

# Memo

To: Village Board

From: Chris Clark, Director of Parks, Recreation, & Forestry

Re: Memorandum of Agreement with the Green Bay Area Public School District for Placement of Playground Equipment at P.H. Martin Webster Park

Date: April 18, 2017

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## Background Information:

The Green Bay Area Public School District (GBAPSD) approached the Village with a request to install playground equipment on Village owned property at P.H. Martin Webster Park for use by students at Webster Elementary School. The Parks, Recreation, and Forestry Department, in conjunction with the GBAPSD have produced a Memorandum of Agreement (MOA) to place the playground equipment (a swing set) on park property west of the tennis courts adjacent to a sidewalk. This location is open space not currently utilized for any specific park use and is adjacent to the school recess area.

Several other locations were discussed for placement of the playground equipment and this location was selected as the most level and least used green space option. Some of the other locations would require the installation of retaining walls due to the slope of the property or take away from more level play space utilized by the students at the school.

GBAPSD will install and maintain the swing set per the terms set forth in the MOA. Both the GBAPSD and the Village of Allouez have insurance for any potential liability issues. The Village will incur no costs associated with the equipment placement or maintenance, it will be open for public use, and will be a benefit to the school, community, and park users.

The attorneys from both the Village of Allouez and the Green Bay Area Public School District have reviewed and approved the MOA.

## Previous Information/Action:

The Parks, Recreation, and Forestry Committee recommended approval of the MOA at the March 2017 committee meeting.

## Budget Item/Funding:

N/A

Staff Recommendation:

Staff recommends that the Village approve the MOA with the Green Bay Area Public School District for placement of playground equipment on Village property at P.H. Martin Webster Park.

Attachments:

Memorandum of Agreement  
Parks, Recreation, and Forestry Committee March 28, 2017 meeting minutes

## MEMORANDUM OF AGREEMENT

### BETWEEN

### THE VILLAGE OF ALLOUEZ AND THE GREEN BAY AREA PUBLIC SCHOOL DISTRICT

### FOR PLACEMENT OF PLAYGROUND EQUIPMENT ON VILLAGE PROPERTY AT P.H. MARTIN WEBSTER PARK

This Playground Agreement ("Agreement") is being made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the Village of Allouez, a Brown County municipality, ("Village") and the Green Bay Area Public School District, ("GBAPSD") for the purpose of placement of public school playground equipment on Village of Allouez property at P.H. Martin Webster Park on the terms and conditions set forth herein. (Collectively, Allouez and GBAPSD may be hereinafter referred to as "Parties" or "Party".)

### RECITALS

WHEREAS, the Village of Allouez and the Green Bay Area Public School District wish to enter into an agreement for the placement of playground equipment on Village owned property.

WHEREAS, GBAPSD desires to purchase, install, and maintain said equipment for public use by school children as well as any community or park user, at no charge to the Village.

WHEREAS, the Village agrees to allow GBAPSD to place, service, and maintain playground equipment adjacent to Webster Elementary School at P.H. Martin Webster Park at no charge to the GBAPSD.

NOW THEREFORE, in consideration of the mutual benefits contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The recitals are true and correct and are incorporated into this Agreement.
2. **LOCATION.** P.H. Martin Webster Park, 2111 Jourdain Lane, Green Bay, WI 54301. Location of said equipment will be outlined in Attachment A.
3. **PLAYGROUND EQUIPMENT.** GBAPSD agrees to purchase, install, and maintain a swing set (hereinafter referred to as "playground equipment").
4. **VILLAGE OF ALLOUEZ AGREES AS FOLLOWS:**



- a. To allow GBAPSD to place, service, and maintain playground equipment on Village property located per Attachment A at no fee.
- b. To provide to GBAPSD any permits or licenses required by the Village for the installation of the playground equipment at no charge to GBAPSD.
- c. To provide any initial inspection of the installation of the playground equipment that may be required by the Village at no charge to GBAPSD.
- d. To provide immediate notice to GBAPSD of the existence of any defective or broken playground equipment upon the Village's notification of the same.

**5. GBAPSD AGREES AS FOLLOWS:**

- a. To purchase, through their party of choice, all playground equipment, structures, and safety surfacing.
- b. To furnish all equipment, materials, labor, supervision, and services as may be necessary to adequately install and maintain playground equipment and playground surfacing.
- c. Provide access to all for use of the equipment.
- d. Monitor, inspect, and repair (as needed) all playground equipment at the location per this agreement.

**6. TERM.** The term of this Agreement shall be for one (1) year ("Term"). This Agreement shall automatically renew annually, upon the same terms and conditions in effect or upon terms and conditions mutually agreed to in writing by the Parties. This Agreement may be terminated by either Party. Termination provisions provided herein.

