WABASHA CITY COUNCIL

WABASHA CITY HALL

Monday, June 26, 2023

Special Council Meeting 7:00 AM

All matters listed under "Consent Agenda" are considered to be routine by the City Council and will be entered by one motion. Unless requested by a Council Member or citizen, there will be no separate discussion on these items. If discussion is required regarding an item, that item will be removed from the Consent Agenda and will be considered separately.

1. **General Business**
    1. Public Hearing for USDA Ambulance Grant Application
    2. Approval of Meeting Owl Purchase
    3. Approve Section 217d Agreement with US Army Corps
    4. Request for donation to Fireworks Display
    5. Board and Commission Appointment for Planning Commission
2. **Adjournment**

City Council Special **1. 1.**

Meeting Date: 06/26/2023

ITEM TITLE: Public Hearing for USDA Ambulance Grant Application

DEPARTMENT: Administration

PURPOSE:

ITEM SUMMARY:

A Public Hearing is required in order for the City of Wabasha to apply for a USDA grant. This will be an informational meeting to approve the City of Wabasha USDA Grant application for a new Ambulance. If the City of Wabasha receives the USDA Grant, the USDA will pay 35% of the Ambulance cost, and the City of Wabasha will pay the remaining 65%. All residents and property owners within the City of Wabasha are encouraged to attend.

ACTION REQUIRED:

Approve City Staff to apply for the USDA Grant to cover 35% of the new Ambulance.

City Council Special **1. 2.**

Meeting Date: 06/26/2023

ITEM TITLE: Approval of Meeting Owl Purchase

DEPARTMENT: Administration

PURPOSE:

ITEM SUMMARY:

The Meeting Owl used for remote meeting participants is no longer working. City staff has worked with Owl tech support, but tech support has been unable to find a solution. The cost of a new Meeting Owl is $1,049.

ACTION REQUIRED:

Approval to purchase a Meeting Owl.

City Council Special **1. 3.**

Meeting Date: 06/26/2023

ITEM TITLE: Approve Section 217d Agreement with US Army Corps

DEPARTMENT: Administration

PURPOSE:

ITEM SUMMARY:

This is a non-binding memorandum of agreement with the US Army Corps to partner with the City of Wabasha and its Port Authority to move dredged material and keep the Mississippi open for channel navigation for the Upper Mississippi River. This agreement identified the Carrells Facility and Wabasha Sand and Gravel Facility to be the sites of dredged or excavated material. The tipping fees identified in the agreement identify the fees paid to cover the cost of the City to engage a private operator (Kohners) to move the material to sites identified in the agreement plus the City's costs. The City anticipates costs in Davis Bacon and federal compliance on the project. A future operator agreement will be approved by the Port.

ACTION REQUIRED:

Approve Section 217d agreement. The agreement is with the City but operations and cost of the project undertaken by the Port Authority.

Attachments

Final Section 217d Agreement

Plate 2

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF WABASHA, MINNESOTA
FOR CALCULATION OF USER FEES FOR USE OF
DREDGED MATERIAL PLACEMENT FACILITIES IN WABASHA, MINNESOTA

THIS Memorandum of Agreement (MOA) is entered into this _____ day of_____,_____, by and between Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, St. Paul District (hereinafter the "District Engineer") and the City of Wabasha, Minnesota (hereinafter the "City") represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, the Government has the authority for continued operation and maintenance of the Mississippi River 9-Foot Navigation Channel Project pursuant to the River and Harbor Act of 1930 and is directed by the Secretary of the Army who shall, as he determines feasible, dispose of dredged material from the Upper Mississippi River system pursuant to the recommendations of the GREAT I study as provided in Section 1103(i) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. § 652(i)); and

WHEREAS, it is the Government's policy to dispose of dredged material in the least costly way consistent with sound engineering practices and meeting the environmental standards established by the Clean Water Act Section 404(b)(1) evaluation process (hereinafter the "Federal standard"); and

