NOTICE OF MEETING
VILLAGE OF FOX POINT
SPECIAL VILLAGE BOARD MEETING

SCHWEMER HALL – MUNICIPAL BUILDING	**WEDNESDAY**
7200 N. SANTA MONICA BLVD	**SEPTEMBER 22, 2021**
FOX POINT, WI 53217	**8:15 AM**

NOTE: THE VILLAGE BOARD WILL BE MEETING IN PERSON AT VILLAGE HALL, WITH A REMOTE ATTENDANCE OPTION, PER THE HYBRID MEETING PROCEDURES FURTHER DESCRIBED IN SECTION 19-32 D. OF THE VILLAGE CODE. THIS MEETING IS OPEN TO ALL CITIZENS IN PERSON AT VILLAGE HALL, OR THROUGH THE ZOOM PARTICIPANT INFORMATION SHOWN BELOW, SUBJECT TO THE FOLLOWING: NO ASSURANCE IS PROVIDED TO THOSE GOVERNING BODY MEMBERS AND CITIZENS INTENDING TO ATTEND REMOTELY THAT THE TECHNOLOGY WILL PERFORM SUFFICIENTLY TO ALLOW FOR THEIR PARTICIPATION AND THE MEETING WILL PROCEDE REGARDLESS. PUBLIC OFFICIALS AND CITIZENS WISHING TO ENSURE THEY CAN PARTICIPATE ARE ENCOURAGED TO ATTEND IN PERSON. CITIZENS ARE ENCOURAGED TO SUBMIT ANY COMMENTS IN WRITING IN ADVANCE OF THE MEETING TO THE VILLAGE MANAGER AT sbotcher@villageoffoxpoint.com.

Zoom Participant Information
https://us02web.zoom.us/j/85726102416
Dial: (312) 626-6799
Meeting ID: 857 2610 2416

AGENDA

1. **Roll Call**

2. **Wisconsin Division of Emergency Management State-Local Hazard Mitigation Grant Program Assistance Agreement (PDMC-PJ-05-WI-2019-019), Resilient Infrastructure**

   The Village Board will discuss and may act on the Wisconsin Division of Emergency Management State-Local Hazard Mitigation Grant Program Assistance Agreement (PDMC-PJ-05-WI-2019-019), Resilient Infrastructure.

3. **North Shore Library Amended and Restated Fox Point-Bayside-Glendale-River Hills Joint Library Agreement**

   The Village Board will discuss, consider and may act on the North Shore Amended and Restated Fox Point-Bayside-Glendale-River Hills Joint Library Agreement.

4. **Adjourn**

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request these services, contact the Village Clerk at (414) 351-8900. "Persons requiring an interpreter or other assistance should contact the Village Clerk's office 72 hours prior to the meeting. Notice is hereby given that a majority any other board, commission or committee may be present at the meeting to gather information about a subject in which they are interested. This constitutes a meeting of any other board, commission or committee pursuant to State ex rel. Badke v. Greendale Village Bd., 173 Wis. 2d 553, 494 2d 408 (1993), and must be noticed as such, although said boards, commissions or committees will not take any formal action at this meeting."

VILLAGE OF
FOX POINT

To: Village of Fox Point Village Board

From: Scott Brandmeier, Director of Public Works

Through: Scott Botcher, Village Manager

Date: September 17, 2021

Re: Recommendation for Approval of the State-Local Hazard Mitigation Grant Program Assistance Agreement for Resilient Infrastructure

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As noted in the September 10, 2021 Administrative Report, FEMA approved the Village of Fox Point's Beach Drive Coastal Resiliency Project in the amount of $2,168,537.50 with 75% or $1,626,337.50, representing the federal cost share of the project. Wisconsin Emergency Management (WEM) will be administering the funding component and, in order to receive reimbursement of funds expended and submit the necessary quarterly, financial and other reports, requires that the Village of Fox Point enter into the attached State-Local Hazard Mitigation Grant Program Assistance Agreement, PDMC-PJ-05-WI-2019-019, for Resilient Infrastructure.

After discussing the matter with the Village Manager and given the number of reports to be submitted to WEM, it is my recommendation that the Village Board approve the State-Local Agreement and authorize the Director of Public Works "to execute documents for and on behalf of" the Village of Fox Point. Please note that this grant of authority is not intended to allow the Director of Public Works to enter into any other agreements with WEM, FEMA or our consultants or contractors; rather, this grant of authority will allow the Director of Public Works to submit required reports, reimbursement requests, and other similar documents to properly manage the project throughout the duration of the design, construction, and project closeout period.

VILLAGE HALL
7200 North Santa Monica Blvd.
Fox Point, Wisconsin 53217-3505
414-351-8900 | Fax 414-351-8909

WISCONSIN DIVISION OF EMERGENCY MANAGEMENT
State-Local Hazard Mitigation Grant Program Assistance Agreement
(PDMC-PJ-05-WI-2019-019)
Resilient Infrastructure

This Assistance Agreement between the Wisconsin Division of Emergency Management (WEM/ the recipient) and the Village of Fox Point (the subrecipient) shall be effective on the date signed by WEM and the subrecipient. It shall apply to all Pre-Disaster Mitigation (PDM) assistance provided by or through WEM to the subrecipient for the grant EMC-2020-PC-0005.

