

**AGENDA FOR SPECIAL COMMON COUNCIL MEETING  
CITY OF SUPERIOR, WISCONSIN  
June 30, 2025 at 6:30 p.m.  
Government Center, Board Room 201, 1316 N 14<sup>th</sup> Street, Superior, WI 54880**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

1. Mayor Paine recommends approval of a cooperative agreement with Superior, Water, Light and Power for the replacement of lead service lines, to include responsibility for project costs and obligations to pursue federal funding.

Due to the requirements of the Wisconsin Open Meetings laws, only matters placed on this agenda may be approved by the Council at this meeting.

Citizens who wish to address the council may do so during Business by Public by signing up with the city clerk and indicating the agenda item they wish to address. All comments by members of the public shall be limited to three minutes in length. Electioneering or personal attacks are not allowed.

The City of Superior complies with the Americans with Disabilities Act of 1990. If you need an accommodation to participate in the public meeting process, please contact the City Clerk's Office at (715) 395-7200 (OR dial 711 for Telecommunications Relay Service) prior to the scheduled meeting. The city will attempt to accommodate any reasonable request depending on the amount of notice received.

In compliance with Wisconsin Open Meetings Law, this agenda was posted on 06/27/2025 at the following locations: Superior Government Center, Douglas County Courthouse, and online at <https://www.superiorwi.gov/agendacenter>. It was also emailed to the Superior Telegram and the Superior Public Library.

## Cooperative Agreement

This Cooperative Agreement (“Agreement”) is entered into by and between the City of Superior, a municipal corporation of the State of Wisconsin (the “City”) and Superior Water, Light and Power Company, a Wisconsin corporation (“SWLP”). The City and SWLP may be referred to collectively as the “Parties.”

### RECITALS

- A. SWLP owns and operates a water public utility serving the City and surrounding area. The rates, terms, and conditions of SWLP’s water utility services are regulated by the Public Service Commission of Wisconsin (“PSCW”) pursuant to state law.
- B. SWLP’s water utility is a “community water system” under applicable state and federal drinking water regulations.
- C. SWLP has provided water utility service since the 1890s, and its system is known to include some lead-pipe service lines or service lines that are classified as galvanized requiring replacement (collectively, “Lead Service Lines”).
- D. Under the federal Lead and Copper Rule Improvements (“LCRI”) regulation, 89 Fed. Reg. 86,418 (October 30, 2024), owners of community water systems must replace all Lead Service Lines by 2037.
- E. SWLP owns and is responsible for the costs of replacing that portion of the lead service line located in the public right-of-way (i.e., up to the curb stop or private property line) (the “Utility Side”). SWLP’s customers own and are responsible for the financial costs of replacing that portion of the service line located on such customer’s private property, after the curb stop, and which connects into such customer’s plumbing (the “Customer Side”).
- F. The United States Environmental Protection Agency (“USEPA”) operates the Drinking Water State Revolving Fund (“DWSRF”) established by the 1996 amendments to the federal Safe Drinking Water Act. *See* 42 U.S.C. § 300j–12.
- G. Federal law permits assistance from the DWSRF to be provided to privately-owned and publicly-owned community water systems. 40 C.F.R. § 35.3520(a). Because the City of Superior is not a community water system, the City is not an eligible applicant under the DWSRF.
- H. The Wisconsin Department of Natural Resources (“WDNR”) and the Wisconsin Department of Administration (collectively, the “State Agencies”) administer the DWSRF in Wisconsin as the Safe Drinking Water Loan Program (“SDWLP”).

**DRAFT (SWLP Revision 6.27.2025)**

- I. Current state law does not allow the State Agencies to provide financial assistance in the form of principal loan forgiveness using federal capitalization grants to the private owner of a community water system.
- J. Pending legislation (Senate Bill 56) would modify Wisconsin law (and specifically, Wis. Stat. § 281.61(2r)(e)) to allow the State Agencies to provide principal loan forgiveness to the private owner of a community water systems for replacement of lead service lines. Senate Bill 56 has passed both houses of the Wisconsin Legislature and was presented to the Governor on June 25, 2025.
- K. If enacted into state law, Senate Bill 56 would enable SWLP to apply for principal loan forgiveness funding through the SDWLP to reduce the costs of replacing Customer Side Lead Service Lines (up to the maximum allowed pursuant to program requirements) and, to the extent sufficient funding is available, Utility Side Lead Service Lines.
- L. The State Agencies allocate available funding for lead line replacement to Customer Side Lead Service lines first. If sufficient funds remain available, funding may be made available to offset the cost of replacing Utility Side Lead Service Lines.
- M. In recent years, SWLP and the City have entered into various cooperative agreements pursuant to which City contractors replace Lead Service Lines in conjunction with street reconstruction projects in order to minimize construction costs and disruption to residents.
- N. The City has indicated that it will utilize public funding or other public financing mechanisms available to it to offset all or a portion of construction costs attributable to replacement of Customer Side Lead Service Lines.
- O. The purpose of this Agreement is to establish a public-private partnership and facilitate cooperation between the Parties to achieve the shared goal of replacing residential customer-owned lateral lead water lines within the City of Superior, at no cost to the customer, as soon as possible, but in any case, not later than the applicable deadline under the LCRI.