WHEREAS, the Government, on or about May 11, 2017, published for notice and public comment its long-term plan for managing dredged material in Lower Pool 4 of the Upper Mississippi River entitled "Draft Feasibility Report and Integrated Environmental Assessment, Lower Pool 4 Dredged Material Management Plan" (hereinafter the "DMMP"); and

WHEREAS, the City, through a series of formal comment letters and meetings with the Government expressed what it deemed to be important concerns and objections related to the Government's identification of certain sites, such as Southside Fitzgerald, as temporary and permanent placement or transfer sites for dredged material management in the Tentatively Selected Plan (hereinafter the "TSP") within the DMMP and identifying such TSP as the Federal standard; and

WHEREAS, Section 217(d) of the Water Resources Development Act of 1996, Public Law 104-303, as amended by Section 2005 of the Water Resources Development Act of 2007, Public Law 110-300 (33 U.S.C. § 2326a(d)), provides that the Government may enter into agreements with non-Federal providers of disposal facilities and non-Federal sponsors to utilize the non-Federal public or private facility for disposal of dredged material from a Federal navigation project and to pay a user fee for placement of the material at the disposal facility in an

amount that shall be sufficient to repay funds contributed by the private entity plus a reasonable return on investment; and

WHEREAS, the City submitted a proposal to the Government on July 29, 2020 (hereinafter the "City's proposal") to partner with the Government under Section 217(d) and has identified the Carrells Facility and Wabasha Sand and Gravel Facility as disposal facilities for Government use; and

WHEREAS, in working with the Government, the City's proposal has undergone additional refinements as discussed in the City's letter of intent dated November 15, 2022 and updated on May 31, 2023 ("Letter of intent"); and

WHEREAS, the Government has determined that use of the Carrells Facility and Wabasha Sand and Gravel Facility, as identified in the City's proposal and Letter of intent is consistent with the Federal standard as explained in the Government's decision memorandum for this MOA, dated June 12, 2023; and

WHEREAS, the Government and the City have agreed upon a user fee, which may be adjusted in subsequent years, for the placement of such dredged or excavated material at the Carrells Facility and Wabasha Sand and Gravel Facility.

NOW, THEREFORE, the Government and the City agree as follows:

ARTICLE I – DEFINITIONS

A. The term "Facilities" shall mean the Carrells Facility and Wabasha Sand and Gravel Facility provided by the City for the placement of dredged or excavated material as identified in Exhibit A to this MOA.

B. The term "Island Transfer Sites" shall mean the Government owned Reads Landing, Crats Island, Teepeeota Point, and Grand Encampment temporary island dredged material placement sites as identified in Exhibit A to this MOA.

C. The term "Wabasha Gravel Pit" shall mean the Government owned dredged material placement site as identified in Exhibit A to this MOA.

D. The term "user fee" shall mean the amount to be paid per cubic yard ("CY") of dredged or excavated material placed at the Facilities. The user fee shall be sufficient to repay funds contributed by the City plus a reasonable return on investment as approved by the Government in cooperation with the City with respect to the costs of the Facilities.

E. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

ARTICLE II – GENERAL PROVISIONS

A. Subject to the requirements of this Article, the City may allow material dredged or excavated by the Government and located at the Wabasha Gravel Pit and Island Transfer Sites to be placed in the Facilities when sufficient capacity is available as determined by the City. The Government's use of the Facilities shall be on an as needed basis. Nothing in this MOA, however, is to be interpreted as requiring the City to accept or reserve space in the Facilities for placement of dredged or excavated material by the Government. The City may allow both private entities and other Federal and non-Federal interests to use the Facilities for placement of suitable dredged or excavated material provided that the user fee per cubic yard charged to the Government shall not be higher than the lowest user fee per cubic yard charged to any other user of the Facilities for comparable placement service.

B. The Government, on or before June 1 of each year, shall notify the City of the estimated cubic yardage of dredged or excavated material that the Government desires to place at the Facilities during the upcoming fiscal year from the Wabasha Gravel Pit and Island Transfer Sites. The estimated average annual volume is projected to be one-hundred and twenty thousand (120,000) cubic yards from the Island Transfer Sites and one-hundred and thirty-five thousand (135,000) cubic yards from the Wabasha Gravel Pit. Within sixty (60) days of such notice, the City shall provide the Government a written statement indicating availability of space to accommodate all or a portion of the estimated volume of dredged or excavated material along with the estimated user fees for the upcoming fiscal year. The Government has the right to monitor the placement of dredged or excavated material in the Facilities and to ensure the accurate determination of the amount of material placed in the Facilities.