The purpose of this agreement is to formally recognize the goals of the PDM program and to establish guidelines by which PDM funds are to be used. This agreement is in addition to the requirements outlined the Assurances for Construction and Non-Construction Projects (DMA Form 1017A) that was signed by the subrecipient and submitted with the PDM subapplication.

Be it resolved by the subrecipient, that the individual named below:

____

(Name and Title)

has the legal authority and is hereby authorized to execute documents for and on behalf of the subrecipient. The designated individual is to be the authorized representative for obtaining PDM funds.

The subrecipient hereby assures and certifies that the project will comply with the applicable State of Wisconsin and federal regulations. Also, the subrecipient gives assurance and certifies with respect to and as a condition for the subaward the following at a minimum:

1. This Assistance Agreement in the amount of $2,168,537.50 will serve as the contract between WEM and the subrecipient for the purpose of completing the design and construction of the North Beach Drive resilient infrastructure project along the Lake Michigan shoreline in Fox Point, Wisconsin. The project will protect two areas of the Lake Michigan shoreline, one segment from approximately 7540 to 7328 North Beach Drive and 8000 to 8040 North Beach Drive, to protect the road and utilities from shoreline erosion. 75 percent, or $1,626,337.50, is the maximum federal share funded through FEMA. The remaining 25 percent, or $542,200.00, is the required local program match (may not be comprised of other federal funds or match to other federal funds, i.e. EMPG, EPCRA). If there is a cost under-run for the project, final reimbursement for the federal share of the project costs will be adjusted based on actual costs of the project; the subrecipient will provide at least 25 percent of the overall funding to complete the project. If costs exceed the amount approved, the subrecipient is responsible for the costs in excess of the approved subaward.
2. The subrecipient will adhere to the special and standard conditions as identified on pages four (4) through six (6) of the approval letter for the Record of Environmental Consideration (REC), dated August 3, 2021, in completing the project.

- The subrecipient will adhere to all local floodplain development ordinances and acquire all necessary local floodplain approvals, prior to construction activities taking place.
- The subrecipient will store equipment, fuel or other regulated materials outside of designated floodplain areas.
- The subrecipient will keep construction staging and access for the Proposed Actions and Connected Actions outside mapped floodplains to the extent practical.
- The subrecipient will dispose of debris and excess material outside of wetland or floodplain areas in an environmentally sound manner.
- Open construction areas should be minimized and watered as needed to minimize particulates such as fugitive dust.
- Construction emission control recommendations should be implemented to the extent practicable.
- The project may require Section 401/404 Clean Water Act (CWA) permits and/or Section 10 permits under the Rivers & Harbors Act. If action is exempt under the nationwide permit (NWP) from pre-construction notification, subrecipient must provide documentation to the recipient to that effect. Otherwise, when these permits are required, subrecipient must maintain documentation of compliance with applicable nationwide permit (NWP) or obtain individual permits from the U.S. Army Corps of Engineers and/or the Wisconsin EPA prior to construction. Subrecipient must comply with all applicable permit conditions.
- Ensure that construction activities do not impede access to local businesses.
- Sidecast all beach sand and gravel that is excavated, or which would be covered by structures, lakeward prior to construction to prevent its removal from the littoral system, except when such materials are contaminated.
- All borrow or fill material must come from pre-existing stockpiles or commercially procured material from a pre-existing source. If this is not the case, the subrecipient shall inform FEMA of the fill source so required agency consultations can be completed and FEMA approval will be required prior to beginning ground disturbing activities.
- Any hazardous and contaminated materials discovered, generated, or used during construction of the Proposed or Connected Actions would be disposed of and handled by the subapplicant in accordance with applicable federal, state, and local regulations.
- Subrecipient will:
    - Use rubber-tired mechanical equipment and vehicles and avoid the use of tracked equipment.
    - Use existing roads for access.
    - Use mulch to reduce soil erosion until vegetation becomes established.
    - Avoid the use of mechanized equipment on steep slopes or unstable soils.
    - In areas with steep slopes or sensitive soils, use hand tools to avoid and minimize potential soil erosion.
    - Drive heavy equipment around the project area in a random pattern and avoid repeatedly passing across the same spot.
- Construction equipment should be kept in proper working order. Any equipment to be used over, in, or within 100 feet of water should be inspected daily for fuel and fluid

leaks. Any leaks should be promptly contained and cleaned up, and the equipment should be repaired.

- For projects that involve the planting of vegetation, use native plants appropriate for current site conditions, including salinity level.
- Limit construction activities to allowable construction noise hours consistent with local noise ordinances.
    - Equipment run-times should be minimized.
    - Equipment and machinery that meet applicable local, state, and federal noise control regulations should be used.
- Develop a maintenance of traffic plan to:
    - Minimize the impact of temporary lane closures or detours
    - Route trucks away from places where children congregate, such as schools, daycares, and parks, to the extent possible to protect children from air emissions and traffic accidents
    - Determine detours and methods to accommodate emergency response vehicles during construction

  If road closures and detours are required during construction, traffic mitigation measures, such as the installation of clear detour signage or flaggers, will be required.
- If utilities need to be temporarily shut off during construction, follow local ordinances regarding shut down procedures and notification.
- Decommission utilities that are abandoned in place to state and local standards.
- Any changes or deviations from the proposed scope of work (e.g. design changes, the need for additional ground disturbance, additional removal of vegetation, or in any other unanticipated changes to the physical environment), the subrecipient must contact WEM immediately as WEM and FEMA must conduct a re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- If ground-disturbing activities occur during implementation, the subrecipient will monitor excavation activity, and if any artifacts or human remains are found during the excavation process all work is to cease, and the subrecipient will notify WEM, FEMA, and the State Historic Preservation Officer (SHPO).