**AGREEMENT**

The Parties agree as follows:

- 1. Recitals.** The Recitals and Definitions set forth above are made part of this Agreement and incorporated by reference as if set forth fully in this Section 1.

## 2. Responsibilities of SWLP.

- 2.1 Principal Loan Forgiveness Application. During the Term (as hereinafter defined), SWLP shall annually apply by the deadline established by WDNR for principal forgiveness loans to fund construction projects to replace Lead Service Lines within the City of Superior (the “Proposed Project(s)”); *provided*, however, that SWLP’s obligations under this Section 2.1 shall be subject to and expressly conditioned upon all of the following: (i) the enactment of modifications to current state law that make SWLP an eligible recipient of principal loan forgiveness funding under the SDWLP, as determined by the State Agencies, and (ii) continued eligibility of SWLP to receive such funds under applicable federal and state law during the Term. SWLP’s failure to submit an application as required by, and subject to, the terms of this Section 2.1 shall constitute a material breach of this Agreement and entitle the City to seek any remedy available at law or equity.
- 2.2 Identification of Projects. Within thirty (30) days of receiving confirmation from the State Agencies of the availability of principal loan forgiveness funding under the SDWLP for one or more Proposed Project(s), the Parties shall meet and confer regarding the scope of work for construction projects to replace Lead Service Lines within the City. Each Lead Service Line replacement project requires the approval of the Parties prior to construction. Each such project approved pursuant to this Section 2.2 is referred to in this Agreement as a “Confirmed Project.”
- 2.3 Primary Recipient Role. In accordance with state and federal law, SWLP will be the primary recipient of the SDWLP principal loan forgiveness funding. Unless prohibited by applicable law (as determined by USEPA or the State Agencies, or by SWLP in its reasonable exercise of discretion), SWLP shall take all reasonable actions to necessary designate the City as a subrecipient responsible for executing portions of Confirmed Project(s).
- 2.4 Financial Obligation and Reimbursement. Upon receipt from the City of a construction project invoice for approved work on a Confirmed Project undertaken and completed in compliance with the terms and conditions of this Agreement, SWLP shall reimburse the City for invoiced amounts (a) attributable to work on SWLP-owned infrastructure or (b) attributable to replacement of Customer Side Lead Service Lines up to, and not to exceed, the total amount of principal loan forgiveness funding awarded and disbursed for replacement of Customer Side Lead Service Lines for such Confirmed Project by the State Agencies. In no case shall SWLP be liable for the costs of work or improvements to Customer Side Lead Service Lines that exceed the amount of principal loan forgiveness awarded by the State Agencies for such work.

- 2.5 SWLP Infrastructure Costs. SWLP shall bear all costs associated with improvements made to SWLP-owned water infrastructure as part of Confirmed Projects, including replacement of Utility Side Lead Service Lines. For clarity and avoidance of all doubt, nothing in this Agreement shall be construed to (i) prevent SWLP from applying for and receiving principal loan forgiveness funding to reduce the costs of replacing Utility Side Lead Service Lines or (ii) prohibit SWLP from seeking recovery, through customer rates approved by the PSCW, of and on SWLP's investments in utility infrastructure that are used and useful for the service of the public, including Utility Side Lead Service Lines.
- 2.6 PSCW Approval. If required, SWLP shall apply for and diligently pursue PSCW approval to establish a customer-side lead service line financial assistance program pursuant to Wis. Stat. § 196.372. If required, receipt of PSCW approval shall be an express condition precedent to SWLP's obligations under this Agreement.

### 3. Responsibilities of the City.

- 3.1 Project Administration. The City, acting through its Public Works Department, shall coordinate and contract for the completion of Confirmed Projects, including replacement of Customer Side Lead Service Lines if customer authorization is obtained.
- 3.2 Procurement and Compliance. The City shall publicly bid Confirmed Projects and select the lowest responsible bidder, in accordance with all of the following: (i) applicable Wisconsin State Statutes and administrative rules (including Chapter NR 166, Wis. Admin. Code); (ii) City of Superior ordinances; and (iii) all federal requirements applicable to receipt of principal loan forgiveness funding, including compliance with Davis-Bacon and Related Acts ("DBRA") and 29 C.F.R. § 5.5.
- 3.3 Construction Oversight. The City shall manage project oversight, contract compliance, and invoice verification, and ensure timely execution of the work and payment to contractors. Notwithstanding the foregoing, the City shall, upon request, promptly provide SWLP access to copies of all documents needed to (i) verify the accuracy and reasonableness of invoiced amounts submitted to SWLP for reimbursement under Section 2.4 of this Agreement; (ii) secure disbursement of principal loan forgiveness funding from the State Agencies; and (iii) confirm the City's compliance with the terms and conditions of this Agreement.
- 3.4 Financial Obligation. The City shall bear all costs associated with replacing Customer Side Lead Service Lines as part of Confirmed Projects that are not reimbursed by SWLP pursuant to Section 2.4.

