

**RESOLUTION 5872-2023**

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**APPROVE TRANSFER OF FUNDS TO MAYVILLE AUDUBON DAYS, INC.**

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WHEREAS, the City of Mayville is holding approximately \$39,281.48 in funds earmarked for the annual Mayville Audubon Days celebrations in the City of Mayville, Dodge County, Wisconsin; and,

WHEREAS, pursuant to the decision of the Mayville Common Council at the May 8, 2023 meeting, the City of Mayville wishes to transfer ownership of the Audubon Days funds to Mayville Audubon Days, Inc., pursuant to the terms established in the attached City of Mayville Use of Funds Agreement; and,

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Mayville does hereby approve transferring the aforementioned funds to Mayville Audubon Days, Inc., pursuant to the terms established in the attached City of Mayville Use of Funds Agreement.

Passed by the Common Council of the City of Mayville this 12<sup>th</sup> day of June, 2023.



John Guinn  
Mayor

Attest:



Anastasia Gonstead

**CITY OF MAYVILLE  
USE OF FUNDS AGREEMENT**

**THIS AGREEMENT** made as of the 12 day of June, 2023 by the City of Mayville (hereinafter, “the City”), having an address of 15 S. School Street, Mayville, WI, 53050, and Mayville Audubon Days, Inc., a Wisconsin nonstock corporation (hereinafter, “Audubon Days”), having an address of W3025 County Road Y, Lomira, WI 53048. The City and Audubon Days may be referred to herein individually as “a Party” and collectively as “the Parties.”

**WITNESSETH:**

**R.01 WHEREAS**, the City is holding approximately \$39,281.48 in a fund earmarked for the annual Mayville Audubon Days celebrations in the City of Mayville, Dodge County, Wisconsin (the “Audubon Days Fund”); and

**R.02 WHEREAS**, pursuant to Resolution 5872-2023 adopted by the City of Mayville Common Council on June 12, 2023, the City wishes to transfer ownership of the Audubon Days Fund to Audubon Days, subject to the terms and conditions contained in this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the Parties agree as follows:

**I. USE OF FUNDS AGREEMENT**

A. Transfer of the Audubon Days Fund to Audubon Days. Within (10) ten days of execution of this Agreement, the City agrees to transfer ownership of the Audubon Days Fund to Audubon Days, subject to the terms and conditions contained in this Agreement.

B. Use of Funds. Audubon Days agrees that the Audubon Days Fund shall be used exclusively for the furtherance of its exempt purposes for its tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as stated in the corporation’s Articles of Organization. Audubon Days may not transfer or assign the Audubon Days Fund to another person, entity, or organization, except back to the City according to the terms of this Agreement.

C. Return of Audubon Days Fund to City. Upon occurrence of any of the following events, as determined by the City in its sole discretion, the Audubon Days Fund, or the remaining balance thereof, shall be immediately refunded to the City:

1. Audubon Days fails to obtain tax-exempt status from the Internal Revenue Service.
2. Audubon Days is no longer using the funds for the corporation’s exempt purposes as stated in the corporation’s Articles of Organization.
3. Audubon Days ceases hosting an annual Audubon Days celebration in the City of Mayville, Dodge County, Wisconsin.
4. Audubon Days transfers, or attempts to transfer, all or substantially all of its assets to another person, entity, or organization.
5. Audubon Days ceases all or substantially all of its operations.

6. Audubon Days dissolves as a non-stock corporation or converts or attempts to convert from a nonstock corporation to a different type of organization or entity.

## II. MISCELLANEOUS

A. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

B. Incorporation of Recitals. The Recitals first set forth above are hereby acknowledged and incorporated herein.

C. Understanding of the Agreement Right to Counsel. The Parties represent that they have fully read the Agreement, understand its provisions, and are entering into the Agreement voluntarily. The parties further acknowledge that they have been informed of their right to seek legal advice regarding this Agreement and have done so to the extent necessary to fully understand this Agreement.

D. Notices. The following addresses shall be used for delivery of all notices under this Agreement and the Note:

If to the City:

City Clerk  
City of Mayville  
15 S. School Street  
P.O. Box 273  
Mayville, WI 53050  
[cityclerk@mayvillecity.com](mailto:cityclerk@mayvillecity.com)

With a copy to:

Attorney Patrick H. Madden  
Madden Law Group, S.C.  
116 S. Main Street  
Mayville, WI 53050  
[pmadden@getmadden.com](mailto:pmadden@getmadden.com)

If to Audubon Days:

Mayville Audubon Days, Inc.  
Attn: Kristin R. Schaefer  
W3025 County Road Y  
Lomira, WI 53048  
[kristin@feuchttrucking.com](mailto:kristin@feuchttrucking.com)

Audubon Days shall notify the City of Mayville of any change in address. All notices shall be personally delivered or sent via United States Mail, or Certified Mail, Return Receipt requested, or

by email. If sent via United States Mail, notices shall be deemed delivered when mailed. If sent via email, notices shall be deemed delivered upon receipt.

E. Binding Agreement. This Agreement shall be binding on the Parties and their heirs, successors, and assigns, except as otherwise provided in this Agreement.

F. Waiver, Change or Modification. This Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

G. Severance. If any of the provisions, terms or clauses of this Agreement are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of the Agreement shall remain valid and binding upon all parties.

H. Full Agreement. This Agreement, including any amendments to it, contains the entire agreement of the Parties. All prior negotiations and discussions have been merged into this Agreement.

I. Authority. Audubon Days attests that its directors have duly authorized Audubon Days to enter into this Agreement.

J. Assignment. This Agreement is not assignable by Audubon Days without the City's written consent. Any assignee shall agree in writing to abide by all terms and conditions of this Agreement.

K. Attorney's Fees and Costs. If the City is required to take any action to enforce the terms of the Agreement, the City will be entitled to recover its attorney's fees and costs incurred in enforcing this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto, intending to be legally bound hereby, and aware they are releasing important legal rights, have executed this Agreement as of the date first written above.

**CITY OF MAYVILLE**

By:   
John Guinn, Mayor

Attest:   
Anastasia Gonstead, City Clerk

**MAYVILLE AUDUBON DAYS, INC.**

By:   
Kristin R. Schaefer, President