C. At the beginning of each fiscal year by October 5, until depletion of available capacity in the Facilities, the City shall provide to the Government in writing the estimated current capacity of the Facilities; the estimated number of years that the Facilities will provide capacity; and the user fees paid by non-Federal users of the Facilities, if any.

D. Before any dredged or excavated material is accepted by the City for placement in the Facilities each fiscal year, the Government shall provide the City written notification of the maximum amount of material that the Government allows to be placed during the fiscal year, along with the maximum total amount of the user fees for which payment may be made for material placed during that fiscal year. The Government shall be responsible for payment of the applicable user fee, up to the maximum total amount allowed, for each cubic yard of dredged or excavated material placed in the Facilities from the Wabasha Gravel Pit or Island Transfer Sites during the fiscal year. Payment will be due to the City within 30 days upon Government verification of the amount of dredged or excavated material periodically placed in the Facilities in accordance with Article II.F. If at any time the Government determines that an overpayment has occurred, the City shall return the overpaid amount within sixty (60) calendar days from receipt of written notice from the Government. Nothing in this MOA, however, is to be interpreted as requiring the Government to place or authorize placement of dredged or excavated material in the Facilities.

E. The total user fee to be paid by the Government for dredged or excavated material placement, as agreed to by the City, is $24.80/CY for material contained at the Island Transfer Sites that will be initially placed at the Carrells Facility and moved to the Wabasha Sand and

Gravel Facility for final placement, and $13.70/CY for material contained at the Wabasha Gravel Pit that will be placed at the Wabasha Sand and Gravel Facility. The user fees will be adjusted annually in an amount agreed to by the parties to account for variations between actual placement amounts in the Facilities, during the prior fiscal year, and the estimated average annual volume amounts listed in Article II.B.; inflation; and any other relevant change in circumstances that the parties so deem material to the determination of user fees. Negotiations on adjusting the user fees will be initiated no later than the month of August. Both parties agree to make a good faith effort to set the adjusted user fees prior to the start of the next fiscal year. In no event shall the adjusted user fees be negotiated in an amount expected to exceed the Federal standard for Government dredged or excavated material placement.

F. The actual amount of cubic yards of dredged or excavated material placed in the Facilities and eligible for payment shall be determined from Government approved measurements at the Wabasha Gravel Pit and Island Transfer Sites. These measurements may occur periodically as dredged or excavated material is being removed for placement in the Facilities during the fiscal year.

G. The Government shall test the dredged or excavated material placed at the Wabasha Gravel Pit and Island Transfer Sites for contamination in manner consistent with applicable federal and state law, regulations, guidance, and best practices on an adequate basis and forward the test results to the City along with the written notice required by Article II.D. If the City expects to disapprove the placement of any dredged or excavated material in the Facilities for reasons of contamination, such determination shall be addressed under Article II.K. To the knowledge of the parties, the character of the dredged or excavated material placed at the Island Transfer Sites and Wabasha Gravel Pit over the past five to ten years is consistent with the most recent sample reports completed by the Government, which was provided to the City on August 26, 2021.

H. After placement of dredged or excavated material in the Facilities, the Government shall relinquish all rights, title, and interest in the material.

I. This MOA shall not be construed as authorizing the Government to assume any of the responsibilities placed on the City or another non-Federal entity.

J. Other than permission on a limited basis to access the Facilities for dredged or excavated material placement purposes, nothing contained herein, however, shall convey to the Government any interest in real property owned or controlled by the City.