**7. TERMINATION.**

- a. This Agreement may be terminated by either Party for any reason by giving sixty (60) days' advanced written notice, as defined in Section 11 hereof ("Notice"), to the other Party of said termination.
- b. A Party may terminate this Agreement if the other Party breaches a material provision within this Agreement by giving fifteen (15) days' notice to the breaching Party. If the breaching Party fails to correct the breach within ten (10) days, the Agreement is terminated. A Party may immediately terminate this Agreement if the other Party fails to comply with any statutory requirement within this Agreement. Either Party may enforce the terms of this Agreement by any legal means.
- c. Effect of Termination. Upon the expiration of the Agreement Term or any extension thereof, or earlier termination of this Agreement for any reason,

GBAPSD shall be permitted to remove the playground equipment. GBAPSD shall be responsible for any material damage to the property caused by the removal of said playground equipment and shall restore the property to substantially the same condition that existed prior to installation of said playground equipment by GBAPSD.

#### **8. INDEMNIFICATION.**

- a. GBAPSD hereby agrees to release, indemnify, defend and hold harmless the Village, along with their respective officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions, liabilities and/or causes of action of any type or nature whatsoever, including actual and reasonable attorneys' fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, resulting from or arising out of the use of playground equipment GBAPSD students during normal school hours or at special GBAPSD sponsored events, the performance under this Agreement by GBAPSD, or GBAPSD's officers, officials, employees, agent, duly authorized subcontractors or assigns performing services hereunder. In case any action or proceeding is brought against the Village or their employees by reason of any such claim, GBAPSD, upon Notice will defend such action or proceeding. The Village does not waive, and specifically reserve their right to assert any and all affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893 and related statutes.
- b. Village hereby agrees to release, indemnify, defend and hold harmless GBAPSD, along with their respective officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions, liabilities and/or causes of action of any type or nature whatsoever, including actual and reasonable attorneys' fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, resulting from or arising out of the use of the playground equipment by the public or performance under this Agreement by the Village, or the Village's officers, officials, employees, agent, duly authorized subcontractors or assigns performing services hereunder. In case any action or proceeding is brought against GBAPSD or its officials, board members, or employees by reason of any such claim, the Village, upon Notice, will defend such action or proceeding. GBAPSD does not waive, and specifically reserve their right to assert any and all



affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893 and related statutes.

**9. INSURANCE.**

- a. GBAPSD shall be solely responsible to meet GBAPSD's insurance needs as required by the Village during the terms of this Agreement or any extension thereof. The Certificate(s) of Insurance, along with endorsements, shall be issued by a company or companies authorized to do business in the State of Wisconsin and shall be satisfactory to the Village. Such insurance should be primary. GBAPSD shall furnish the Village with a Certificate of Insurance, along with two endorsements, one naming the Village of Allouez, along with their boards, commissions, agencies, officers, employees and representatives as additional insureds and one endorsement providing the Village with thirty (30) days advance written notice of any change, cancellation or non-renewal during the Term of the Agreement. Certificates of Insurance are required to be valid and provided to Village of Allouez, Attn: Parks, Recreation, and Forestry Dept., 1900 Libal St., Green Bay, WI 54301-2453 or emailed to [chrisc@villageofallouez.com](mailto:chrisc@villageofallouez.com) throughout the Agreement Term.
- b. The Village shall maintain, throughout the Agreement Term or any extension thereof, such Public Liability, and if applicable Employers Liability, insurance or other policies of insurance in relation to the playground and playground equipment as may be necessary to cover the Village against any claim arising out of the Village's or public's use of said playground or playground equipment. The Village agrees to provide evidence of such coverage to GBAPSD upon request by GBAPSD.

**10. VENUE AND APPLICABLE LAW.** Any lawsuits related to or arising out of disputes under this Agreement shall be commenced and tried in the Courts of Brown County, Wisconsin and the Village and GBAPSD shall submit to the jurisdiction of the Courts for such lawsuits. In all respects, this Agreement and any disputes arising under it shall be governed by the laws of the State of Wisconsin.