3. Once this Assistance Agreement is signed and returned to WEM, the subrecipient may begin the project and the authorized representative may request reimbursement of expenses as identified in the budget included in the approved subapplication. The subrecipient will need to complete and submit to WEM a Request for Reimbursement of Expenses with appropriate documentation in order to receive subaward funds. Advancement of funds may be made in some extraordinary situations upon prior approval of the recipient.

ONLY COSTS IDENTIFIED AS PRE-AWARD COSTS THAT HAVE BEEN APPROVED BY FEMA ARE ELIGIBLE FOR REIMBURSEMENT. ANY OTHER COSTS INCURRED PRIOR TO FEMA APPROVAL OF THE SUBAWARD ARE NOT ALLOWABLE COSTS FOR THE SUBAWARD.

4. The authorized representative will be required to submit Quarterly Status Reports to the State Hazard Mitigation Officer (SHMO) within 15 days of the end of the quarter (January 15, April 15, July 15, and October 15 each year). Said reports will include the status of the project including property acquisition and demolition data, anticipated completion date, and financial information.

5. The subrecipient will meet the following timeline for completing this grant:

Start Date	No later than October 15, 2021 (~30 days from receiving grant award documents from WEM)
Completion Date	October 15, 2023 (Last date of the PDM 2019 period of performance for all subgrants in State of Wisconsin; can apply for a time extension; see below)

This timeline was identified in the approved Scope of Work as the schedule to complete the project. If the subrecipient is delayed in their completion of the grant by an event beyond their control, a request for an extension must be received in writing 90 days prior to the completion date. WEM is able to extend the completion date up to the end of the overall Period of Performance (outlined in number 6 below).

6. The official grant Period of Performance (POP) will be September 4, 2021 to September 18, 2023. This is the approved POP for <u>all</u> subgrants approved under PDM 2019 in the State of Wisconsin. If the subrecipient is delayed in their completion of the grant by an event beyond their control, a request for an extension must be received in writing 90 days prior the date identified above for submission to FEMA Region V through WEM.
Reach out to WEM before the 90-day deadline to obtain additional information for what is required for a POP extension from FEMA Region V.
7. The final request for reimbursement and a final report covering all aspects of the grant will be due 30 days after completion of the scope of work. The final report to WEM must include the following:

- Photo(s) of the property site(s) after project completion
- Latitude and longitude coordinates for the start and end point of each construction segment along North Beach Drive
- Copies of permits and forms as identified in the approval letter for the Record of Environmental Consideration and in number 2 of this document
- Other information as required

8. The PDM funds requested for the project shall not duplicate benefits received from any other disaster assistance program.

9. The subrecipient will use PDM funds solely for the purpose for which they are provided.

10. The subrecipient shall maintain good standing with the National Flood Insurance Program (NFIP) and comply with local regulations pertaining to the NFIP.
11. The subrecipient will update their floodplain ordinance to meet the current Wisconsin Department of Natural Resources requirements.
12. The subrecipient will comply with all other policies and guidelines established by FEMA and WEM in administering the PDM Program.
13. The subrecipient will follow 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards:
    - Transfer of funds among budget cost categories in any approved budget with a federal share in excess of the Simplified Acquisition Threshold ($150,000 at the time this agreement was drafted) shall receive the prior approval of FEMA when such cumulative transfers among those cost categories exceed 10% of the total budget. (2 CFR Part 200.308(e))
    - Cost-sharing requirements found in 2 CFR Part 200.306.
    - Requirements for equipment and supply purchases and procurement found in 2 CFR Part 200 Sections 313, 314, and 322, respectively.
14. The subrecipient will follow 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments.
15. Any publication resulting from work performed under this agreement shall include an acknowledgement of FEMA financial support and a statement that the publication does not constitute an endorsement of FEMA or reflects FEMA's views. The recipient and FEMA are free to copyright any original work developed under this agreement, and reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes.
16. The subrecipient will not enter into cost-plus-percentage-of-cost contracts for completion of the PDM project.
17. The subrecipient will not enter into any contract with any party that is debarred or suspended from participating in federal assistance programs. (See https://www.sam.gov.)
18. Per 2 CFR Part 25, register and maintain an active System for Award Management (SAM) (http://www.sam.gov) registration with current information through the life of the subaward. The subrecipient is required to review and update information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate, and complete.
19. Records shall be retained three years following the date the PDM Program is closed for Wisconsin's entire PDM 2019 program, including all subgrants awarded under the PDM for the 2019 Federal Fiscal Year in accordance with 2 CFR Part 200.333.

