, AND PENALTIES.

a) Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Code Enforcement Office is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The Code Enforcement Office is authorized to seek costs of the abatement as outlined in Section 9-6-16.

b) Warning Notice.

When the Code Enforcement Office finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the Code Enforcement Office may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in the subsection shall limit the authority of the Code Enforcement Office to take action, including emergency action or any other enforcement action without first issuing a Warning Notice.

c) Notice of Violation.

Whenever the Code Enforcement Office finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Code Enforcement Office may order compliance by written notice of violation to the responsible person.

The Notice of Violation shall contain:

- 1) The name and address of the alleged violator;
- 2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- 3) A statement specifying the nature of the violation;
- 4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- 5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- 6) A statement that the determination of violation may be appealed to the Code Enforcement Office by filing a written notice of appeal within 3 days of service of notice of violation; and
- 7) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator.

Such notice may require without limitation:

- 1) The performance of monitoring, analyses, and reporting;
 - 2) The elimination of illicit connections or discharges;
 - 3) That violating discharges, practices, or operations shall cease and desist;
 - 4) The abatement of remediation of storm water pollution or contamination hazards and the restoration of any affected property;
 - 5) Payment of a fine to cover administrative and remediation costs; and
 - 6) The implementation of BMPs.
- d) **Suspension of MS4 Access.**

1) **Emergency Cease and Desist Orders**

When the Code Enforcement Office finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Code Enforcement Office may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- a. Immediately comply with all ordinance requirements; and
- b. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Code Enforcement Office may take such steps as deemed necessary to prevent or minimize harm to the M54 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Code Enforcement Office may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Code Enforcement Office that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed

written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Code Enforcement Office within 5 days of receipt of the prerequisite for, taking any other action against the violator.

2) Suspension due to Illicit Discharges in Emergency Situations

The Code Enforcement Office may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the Code Enforcement Office may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

SEC. 9-6-14 PENALTIES.

Any person who has violated or continues to violate this ordinance shall be subject to a forfeiture of not less than \$500 nor more than \$2,500 for each violation of this ordinance. In the event a violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within the set time period specified by the Code Enforcement Office, after the Code Enforcement Office has taken one or more of the actions described above, each day the violation remains unremedied after receipt of the notice of violation shall constitute a separate violation of this ordinance.

SEC. 9-6-15 ENFORCEMENT.

Whenever a violation of this ordinance occurs, the Code Enforcement Officer may issue a citation for violation of this ordinance, pursuant to the Town's Code. The Code Enforcement Officer may also, or as an alternative, institute or pursue other appropriate legal action, including summons and complaint for a forfeiture and/or injunctive relief. The Town attorney shall represent the Town in any legal action or proceeding to enforce this ordinance.

SEC. 9-6-16 COST OF ABATEMENT OF THE VIOLATION.

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid by the date determined by the municipal authority, the charges shall become a special charge against the property and shall constitute a lien on the property.

SEC. 9-6-17 VIOLATIONS DEEMED A PUBLIC NUISANCE.

Any condition in violation of any of the provisions of this ordinance and declared and deemed a nuisance, may be summarily abated or restored at the violator's expense.

SEC. 9-6-18 REMEDIES NOT EXCLUSIVE.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Code Enforcement Office to seek cumulative remedies.

The Town may recover all attorneys' fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SEC. 9-6-19 ADOPTION OF ORDINANCE

This ordinance shall take effect the day after its publication pursuant as required by law. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.