**11. NOTICES.** Any and all Notices and demands shall be in writing delivered in person or by first class mail, registered or certified, postage paid, return receipt requested and addressed to the appropriate Party as follows:

**VILLAGE OF ALLOUEZ:**

Director  
Allouez Parks, Recreation, and Forestry Dept.  
1900 Libal St.  
Green Bay, WI 54301

**GREEN BAY AREA PUBLIC SCHOOL DISTRICT:**

Executive Director of Facilities and Related Services  
Green Bay Area Public School District  
200 S. Broadway St.  
Green Bay, WI 54303

- 12. AMENDMENTS.** This Agreement is the entire agreement between the undersigned Parties and shall only be modified, changed or amended in writing and signed by duly authorized representatives of each Party, which amendment expressly states that it is the intention of the Parties to amend this Agreement.
- 13. ASSIGNMENT.** Neither this Agreement nor any rights hereunder may be assigned or otherwise transferred by the Village or GBAPSD without the prior written consent of the other Party.
- 14. NON-DISCRIMINATION.** During the term of this Agreement, the Parties shall not discriminate against any person based on race, color, creed, religion, sex, national origin, age, ancestry, disability, sexual orientation, gender identity, gender non-conformity, gender expression, transgender status, pregnancy, or marital or parental status.
- 15. SEVERABILITY:** The provisions of this Agreement are severable and if any provision is found to be invalid, unenforceable, or void by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated unless the effect of holding the provision invalid, unenforceable or void defeats the entire purpose of the Agreement.

**16. FORCE MAJEURE.** Neither Party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the Party failing or delaying in performance.

**17. WAIVER.** No delay or omission by either Party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a Party of the obligations of the other Party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

**18. BINDING EFFECT.** This Agreement shall be binding upon and shall inure to the benefit of GBAPSD and the Village and upon their respective heirs, successors, executors, administrators, personal representatives, and permitted successors and assigns.

**19. CONSTRUCTION:** All Parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforcement of this Agreement or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any Party by virtue of that Party having drafted the Agreement or any portion thereof.

**20. SIGNATURE AUTHORITY:** The persons signing this Agreement warrant that they have been authorized to enter into this Agreement by and on behalf of their respective Parties and that they have full and complete authority to bind their respective Parties by executing this Agreement.

VILLAGE OF ALLOUEZ

GREEN BAY AREA PUBLIC SCHOOL DISTRICT

\_\_\_\_\_  
James F. Rafter, Village President

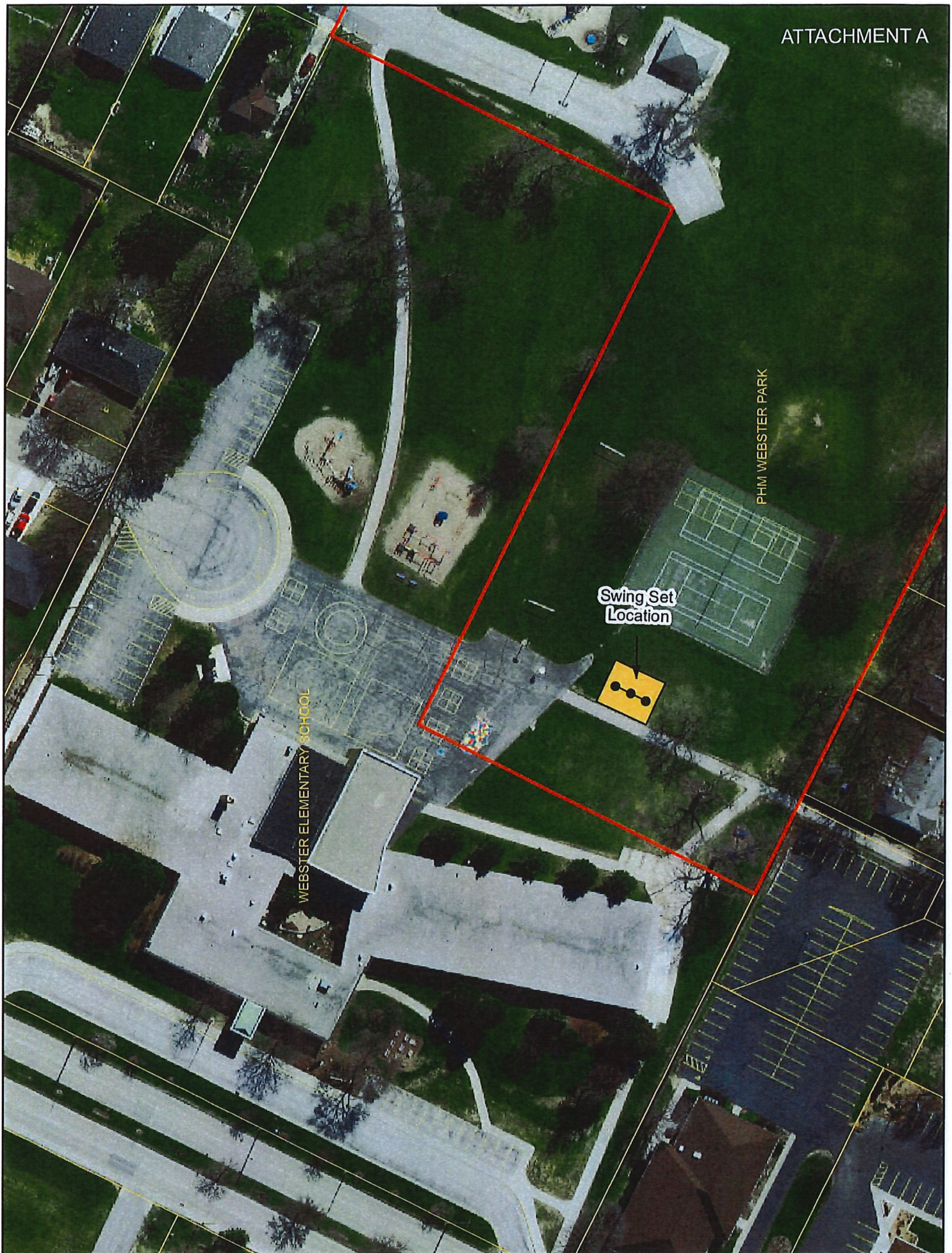
\_\_\_\_\_  
Andrew Sarnow, Chief Financial Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Debra M. Baenen, Village Clerk