SIGNATURE OF SUBRECIPIENT'S AUTHORIZED REPRESENTATIVE:

____Date:_________________________

____

Name (printed) Title

____

Jurisdiction

SIGNATURE OF THE RECIPIENT (WISCONSIN DIVISION OF EMERGENCY MANAGEMENT):

____Date: September 9, 2021

Mitigation Section Supervisor, Alternate GAR

VILLAGE OF
FOX POINT

To: Village Board

From: Scott A Botcher SAB

cc: Eric Larson

Date: September 20, 2021

Re: Draft Library Agreement

Municipal leadership have been working diligently over the past month or so to draft a joint North Shore Library agreement in response to the potential development in Bayside at or near the intersection of Brown Deer and Port Washington Roads.

To facilitate this opportunity, the developer is desirous of having the agreement largely finalized by the end of September, prior to Bayside reviewing the development proposal.

Fox Point will be the first community to review the draft; all the others are scheduled to review prior to the end of the month.

President Frazer will walk through the agreement at the meeting, but please take a moment to review. While I have spoken to a few of you, please contact me directly should you have any questions.

Thank you.

VILLAGE HALL
7200 North Santa Monica Blvd.
Fox Point, Wisconsin 53217-3505
414-351-8900 | Fax 414-351-8909

STATE OF WISCONSIN VILLAGE OF FOX POINT MILWAUKEE COUNTY

RESOLUTION NO. ______

RESOLUTION CONDITIONALLY APPROVING AN AMENDED AND RE-STATED JOINT LIBRARY AGREEMENT FOR THE NORTH SHORE LIBRARY

WHEREAS, Bayside, Fox Point, Glendale, and River Hills have operated and funded the North Shore Library pursuant to the Joint Library Agreement that the Member Agencies entered into as of January 1, 1985, to serve the needs of the public; and

WHEREAS, Bayside, Fox Point, Glendale, and River Hills have mutually benefited, both financially and through the provision of services; and

WHEREAS, the Village of Fox Point Village Board finds it advisable to continue the operation and funding of the North Shore Library with the changes and amendments as set forth in a 2022 Amended and Re-Stated Joint Library Agreement, provided that certain conditions precedent are met.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Village Board of the Village of Fox Point, Milwaukee County, Wisconsin, as follows:

1. The Village Board approves the Amended and Restated Fox Point-Bayside-Glendale-River Hills Joint Library Agreement attached hereto and incorporated herein by reference (the "Agreement"), subject to the terms and conditions described below.

2. Prior to execution of the Agreement, and as a condition precedent to the Village Board's approval, sufficient written assurance (the "assurance") shall be provided of all of the following:

   a. That Cobalt Partners, LLC and La Macchia Holdings, LLC or affiliated entities will construct a building that will be dedicated to the North Shore Library for library purposes, substantially as described in plans presented to the Village of Bayside Plan Commission in a PUD rezoning application with cover letter dated August 5, 2021. Such assurance must demonstrate that the construction and dedication will be completed promptly, within 2 years of the effective date of the Agreement. The assurance shall be in writing, in the form of one or more binding agreement(s), with financial guarantee(s). The Village of Fox Point may or may not be a party to such agreement(s).

   b. That Fox Point, Bayside, River Hills and Glendale have negotiated and agreed upon the terms of the Fiscal Agent Memorandum of Understanding (MOU) referenced in Section 5 of the Agreement.

   c. That Fox Point, Bayside, River Hills and Glendale have negotiated and agreed upon the timeline and preliminary budget to complete construction of the dedicated library space and to begin operations in the new space.

d. All such assurance shall demonstrate terms to the satisfaction of the Village President and Village Manager, in a form approved by the Village Attorney.

3. The Village President and Village Clerk are authorized and directed to execute the Agreement upon satisfaction of all conditions stated in Section 2, above.

4. The authorization granted by this Resolution expires at 11:59 p.m. on December 31, 2021. In the event the conditions described in Section 2 are not satisfied by that date and time, the Village Board's approval of the Agreement expires and the Agreement shall not be executed.

Dated this ___________ day of ________________, 2021

VILLAGE OF FOX POINT

____
Douglas Frazer, Village President

ATTEST:

____
Kelly Meyer, Village Clerk

JOINT LIBRARY

SERVICES AGREEMENT

VILLAGES OF BAYSIDE, FOX POINT, RIVER HILLS, AND CITY OF GLENDALE

September 22, 2021

THE AMENDED AND RESTATED
FOX POINT-BAYSIDE-GLENDALE-RIVER HILLS
JOINT LIBRARY AGREEMENT

This Agreement is an Intergovernmental Cooperation Agreement pursuant to Sections 66.0301 and 43.53, Wis. Stats., made and entered into as of the 1st day of January 2022 (hereinafter referred to as either "this Agreement" or "the 2022 Agreement" by and between the Village of Bayside (hereinafter referred to as "Bayside"), City of Glendale (hereinafter referred to as "Glendale"), Village of Fox Point (hereinafter referred to as "Fox Point"), and Village of River Hills (hereinafter referred to as "River Hills"). Each of the four communities shall be referred to hereinafter as a "Member Agency". Collectively, the four communities shall be referred hereinafter to as the "Member Agencies".