K. The parties shall meet when necessary to discuss the use of the Facilities and other such matters as may be necessary such as developing an operation or coordination plan. If any disputes arise the parties shall work in good faith to attempt to resolve them at the lowest level necessary between City staff and its contractors and the Government's project management office and operations staff. If the parties cannot resolve such disputes at the staff level, disputes may be escalated for attempted resolution between the District Engineer and the Mayor and as otherwise provided for in Article III.

L. As between the Government and the City, the City shall be considered the owner and operator of the Facilities for purposes of Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675) liability or liability arising from other applicable laws and regulations pertaining to hazardous, toxic, and radioactive wastes (hereinafter "HTRW"). This does not restrict the City's right to pursue any non-Federal potential responsible party regarding any applicable liability. To the maximum extent practicable, the Government and the City shall perform their responsibilities under this MOA in a manner that will not cause liability to arise under CERCLA or other applicable law for HTRW.

M. In implementing this MOA, the City shall comply, or ensure the compliance of its agents and contractors, with all conditions and requirements of applicable Federal, State and local laws, regulations and permits including but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000D) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq*.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq*.) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). The Government reserves the right to withhold payment under Article II.D. for noncompliance.

N. Performance by the Government of any promise, covenant, or obligation in this MOA, and the Government's liability under this MOA, is subject to and dependent on the availability of sufficient funds appropriated and allocated for that purpose. The Government will use its best efforts to prioritize appropriated funds made available for channel maintenance in order to comply with the terms of this MOA. In the event that sufficient funds are not available to liquidate a liability or undertake an obligation arising under this MOA, the Government's duties with respect to that liability or obligation shall be deferred until such time as sufficient funds are lawfully made available (appropriated and allocated) for that purpose.

O. Unless otherwise notified, this MOA shall expire 10 years after its effective date. Any revision of this MOA must be made by written mutual amendment approved and executed by both parties. Either party may terminate this MOA upon thirty days written notice.

ARTICLE III – DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this MOA, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation in accordance with Article II.K. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The Government shall pay 50 percent and the City shall pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this MOA.

ARTICLE IV – HOLD AND SAVE

The City shall hold and save the Government free from all damages arising from the implementation of this MOA, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE V - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the City of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years of the accounting for which such books, records, documents, or other evidence were required. The City shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's cost of audits shall be included in any user fee payment for use of the Carrells Facility or Wabasha Sand and Gravel Facility, as applicable.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the City to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the City's request, provide to the City or independent auditors any such information necessary to enable an audit of the City's activities under this MOA. The cost of any non-Federal audits performed in accordance with this paragraph shall be included in any user fee payment for use of the Carrells Facility or Wabasha Sand and Gravel Facility, as applicable.

ARTICLE VI – RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this MOA, the Government and the City each act in an independent capacity, and neither is to be considered the officer, agent, contractor or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE VII – NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the City:

Mayor
P.O. Box 268
Wabasha, MN 55981

If to the Government:

District Engineer
U.S. Army Corps of Engineers, St. Paul District
332 Minnesota Street, Suite E1500
St. Paul, MN 55101

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE VIII – CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party. The parties acknowledge that this MOA and other communications between the parties associated with the MOA, including information viewed as confidential by one or all parties, may be subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et. seq., and the Freedom of Information Act, 5 U.S.C. § 552.

ARTICLE IX – THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this MOA is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this MOA.

ARTICLE X – OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or any resident commissioner, shall be admitted to any share or part of this MOA, or to any benefit that may arise therefrom.

IN WITNESS WHEREOF, the parties hereto have executed this MOA, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY	THE CITY OF WABASHA, MINNESOTA
BY:_____	BY:_____
Eric R. Swenson COL, Corps of Engineers District Engineer	Emily Durand Mayor
DATE:_____	DATE: _____

EXHIBIT A

CERTIFICATE OF AUTHORITY

I, _____ do hereby certify that I am the principal legal officer of the City of Wabasha, Minnesota, that the City of Wabasha, Minnesota is a legally constituted public body with full authority and legal capability to perform the terms of the MOA between the Department of the Army and the City of Wabasha, Minnesota in connection with the Calculation of User Fees for Use of Dredged Material Placement Facilities in Wabasha, Minnesota, and that the persons who have executed this MOA on behalf of the City of Wabasha, Minnesota have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ ____.