March 28, 2017 (Allouez Parks, Recreation & Forestry Committee Meeting)

**ALLOUEZ PARKS, RECREATION, & FORESTRY COMMITTEE MEETING  
TUESDAY, MARCH 28, 2017  
5:30 P.M., ALLOUEZ VILLAGE HALL, 1900 LIBAL STREET, GREEN BAY**

CALL TO ORDER/ROLL CALL

Meeting was called to order at 5:32 PM by Lee Bouche.

Present: Lee Bouche, Bob Ferguson, Kelsey Prescott, Martha Bonnie,

Excused: Dave Doran, Angela Kowalzek-Adrians, Rob Atwood

Also Present: Chris Clark

MODIFY / ADOPT AGENDA

**K Prescott moved to adopt the agenda as presented. M. Bonnie seconded the motion. Motion passed.**

APPROVAL OF FEBRUARY 28, 2017 MINUTES

**B. Ferguson moved to approve the February 28<sup>th</sup>, 2017 minutes. K. Prescott seconded the motion. Motion passed.**

PUBLIC APPEARANCES

None

INFORMATION/REPORTS

- a. C. Clark gave the Committee an overview of the Parks, Recreation, and Forestry Departments Movie in the Park schedule and event donors for this summer.
  - June 9<sup>th</sup> movie will be either Moana or Sing at Green Isle Park. Currently we are working with several potential sponsors for this date.
  - July 18<sup>th</sup> movie is Trolls and will be held at Langlade Park after the YMCA Neighborhood Block Party. The YMCA is going to sponsor this event.
  - August 18<sup>th</sup> movie is Rogue One, A Star Wars Story. This movie is sponsored by Kwik Trip and will be at Green Isle Park.
- b. C. Clark updated the Committee on the Allouez Summer Camp. To date, the Recreation Department has had very good sign up numbers, 83 percent full. The camp has expanded this year from 36 to 48 attendees per week.
- c. C. Clark gave the Committee an update on the Green Isle main entrance re-construction project. This project was bid out with the Street Department roadway re-construction project this summer. Bid prices for this project came in a little over \$63,000 which was a very good price. Construction will take place this summer after Allouez Fest, June 11<sup>th</sup>.



March 28, 2017 (Allouez Parks, Recreation & Forestry Committee Meeting)

DISCUSSION/ACTION: MEMORANDUM OF AGREEMENT WITH GREEN BAY AREA PUBLIC SCHOOL DISTRICT TO INSTALL PLAYGROUND EQUIPMENT AT P.H. MARTIN-WEBSTER PARK.

The Green Bay Area Public School District (GBAPSD) has approached the Village to install a swing set on Village owned property at P.H. Martin – Webster Park. The Parks, Recreation, and Forestry Department, in conjunction with the GBAPSD have produced a Memorandum of Agreement to place the swing set on park property west of the tennis courts adjacent to a sidewalk. Several other locations were discussed for placement of the playground equipment and this location was selected as the most level and least used green space option.

The GBAPSD will install and maintain the swing set. The equipment will be open for public use. Both the GBAPSD and the Village of Allouez have insurance for any potential liability issues.

**M. Bonnie motioned to recommend approval of the Memorandum of Agreement with Green Bay Schools using site number one. K. Prescott seconded the motion. Motion passed.**

FUTURE AGENDA ITEMS

- a. Emerald Ash Borer update.
- b. A. Kowalzek-Adrians would like a Discussion/Action item to amend the Comprehensive Outdoor Recreation Plan to include a future recreation trail corridor along the west side of the East River.

ADJOURNMENT

**B. Ferguson moved to adjourn at 6:01 PM. K. Prescott seconded the motion. Motion passed.**

Minutes taken by Chris Clark.