Whereas, Bayside, Fox Point, Glendale, and River Hills have operated and funded the North Shore Library pursuant to the Joint Library Agreement that the Member Agencies entered into as of January 1, 1985 ("1985 Agreement") to serve the needs of the public, and

Whereas, Bayside, Fox Point, Glendale, and River Hills have mutually benefited, both financially and through the provision of services, and

Whereas, Bayside, Fox Point, Glendale, and River Hills have found it advisable to continue the operation and funding of the North Shore Library with the changes and amendments as set forth in this 2022 Agreement,

NOW, THEREFORE, for and in consideration of the following mutual covenants and terms contained herein, the Member Agencies agree as follows:

1. <u>LIBRARY BOARD</u> The 1985 Agreement created and established a Joint Library Board ("Board") for the purpose of operating a public library to be known as the "North Shore Library" ("Library"). The Member Agencies will agree to the location of the facility. The Board shall be given the facility from the Member Agencies for use by residents and others. The Board shall administer all future contractual relationships between the Member Agencies and the Milwaukee County Federated Library System for continuing library privileges for the public.

1.1 <u>BOARD MEMBERS</u> The existing members of the Board as of December 31, 2021 shall continue as Board members until such time as the Member Agencies reappoint or replace them with new members. As of January 1, 2022, the Board shall have nine (9) members, each of whom shall be a resident of the Member Agencies. Four members shall be appointed by the Mayor of Glendale and confirmed by the Glendale Common Council; Two members shall be appointed by the Village President of Fox Point and confirmed by the Fox Point Village Board; Two members shall be appointed by the Village President of Bayside and confirmed by the Bayside Village Board; One member shall be appointed by the Village President of River Hills and confirmed by the River Hills Village Board. Each Member Agency shall appoint one member of its governing body to serve as one of its appointed members of the Board for three year terms to expire April 30 of any year.

1.2 <u>TERMS OF OFFICE</u> The nine-member board shall be divided into three classes as provided in Wisconsin Statutes Section 43.54(1)(b). Each appointment shall be for a three-year term, provided that if, after such appointment, the appointee changes their residence to a location outside the Member Agency which appointed them, the term shall immediately expire, and a successor shall be appointed. Otherwise, members shall serve until successors are appointed.

Vacancies on the Board shall be filled by appointment for any unexpired term by the appointing authority in the same manner as original appointments are made.

1.3 **OFFICERS** The existing officers as of January 1, 2022 shall continue in office until such time as the Board in its discretion holds a meeting at which time the members of the Board may elect a President, Vice President, Secretary/Treasurer, and such other officers as they deem necessary. The Board shall conduct an organizational meeting for the election of officers at its annual May meeting.

1.4 **MEETINGS** Meetings of the Board shall be held not less frequently than once per month, and otherwise upon the written request of a least three Board members. Meeting locations shall rotate between the Library and the Member Agency City/Village Hall(s).

A majority of the members of the Board shall constitute a quorum for the transaction of any business at a meeting of the Board, and the Board shall determine Rules of Order to adopt for conducting business. The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Board.

1.5 **COMPENSATION** No compensation shall be paid to members of the Board for their services.

1.6 **POWERS** Except as limited by this 2022 Agreement or amendments hereto, the Board shall have all the powers and duties authorized for library boards by Chapter 43, Wisconsin Statutes. Among others, the Board shall have the following powers and duties:

1.6.1 The Board shall provide library services to Member Agencies and others.

1.6.2 The Board shall purchase, install, and maintain programming, technology, equipment, collection and circulation materials and services as necessary to provide services associated directly with the joint library operation within approved budget allocations.

1.6.3 The Board will manage, operate, and administer the personnel and operations of the Library.

1.6.4 The Board shall repair, maintain, and renew the physical assets of the Library including, but not limited to, its premises, equipment, and collection.

1.6.5 The Board shall prepare and adopt an annual budget for the Library's annual operating expenses as well as a capital budget.

1.6.6 The Board may establish and make public rules and regulations governing the use of facilities operated by the Board pursuant to § 43.52, Wisconsin Statutes.

1.6.7 The Board may, in its discretion, discontinue library privileges to any person who violates the rules and regulations adopted and published by the Board.

1.6.8 The Board created by this Agreement shall not be considered a separate legal entity, unless specifically required by State Statute .

2. **OPERATING EXPENSE BUDGET** Member Agencies shall pay their share of the operating expense budget related to the joint library operation as specified by formula allocation contained in Section 6 (the "Member Agency Cost Allocation"). For purposes of this Agreement, operating expenses shall include the usual and ordinary cost of operation of the Library and the repair and renewal of the Library's physical assets including without limitation expenses of and ordinary additions to the collection and the purchase, installation, and maintenance of technology and programming necessary to provide library services to the Member Agencies. Annual operating expense budget increases shall not exceed the average of the Member Agencies' previous year's levy limits percentage increases, plus one percent (1%), for operating expenses of the Library.

Should a Member Agency's levy limit exceed the other Member Agencies levy limits by more than one percent (1%), that Member Agency's levy limit increase shall be removed from the calculation. The Board, moreover, is not required to seek or obtain Member Agencies' approval if the Board presents and adopts an operating expense budget within the 1% limit. Member Agencies, by written unanimous consent, may increase the budgeted allocation beyond the allowable annual increase set forth in this Section 2.

2.1 The Board shall provide the fiscal agent with its annual operating and capital expense budget and Member Agency Cost Allocation, by September 15 each year.

2.2 No expenditures shall be made or contracted for by the Board or any Library employee with respect to any current or proposed item of operating expense until such time that it has been approved by the Board.

2.3 All annual unspent operating monies shall be placed in an operating fund balance account with the fiscal agent.

2.4 Should a significant community specific event occur or be requested by a Member Agency served by the Library, and the Library incurs additional costs related to the event, the Member Agency involved shall be responsible for any additional costs incurred.

3. **<u>CAPITAL EXPENSE BUDGET</u>** The Library shall prepare and adopt an annual budget for the Library's capital expenses and a five-year capital improvement plan, by September 15, each year. For purposes of this Agreement, capital expenses are expenses, other than operating expenses, that are intended to provide a long term benefit, such as the purchase of real property or fixtures attached to real property, and physical equipment with an expected useful life of more than five (5) years.

3.1 No expenditures shall be made or contracted for by the Board or any Library employee with respect to any current or proposed item of capital expense until such time that it has been approved by the Board.

3.2 Upon unanimous approval of the annual capital improvements budget by the governing bodies of the Member Agencies, the Library may make or contract for approved capital project expenditures of up to approved budget amount for each specific capital funding request.

3.3 A designated Capital Reserve Fund shall be established and funded annually at the same percentage as the respective Member Agency's current Member Agency Cost Allocation. This Capital Reserve Fund shall be used for current, anticipated, unforeseen, or future major capital purchases. The Library will include an annual report of capital fund related activities by June 30, annually. The Capital Reserve Fund balance will be capped at $100,000, as of September 1 each year. If the Capital Reserve Fund balance exceeds $100,000 on September 1 of any year, the Library Director shall provide the fiscal agent with the appropriate allocation to reduce the community contribution proportionally in the subsequent year(s) by the then current Member Agency Cost Allocation.

3.4 All annual unspent capital monies shall be placed in the Capital Reserve Fund with the fiscal agent.

4. **<u>EMPLOYEES</u>** The Board shall appoint a Library Director. The Library Director shall appoint other employees within the prescribed duties, compensation, and approved Library budget. The Library Director and other employees appointed by the Director shall be employees of the fiscal agent.

4.1 The power to control the activities of those employees and to establish their compensation shall be delegated to and exercised by the Board. Said employees shall be entitled to such fringe benefits as are provided administrative employees of the fiscal agent, including, where applicable, group, life, health, and dental insurance and FICA and participation in the Wisconsin Retirement System.

4.2 The Board shall develop, approve, and maintain personnel policies for Library employees and as necessary, shall budget accordingly. All personnel costs of Library employees shall be included in the annual budget referred to within this Agreement and shared by the Member Agencies as specified within this Agreement.

5. FISCAL AGENT The fiscal agent shall be established by a separate Memorandum of Understanding ("MOU"), which shall include terms and compensation deemed necessary by the Board as necessitated by Library operations, between the Library and a Member Agency, currently Bayside. The fiscal agent is designated to pay all expenditures approved by the Board and to receive all Library revenues. Said fiscal agent may co-mingle Library funds with other funds of their Member Agency but shall keep separate records of all Library receipts and expenditures.

5.1 The fiscal agent shall provide payroll and accounts payable services in an electronic method as well as other services in a manner that enhances the efficiency of the administration of the Library.

5.2 The fiscal agent shall procure and maintain for the Library, at Library expense, during the term of this Agreement, insurance to cover this operation. Such insurance shall include, but not be limited to property, workers' compensation, general and auto liability, energy systems, errors and omissions, and employee dishonesty insurance coverage. Such liability policies shall name each of the Member Agencies as an additional insured.

5.3 The fiscal agent shall keep complete and provide accurate records of all receipts expenditures of the Board as well as an annual audit, which shall be available for public inspection.

6. MEMBER AGENCIES CONTRIBUTION The Member Agencies shall bear and pay the net operating expenses and capital expenditures of the Library as established according to the following formula.

a. Each Member Agency shall pay a fixed allocation of five (5) percent of the annual Library budgets.

b. The remaining ninety-five percent (95%) contribution of each Member Agency shall be proportional to the population of each Member Agency as determined by the most recent decennial United States Census.

6.1 The Board shall provide the fiscal agent with its annual operating and capital budget and Member Agency Cost Allocation, by September 15 each year. The Library Director shall provide the Member Agencies their community allocation within three business days of approval by the Board. Member Agencies shall have ten (10) business days after receipt of the annual operating and capital budget to object to the implementation of the formula allocation of the budget. The Board shall resolve any such objections by a majority vote of the Board. After the objection period concludes, the Member Agency Cost Allocations shall be considered final and accepted by each Member Agency.

7. PAYMENTS Operating budget payments shall be made in advance for each calendar quarter fifteen (15) days prior to the last day of the first, fourth, seventh, and tenth month of the year. Capital contributions shall be due and payable by Member Agencies by January 31, unless modified annually through written mutual agreement by the Board and the Member Agency.