BY: _____

Chippewa Delta
Reads Landing
Reads landing
Pipeline A
Bean Field
T-Leg 1
Carrels
T-Leg 2
Wabasha Gravel Pit
Wabasha
30
Wabasha Sand & Gravel
T-Leg 3
B-Leg 1
B-Leg 2
760
Crats Island
Teepeeota Island
Grand Encampment
B-Leg 3
Buffalo County, WI
Seeking Willing Seller
North of Zumbro River
61
Wabasha County, MN
24
T-Leg 5
Zumbro
River Flats
North
81
30
Pipeline C
T-Leg 6
T-Leg 4
18
Kellogg
T-85
Zumbro River
Zumbro
River Flats
South
18
84
755
35
Alma Marina
B-Leg 5
Lock & Dam #4
Alma
G-1
Alma
T-Leg 7
Rolling
Prairie Site
84
B-Leg 4
750
West
Newton
Chute
CANADA
MINNESOTA
WISCONSIN
IOWA

River Mile
Pipeline A
Pipeline C
Dredge Cuts
Tier I & Tier 4
Tier 2
Tier 3
Pool 4 Active Sites
Tier 5 (Pool 5 Active Sites)

St. Paul District
GIS CENTER
US Army Corps
of Engineers ®

Created by: b6pmbgw1 5/5/2022 12:48 PM
C:\Users\b6pmbgw1\GIS\Lower Pool 4 Dredged Material Transportation Routes & MethodII.aprx

Lower Pool 4 DMMP: Recommended Plan Sites and Transportation Routes

Base Image: ESRI WMS Topographic

0 1,000 2,000 4,000 6,000 8,000
Feet

Plate 2

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City Council Special **1. 4.**

Meeting Date: 06/26/2023

ITEM TITLE: Request for donation to Fireworks Display

DEPARTMENT: Administration

PURPOSE:

ITEM SUMMARY:

Please find attached a letter from the Son's of the American Legion representative, Mr. Brian Wodele, requesting $2,000.00 towards the July 4th fireworks. The City has donated $2,000 every year since 2009.

STAFF RECOMMENDATION:

Staff recommends approving the donation of $2,000 towards the annual 4th of July fireworks.

ACTION REQUIRED:

A MOTION to authorize a donation of $2,000.00 towards the 4th of July Fireworks as well as approve payment of the 2023 Firework's Display Invoice of $7500.

Attachments

Fireworks Letter

Post 50
Wabasha, MN

The Sons of the American Legion Post 50 is proud to announce that we will continue to collect donations for the 2023 City of Wabasha Fireworks Display on Independence Day. We are grateful for new and continued donations from our local businesses, organizations, and individuals so that we can continue to put on the quality event that we have all become accustomed to. We would like to commend the volunteers that give their entire 4th of July day that begins early in the morning organizing, preparing, and ultimately blasting the fireworks for all ages to enjoy. Last year we received a great response with many generous donations, and we still just made our goal. If you have never made a donation for fireworks, please consider making one this year.

We kindly ask for your support in the form of a donation to help fund the fireworks. No donation is too small.

Please mail any donations to 1036 Milligan Avenue, Wabasha, MN 55981, or contact me and I would be glad to swing by and collect your contribution. Checks can be made out to "City of Wabasha".

If you have any questions, you can e-mail me at brianw@jslsmail.com, or my cell phone number is 651-564-0530.

Thank you,

Brian Wodele, Sons of the American Legion Post 50 Commander
651-564-0530 brianw@jslsmail.com

City Council Special **1. 5.**

Meeting Date: 06/26/2023

ITEM TITLE: Board and Commission Appointment for Planning Commission

DEPARTMENT: Administration

PURPOSE:

ITEM SUMMARY:

Richard Heffner would like to be considered for appointment to the Wabasha Planning Commission. Richard has a background in Business, logistics and currently holds a certified MN Assessor License.

ACTION REQUIRED:

Motion to approve the appointment of Richard Heffner to Planning Commission.