- 3.5 PSCW Approval. The City shall take all actions reasonably necessary for SWLP to obtain any required PSCW approval(s) pursuant to Wis. Stat. § 196.372 and any other applicable statute administered by the PSCW, including enactment of an ordinance meeting the requirements of Wis. Stat. § 196.372(2)(a).

#### **4. Joint Responsibilities.**

- 4.1 Public Communication. During the Term, the Parties shall coordinate efforts to educate the public about the SWLP-City partnership and the Lead Service Line replacement projects, including customer eligibility, timelines, and safety benefits. Ongoing coordination shall, at minimum, consist of semi-annual meetings between City staff and SWLP to discuss the status of public communications surrounding Proposed Project(s) and Confirmed Projects.
- 4.2 Construction Cooperative Agreement. From and after sixty (60) days of the Effective Date (as hereinafter defined) of this Agreement, the Parties shall negotiate diligently and in good faith to finalize and execute a Construction Cooperative Agreement that will formalize each party's roles and responsibilities as related to construction oversight. Such agreement shall remain in effect through the termination or expiration of this Agreement.
- 4.3 Compliance with Law. The Parties shall comply with (i) all applicable state and federal laws and (ii) the terms and conditions of any agreement entered into by SWLP with the State Agencies or USEPA as a condition of receiving principal loan forgiveness funding.
- 4.4 LCRI Compliance. Each year, the Parties shall ensure that completion of Lead Service Line replacements as part of the Confirmed Projects will result in replacement of a sufficient quantity of Lead Service Lines for SWLP to remain in compliance with the LCRI, as such rule may be amended from time to time, and plans approved by USEPA or WDNR thereunder.

#### **5. Effectiveness; Term and Termination; Default; Remedies.**

- 5.1 Effectiveness. This Agreement shall be deemed effective on the date on which both of the following conditions precedent are first satisfied (the "Effective Date"): (i) each party has duly executed the Agreement and (ii) Senate Bill 56, as enrolled and presented to the Governor on June 25, 2025, is enacted into Wisconsin law and takes effect.
- 5.2 Term. The term of this Agreement ("Term") shall commence on the Effective Date, and unless this Agreement is sooner terminated pursuant to Sections 5.3,

5.4, or 5.5, will expire on the earlier of (i) December 31, 2037 or (ii) the date that is ninety (90) days after all Lead Service Lines in the City of Superior have been replaced.

- 5.3 Termination by Mutual Agreement. This Agreement may be terminated by mutual written agreement of both Parties at any time. The termination shall be effective upon the date specified in the written agreement.
- 5.4 Discretionary Termination by SWLP. If, during the Term, SWLP becomes ineligible for SDWLP principal loan forgiveness funding, SWLP may, in its sole and absolute discretion, terminate this Agreement upon written Notice to the City. Upon termination pursuant to this Section 5.4, SWLP shall reimburse the City for actual construction costs incurred by the City through the date of the notice of termination and any non-cancellable commitments and obligations made prior to the date of the notice of termination, to the extent such costs, commitments, and obligations are attributable to work on SWLP-owned infrastructure. Except as set forth in this Section 5.4 and obligations that survive the termination or expiration of this Agreement pursuant to Section 6.3, all further obligations of either party under this Agreement will terminate and be deemed to have been discharged as of the date of the notice of termination.
- 5.5 Termination for Cause; Remedies. If either party fails to perform any material obligation in this Agreement or breaches any material representation or warranty during the Term of this Agreement, the non-breaching party shall notify the other party in writing of the breach and provide the breaching party with a thirty (30) day period to cure such breach. If, following such cure period, the breach remains uncured, the non-breaching party shall have the right to terminate this Agreement, as the case may be, pursuant to this Section 5.5, and seek any available remedy at law or in equity, including but not limited to withholding reimbursement under Section 2.4.