7.1 If a Member Agency fails to pay in full any payment to be made by it as provided by this Agreement on the due date, the Member Agency shall be indebted to the Library for the payment due, plus interest at an annual percentage rate of eighteen percent (18%), from the due date until full payment. In the event a Member Agency commences legal action regarding payments due under this Agreement, the prevailing party in such action shall be entitled to its costs, disbursements, and reasonable attorney's fees.

7.2 On September 15 of each year, the Library Director shall compute the amount of revenue received by the Library from non-resident usage fees during the preceding year. If non-resident usage fees are greater than $1,000 in the preceding fiscal year, the fiscal agent shall credit the amount of such revenues against the amounts due from the Member Agencies in accordance with the Member Agency Cost Allocation in effect during the preceding year for the upcoming year.

8. **DONATIONS FUND** The Board shall maintain a separate "Donations Fund" in which gifts, bequests, devises or endowments made to the Library shall be deposited. The amounts in the Donations Fund shall not be included in the budget required by this 2022 Agreement. All assets in the Donations Fund shall be used exclusively for the purposes of the Library. All expenditures from the Donations Fund shall be specifically and individually authorized by the Board by formal resolution at a meeting of the Board. The fiscal agent shall keep separate records with respect to the Donations Fund.

9. **MILWAUKEE COUNTY FEDERATED LIBRARY SYSTEM** The Library shall participate in the Milwaukee County Federated Library System (hereinafter "MCFLS") until such time as the Member Agencies shall unanimously agree that such participation should cease or this 2022 Agreement is terminated. Nothing contained in this 2022 Agreement shall require any participating Member Agency to continue its participation in the MCFLS provided, however, that in the absence of unanimous agreement by the Member Agencies, the decision of any participating Member Agency to cease its participation in the MCFLS shall not affect the Library's continuing participation in the MCFLS and further provided that the Library shall make whatever reductions in service to the residents of such non-participating Member Agency as may be required as a result of such Member Agency's decision to cease its participation in the MCFLS by the provisions of the agreement or agreements governing the Library's continuing participation in the MCFLS.

9.1 The Board has the power to recommend to the governing bodies of the Member Agencies as to the desirability of continuing the contractual relationships of the Member Agencies with the MCFLS, and to make such recommendations it deems appropriate with respect to the specific terms of such continuing contractual relationships.

10. **COMMUNITY COORDINATION COUNCIL** A Community Coordination Council ("CCC") is created and shall be composed of a representative of the fiscal agent; the Chief Administrative Officer, or designee, of each Member Agency; and the Library Director. The CCC is advisory in nature and shall discuss and provide input and recommendations on matters that enhance the service delivery, efficiency, and facility management between the Library and Member Agencies. Meetings of the CCC shall be held not less frequently than once each calendar quarter, and otherwise upon the written request of a least two CCC members.

11. **OWNERSHIP OF ASSETS** Physical assets acquired by the Board shall be owned by the Library, subject to the provisions for division of assets on termination of this Agreement. The Member Agencies entered into an Amendment to the 1985 Agreement as of the date of December 18, 2015 (hereinafter "2015 Amendment") for the purpose of acquiring ownership of a portion of the space that was being leased for library purposes. Nothing in this 2022 Agreement shall be construed to amend or supersede the 2015 Amendment. The remainder of the existing facility at 6800 N. Port Washington Road is two condominiums, one owned by the City of Glendale and the other by the City of Glendale and Villages of Bayside, Fox Point and River Hills. Any future physical facility, excluding the existing Library at 6800 Port Washington Road, Glendale, WI 53217, in which the Library is located, shall be owned and operated by the North Shore Library, subject to execution of a separate agreement.

12. PARTICIPATION Should a municipalities not currently a Member Agency contract for the services of the Library, contribute assets, capital, revenue, or personnel, or make any other contribution which reduces the cost to the Library for its services, a credit shall be issued to the Member Agencies. The credit shall be the reasonable estimated amount of the pro-rata cost savings of such contribution both for a reduction in on-going operating costs allocation and operating cost budget. Adding an additional municipality would require an amendment of this Agreement.

13. TERM OF AGREEMENT AND WITHDRAWAL This Agreement shall take effect upon the effective date stated herein after adoption by the governing body of each Member Agency of a resolution approving the Agreement and authorizing its execution. This Agreement shall remain in effect in perpetuity subject to the following:

13.1 Any Member Agency wishing to withdraw from the 2022 Agreement may do so anytime after January 1, 2042, with at least three (3) years written notice delivered to the Clerk for and addressed to the governing bodies of each of the other Member Agencies. Any notice to withdraw shall specify a withdrawal date of December 31, of the year that the Member Agency intends to withdraw so that a withdrawing Member Agency shall continue to participate for at least three full calendar years after delivering its notice of withdrawal.

13.2 Withdrawal of any participating Member Agency without the express written consent of each of the other Member Agencies shall not result in dissolution of the Library and no withdrawing Member Agency shall ever have any claim against any of the assets used by the Library or the proceeds thereof.

13.3 Should any Member Agency withdraw from the 2022 Agreement, it shall be obligated for its share of any debt service (principal and interest) incurred while that Member Agency was under the Agreement, unless such debt is assumed by another Member Agency or some third person or entity. This section shall not apply to any new debt incurred during the withdrawal notice period.

13.4 The fact that a Member Agency is paying or is required to pay on debt service (principal and interest) incurred while that Member Agency was a member of the Library shall not entitle a terminated Member Agency after termination to any of the services provided by the Library.

13.5 This Agreement may be terminated and unilaterally dissolved only by express written agreement of all of the Member Agencies which are participating in this Agreement and which have maintained in a current status their financial obligation hereunder. Upon such dissolution, the assets used by the Library shall be divided among the Member Agencies, then participating in accordance with the ratio of expense sharing in existence in the year of termination. In the event of a dispute with respect to such distribution, all assets shall be sold with proceeds thereof distributed on the same basis.

13.6 All notices of withdrawal issued prior to the effective date of this 2022 Agreement are rendered null and void upon the full execution of this 2022 Agreement.

14. WARRANTIES AND DAMAGES Member Agencies agree that there are no warranties, express or implied, by this Agreement or otherwise, as to the service and as to any parts of any systems design, program, implementation, modification or other service provided by the Library. There is no implied warranty of merchantability or fitness for a particular purpose. There is no warranty of any other kind. Nothing herein is intended to limit or preclude any claims Member Agencies may have against any third parties, including manufacturers, sellers, dealers, repairers, service providers, installers or others, nor shall this provision be construed as relating to, or defining in any way, liability as to third parties.

15. **THIRD PARTY LIABILITY** It is expressly understood by and between the parties that each party shall be responsible, in the event of a claim, or judgment by a court of competent jurisdiction, for liability to a third party, to the extent liability of the party shall be found. Nothing in this Agreement shall be construed to limit the right of contribution of any party against the other in the event of liability to a third party. This Agreement is intended to be solely between the parties hereto and its terms shall not be construed to add, supplement, or grant any rights, benefits or privileges of any kind whatsoever to any third party or parties.

16. **DISPUTE RESOLUTION** The parties agree that in the event of any dispute over the terms, performance, or administration of this Agreement they will submit first to mediation through the Wisconsin Policy Forum, or a mediator mutually agreed upon by all parties. In any litigation thereafter, the substantially prevailing party shall be entitled to its attorneys' fees and costs.

17. **AMENDMENTS** Any amendments to this Agreement or any exhibit hereto shall be approved by the governing bodies of all Member Agencies.

18. **HOLD HARMLESS** Any uninsured liability, costs of damages for personal injury, property damage, or any other loss of whatever nature incurred by the Library shall be the liability of the Library, subject to the contributions of the Member Agencies herein described. Any such uninsured liability, costs, or damage shall be paid proportionately by each of the Member Agencies in accordance with the Member Agency Cost Allocation.

19. **ASSIGNMENT** This Agreement may not be assigned.

20. **SEVERABILITY** If any provision of this Agreement shall be held or declared invalid, illegal, or unenforceable under any law applicable thereto, such provision shall be deemed deleted from this Agreement without impairing or prejudicing the validity, legality, and enforceability of the remaining provisions hereof.

21. **WISCONSIN LAW** This Agreement is to be interpreted in accordance with the laws of the State of Wisconsin.

22. **NO WAIVER OF IMMUNITIES** Nothing in this Agreement shall constitute a waiver in whole or in part, of any immunities of the Member Agencies under § 893.80 Wis. Stats. or any other statutory or common law.

23. **ACKNOWLEDGMENT** Member Agencies acknowledge by the signature of its duly authorized representative below that Member Agency or its authorized agent has read and understands all the terms and conditions of this Agreement as set forth herein, and Member Agency fully understands that the Library is a provider of equipment and service and not an insurer, and Member Agency agrees to be bound by such terms and conditions.

24. **ENTIRE AGREEMENT** This document, including any and all attachments, unless specified as illustrative, constitutes the entire agreement between Member Agencies on this subject matter and is intended as a final expression of the agreement of the parties and the complete and exclusive statement of the terms of the agreement. This 2022 Agreement is intended to amend and restate the 1985 agreement except for the current lease described in Section 9.2 of the 1985 Agreement (and documents that show, evidence, or discuss the current lease) and the 2015 Amendment to the 1985 Agreement described in Section 11 of the 2022 Agreement. The items excepted shall continue in force undisturbed. No provision of this Agreement shall be deemed waived, amended or modified by any party unless such waiver, amendment or modification is in writing signed by the party sought to be bound by the waiver, amendment or modification.

This Agreement is not binding unless approved in writing by an authorized representative of each Member Agency.

25. **PRESUMPTIONS** This Agreement is the result of negotiations between the parties, each of whom was represented by counsel. No party may claim or enjoy any presumption with regard to the interpretation of this Agreement based on its draftsmanship.

26. **AUTHORITY** The undersigned represent and warrant that they are duly authorized to enter into this Agreement on behalf of the respective parties.

In witness whereof, this Agreement has been executed to take effect as of the day and year set forth above by the respective officers of the respective Member Agencies, being duly authorized by their respective governing bodies so to do.

Village of Bayside

By ______________________________, President Date _______________

______________________________, Clerk Date _______________

City of Glendale

By ______________________________, Mayor Date _______________

______________________________, Clerk Date _______________

Village of Fox Point

By ______________________________, President Date _______________

______________________________, Clerk Date _______________

Village of River Hills

By ______________________________, President Date _______________

______________________________, Clerk Date _______________