## **6. Indemnification.**

- 6.1 By SWLP. SWLP agrees that it shall indemnify, save, and hold harmless, the City and all of its employees and agents from any and all third party claims, demands, actions, or causes of action of whatever nature or character arising out of or by reason of SWLP's execution or performance of the work provided for as part of a Confirmed Project, except to the extent such claims, demands, actions, or causes of action arise out of the City's negligence or more culpable act or omission (including recklessness or willful misconduct).
- 6.2 By the City. Subject to applicable law and to the extent permitted by Wisconsin law, the City agrees that it shall indemnify, save, and hold harmless, SWLP and all



of its employees and agents from any and all third party claims, demands, actions or causes of action of whatever nature or character arising out of or by reason of the City's execution or performance of the work provided for herein as part of a Confirmed Project, except to the extent such claims, demands, actions, or causes of action arise out of SWLP's negligence or more culpable act or omission (including recklessness or willful misconduct). The City further agrees to defend at its own cost and expense any action or proceeding commenced for the purpose of asserting any claim of whatever character arising from the City's execution or performance of the work provided for herein.

- 6.3 Survival. The respective indemnification obligations of SWLP and the City in this Section 6 shall survive the termination or expiration of this Agreement for a period of four (4) years.

## **7. Legal and Miscellaneous Terms.**

- 7.1 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, without regard for any conflict of laws rules or principles that would result in the application of the laws of any other jurisdiction.
- 7.2 Waiver. If any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive the same, or other or any future breach hereunder on any other occasion. No remedy herein conferred upon or reserved to either party hereto is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by virtue of other contracts. No delay or omission to exercise any right or power occurring upon any breach or event of default under this Agreement shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient. To entitle either party to exercise any remedy reserved or available to it, it shall not be necessary to give any notice other than such notice as may be herein expressly required.
- 7.3 Successors. Except as limited or conditioned by the express provisions hereof, the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any



other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

- 7.4 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or extent of any of the provisions of this Agreement.
- 7.5 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.
- 7.6 Notices. All notices, requests, consents, claims, demands, waivers, and other communications required or permitted to be given hereunder (each, a “Notice”) shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail (in each case, return receipt requested, postage pre-paid). Notices must be sent to the respective party at the following addresses (or at such other address for a party as shall be specified in a Notice given in accordance with this Section 7.6):

To the City:

City of Superior  
Attn: City Clerk  
1316 North 14<sup>th</sup> Street, Suite 200  
Superior, WI 54880

To SWLP:

Superior Water, Light and Power Company  
ATTN: President  
2915 Hill Avenue  
Superior, WI 54880

As used in this Agreement, “Business Day” means any day except Saturday, Sunday, or any day which is a federal legal holiday in the United States.

- 7.7 Dispute Resolution.
- 7.7.1 *Negotiation*. Except where injunctive relief is sought, each party shall

attempt in good faith to resolve any controversy, claim or dispute of whatever nature arising out of or relating to this Agreement or the breach, termination, enforceability or validity thereof (“Dispute”) promptly by negotiation between representatives of the Parties who have authority to settle the Dispute.

7.7.2 *Mediation.* If the Dispute has not been resolved through negotiation within ten (10) business days of the initiation thereof, the Parties shall make a good faith attempt to settle the Dispute by mediation conducted by a mutually agreeable mediator in a mutually agreed upon location. This requirement shall not apply if injunctive relief is sought.

7.7.3 *Other Legal and Equitable Remedies.* If the Parties are unable to resolve a Dispute using the mechanisms described in this Section 7.7, then any party is entitled to pursue all legal and equitable remedies that may be available to the party in a court of competent jurisdiction.

7.8 No Partnership. This Agreement shall not be deemed or construed to create a partnership or joint venture between the Parties. Nothing contained herein shall be deemed or construed to create an agency relationship between the City or SWLP, and neither party shall take any action which could reasonably lead a third party to assume that it has the authority to bind the other party or make commitments on such party’s behalf.

7.9 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

7.10 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation;” (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

- 7.11 Force Majeure. No party shall be liable or responsible to any other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) epidemics or pandemics; (g) action by any governmental authority; and (h) national or regional emergency ("Force Majeure Event"). The party suffering a Force Majeure Event shall promptly give written Notice to the other party stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay, resume performance, and ensure the effects of such Force Majeure Event are minimized.
- 7.12 Assignment. Neither party may assign its rights hereunder without the prior written consent of the other party. Any purported assignment in violation of this Section 7.12 shall be null and void. No assignment shall relieve the assigning party of any of its obligations hereunder.
- 7.13 Modification. This Agreement is binding only when signed by both Parties. Any modifications or amendments must be in writing and signed by both Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement effective as of the Effective Date.

SWLP

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Robert Sandstrom  
President

City of Superior

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Jim Paine, Mayor

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Heidi Blunt, City Clerk

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Nicholas Rhinehart, Finance Director

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Frog Prell, City Attorney

Approved by the Superior Common Council on: