

**\*\*\*ATTACHMENTS\*\*\***

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3.15

R. O. No. 156 - 17 - 18.

By BOARD OF WATER COMMISSIONERS.  
September 5, 2017.

To the Honorable, Mayor and Common Council:

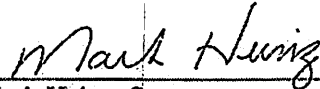
Submitting, as a matter of record, in accordance with the Finance Committee request dated March 1, 1991, the Sheboygan Water Utility's Budget for the year 2018.

*Finance Personnel*

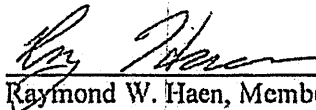
BOARD OF WATER COMMISSIONERS



Gerald R. Van De Kreeke, President



Mark Heinz, Secretary



Raymond W. Haen, Member

Attachment.

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**2018 Sheboygan Water Utility Budget**

(approved August 21, 2017)

**Sheboygan Board of Water Commissioners**

**72 Park Avenue,**

**Sheboygan, WI 53081**

**WI PSC Utility No. 5370**

### **2018 Sheboygan Water Utility Budget Summary**

- **Tax equivalency payment to municipality estimated at \$1,204,423**
- **Of 80 class AB utilities in WI, Sheboygan had the third lowest cost for 18,750 gallons of water per quarter**
- **\$1,550,000 budgeted for water main replacement projects**
- **\$2,400,000 budgeted for new industrial park water tower**



**Sheboygan Water Utility**

**WI PSC Utility No. 5370  
 Sheboygan Board of Water Commissioners  
 72 Park Avenue  
 Sheboygan, Wisconsin**

**2018 Budget**

Budget provides for investment of \$11,206,029 in all phases of Water Utility operations.

Revenues

Budgeted revenue projection for 2018	<u>\$8,968,689</u> (1)
Estimated revenue total as of December 31, 2017	<u>\$8,464,902</u>
Total projected revenues for 2018 expected to increase (decrease)	<u>\$503,787</u>

Expenditures

<u>Expenditure by Classification</u>	Estimated Expenses 2017	Budget 2017	Budget 2018	Budget Increase (Decrease)	Percent Change
Labor	\$1,455,139	\$1,538,351	\$1,567,500	\$29,149	2%
Source of supply expenses	\$16,000	\$18,000	\$18,000	\$0	0%
Pumping expenses	\$552,031	\$567,620	\$571,120	\$3,500	1%
Water treatment expenses	\$575,440	\$622,000	\$643,000	\$21,000	3%
Transmission & distribution expenses	\$452,721	\$309,000	\$543,500	\$234,500	76% (2)
Customer accounts expenses	\$53,245	\$61,750	\$61,800	\$50	0%
Administrative & general expenses	\$747,698	\$882,000	\$856,000	-\$26,000	-3% (3)
Taxes	\$1,255,851	\$1,254,000	\$1,334,423	\$80,423	6% (4)
Capital outlay	\$2,809,415 (2)	\$3,481,220	\$5,327,000	\$1,845,780	53% (5)
Interest expense on bonds	\$303,852	\$387,937	\$283,686	-\$104,251	-27% (6)
<b>Totals</b>	<u>\$8,221,392</u>	<u>\$9,121,878</u>	<u>\$11,206,029</u>	<u>\$2,084,151</u>	<b>23%</b>

- 1) Includes 6% revenue increase due to rate increase in January 2018. No rate increases took place in 2017.
- 2) Increase due to \$220,000 in WDNR lead water service lateral grant monies offset as T&D expense.
- 3) Decrease due to savings with League of Municipalities insurance package.
- 4) Increase due to PILOT payment to City.
- 5) Increase due to \$2.4M construction cost of south side water tower.
- 6) Decrease due to interest payment schedule and debt refinancing.

Sheboygan's water rates remain among the lowest in the state for class AB utilities serving more than 5,000 customers.



**CASH AND BUDGET SUMMARY**

**2018**

<b>REVENUES</b>	<b>Budget 2017</b>	<b>Estimate 2017</b>	<b>Budget 2018</b>
<u>Cash Balance January 1 (including bond reserves)</u>	<u>\$5,561,223</u>	<u>\$6,916,854 (1)</u>	<u>\$6,763,417</u>
<b>Current Revenues</b>			
Total sales of water	\$6,252,100	\$6,316,078	\$6,695,043
Other operating revenues (other sales)	\$1,762,301	\$1,773,647	\$1,880,066
Non-operating revenues (other revenues)	\$139,630	\$366,177	\$373,581 (2)
Contributions in aid of construction	\$25,000	\$9,000	\$20,000
<b>Total current revenues</b>	<b>\$8,179,031</b>	<b>\$8,464,902</b>	<b>\$8,968,689</b>
<b>Total reserves available</b>	<b>\$13,740,254</b>	<b>\$15,381,756</b>	<b>\$15,732,107</b>
<b>EXPENDITURES</b>			
<b>Operation &amp; Maintenance</b>			
Source of supply	\$19,500	\$16,000	\$19,500
Pumping	\$693,471	\$690,591	\$715,120
Water treatment	\$1,143,000	\$1,061,449	\$1,167,000
Transmission & distribution maintenance	\$784,000	\$918,292	\$1,018,500 (2)
Customer accounts	\$221,750	\$203,245	\$229,600
Taxes	\$1,254,000	\$1,255,851	\$1,334,423
Administrative & general	\$1,137,000	\$962,698	\$1,111,000
<b>Total operation &amp; maintenance expenses</b>	<b>\$5,252,721</b>	<b>\$5,108,125</b>	<b>\$5,595,343</b>
<b>Other Expenditures</b>			
Capital outlay	\$3,481,220	\$2,809,415	\$5,327,000
Safe Drinking Water Loan proceeds	\$0	-\$463,768 (3)	\$0
Proceeds from bond issue (including \$ to new bond reserve fund)	\$0	\$0	-\$2,400,000
Debt service (including principal and interest)	\$1,182,219	\$1,164,569	\$1,174,183
<b>Total other expenditures</b>	<b>\$4,663,439</b>	<b>\$3,510,216</b>	<b>\$4,101,183</b>
<b>Total expenditures</b>	<b>\$9,916,160</b>	<b>\$8,618,341</b>	<b>\$9,696,526</b>
<u>Cash &amp; Receivables Balance - December 31</u>	<u>\$3,824,094</u>	<u>\$6,763,416 (4)</u>	<u>\$6,035,580</u>
(Total reserves - Total expenditures)			

1) Cash reported is actual Jan 1, 2017.

2) Includes \$220,000 recorded as revenue due to new lead water service lateral grants. Offset shown as TBD main expenditure.

3) Final costs on UV project.

4) Estimate higher than budget due to SDWL monies in 2017, higher initial cash position, lower capital outlay, and higher revenues.



**STATEMENT OF ESTIMATED REVENUES**

REVENUE SOURCE	2018			
	Actual 2016	Budget 2017	Estimate 2017	Budget 2018
<i>(2018 estimate based on no increase in water pumpage)</i>				
<b>Metered Sales to General Customers (approx. 4,900 million gallons)</b>				
Residential	\$2,217,203	\$2,060,000	\$2,126,098	\$2,253,664
Multi-family	\$236,063	\$216,300	\$239,965	\$254,363
Commercial	\$554,769	\$473,800	\$550,015	\$583,015
Industrial	\$3,597,400	\$3,502,000	\$3,400,000	\$3,604,000
<b>Totals</b>	<b>\$6,605,435</b>	<b>\$6,252,100</b>	<b>\$6,316,078</b>	<b>\$6,695,043</b>
<b>Other Sales to Water Customers</b>				
Private fire protection	\$91,204	\$93,701	\$85,000	\$90,100
Public fire protection (96, Inc Falls & Kohler)	\$831,372	\$813,700	\$832,000	\$881,920
Sales to public authorities	\$112,833	\$72,100	\$95,000	\$101,760
Sales to Sheboygan Falls & Kohler	\$847,019	\$782,800	\$760,647	\$806,286
Sales to Irrigation customers	\$0	\$0	\$0	\$0
Miscellaneous sales	\$0	\$0	\$0	\$0
<b>Totals</b>	<b>\$1,882,429</b>	<b>\$1,762,301</b>	<b>\$1,773,647</b>	<b>\$1,880,066</b>
<b>Other Revenues</b>				
Late payment charges	\$50,843	\$32,000	\$50,000	\$38,000
Miscellaneous sales	\$39,179	\$34,000	\$43,009	\$36,000
Rental income from Georgia Ave	\$21,493	\$21,630	\$22,138	\$22,581
Billing & collecting charge to City	\$40,440	\$37,000	\$29,679	\$37,000
Grant revenues - restricted	\$0	\$0	\$200,000	\$220,000 (1)
<i>(other billing &amp; collecting costs accounted for by expense reduction per PSC)</i>				
<b>Totals</b>	<b>\$151,955</b>	<b>\$124,630</b>	<b>\$344,826</b>	<b>\$353,581</b>
<b>Total Revenues</b>	<b>\$8,639,818</b>	<b>\$8,139,031</b>	<b>\$8,434,551</b>	<b>\$8,928,689</b>
<b>Other Income</b>				
Interest	\$15,281	\$15,000	\$21,350	\$20,000
Contributions in aid of construction (including private laterals)	\$238,799 (2)	\$25,000	\$9,000	\$20,000
<b>Totals</b>	<b>\$254,080</b>	<b>\$40,000</b>	<b>\$30,350</b>	<b>\$40,000</b>
<b>REVENUES</b>	<b>Grand Totals</b>	<b>\$8,893,898</b>	<b>\$8,464,902</b>	<b>\$8,968,689</b>

1) WDNR lead water service lateral grant monies

2) Large contribution due to UW Sheboygan water main extension.



**OPERATION AND MAINTENANCE EXPENSES**

	<b>2018</b>			
<u>Source of Supply Expenses</u>	<u>Actual 2016</u>	<u>Budget 2017</u>	<u>Estimate 2017</u>	<u>Budget 2018</u>
<b><u>Operations</u></b>				
Labor	\$857	\$500	\$0	\$500
<b><u>Maintenance</u></b>				
Labor	\$0	\$1,000	\$0	\$1,000
Intakes	\$1,000	\$18,000	\$16,000	\$18,000
<b>Totals</b>	<b><u>\$1,857</u></b>	<b><u>\$19,500</u></b>	<b><u>\$16,000</u></b>	<b><u>\$19,500</u></b>
<b><u>Pumping Expenses</u></b>				
<b><u>Operations</u></b>				
Labor	\$38,402	\$35,000	\$33,560	\$36,000
Electricity & natural gas	\$479,292	\$498,500	\$492,577	\$500,000 (1)
Pumping equipment	\$316	\$3,120	\$0	\$3,120
Miscellaneous	\$15,819	\$14,000	\$15,254	\$15,000
Utilities	\$30,579	\$34,000	\$35,000	\$34,000
<b><u>Maintenance</u></b>				
Labor	\$100,825	\$90,851	\$105,000	\$109,000
Pumping equipment	\$8,794	\$14,000	\$7,879	\$15,000
Structures	\$10,833	\$4,000	\$1,320	\$4,000
<b>Totals</b>	<b><u>\$684,860</u></b>	<b><u>\$693,471</u></b>	<b><u>\$690,591</u></b>	<b><u>\$715,120</u></b>
<b><u>Water Treatment Expenses</u></b>				
<b><u>Operations</u></b>				
Labor	\$458,312	\$440,000	\$416,642	\$443,000
Water treatment equipment	\$246,710	\$250,000	\$244,078	\$255,000
Chemicals	\$227,542	\$265,000	\$250,000	\$275,000
Miscellaneous	\$11,719	\$4,000	\$9,241	\$10,000
Utilities	\$12,321	\$21,000	\$16,972	\$21,000
<b><u>Maintenance</u></b>				
Labor	\$63,147	\$81,000	\$69,366	\$81,000
Water treatment equipment	\$33,266	\$32,000	\$20,149	\$32,000
Structures	\$13,951	\$50,000	\$35,000	\$50,000
<b>Totals</b>	<b><u>\$1,066,968</u></b>	<b><u>\$1,143,000</u></b>	<b><u>\$1,061,449</u></b>	<b><u>\$1,167,000</u></b>

(1) Additional electrical costs due to new UV system of \$1.50 per MG.



**OPERATION AND MAINTENANCE EXPENSES**

**2018**

	Actual 2016	Budget 2017	Estimate 2017	Budget 2018
<b><u>Transmission &amp; Distribution Expenses</u></b>				
<b><u>Operations</u></b>				
Labor	\$253,396	\$240,000	\$245,571	\$250,000
Reservoirs & standpipes	\$718	\$2,000	\$2,178	\$2,000
Mains & hydrants	\$9,592	\$6,000	\$14,915	\$15,000
Meters	\$3,414	\$50,000	\$3,468	\$40,000
Customer services	\$101,515	\$95,000	\$70,000	\$73,000
Miscellaneous	\$9,388	\$14,000	\$220,000	\$260,000 (1)
Utilities	\$15,400	\$16,000	\$16,736	\$16,000
<b><u>Maintenance</u></b>				
Labor	\$270,043	\$235,000	\$220,000	\$225,000
Structures & Improvements	\$3,027	\$3,000	\$6,408	\$7,000
Reservoirs & standpipes	\$47,580	\$15,000	\$15,000	\$15,000
Mains	\$88,029	\$75,000	\$75,000	\$75,000
Meters	\$0	\$2,000	\$2,801	\$3,500
Hydrants	\$26,597	\$16,000	\$25,000	\$30,000
Customer Services	\$183	\$15,000	\$1,213	\$5,000
<b>Totals</b>	<b><u>\$778,882</u></b>	<b><u>\$784,000</u></b>	<b><u>\$918,292</u></b>	<b><u>\$1,018,500</u></b>
<b><u>Customer Accounts Expenses</u></b>				
<b><u>Operations</u></b>				
Labor	\$144,034	\$160,000	\$150,000	\$168,000
Meter reading	\$4,644	\$4,000	\$4,153	\$4,000
Billing & collecting	\$29,185	\$30,000	\$30,000	\$30,000
Uncollectible accounts	\$1,424	\$8,000	\$735	\$8,000
Utilities	\$719	\$750	\$742	\$800
Postage	\$13,962	\$19,000	\$17,614	\$19,000
<b>Totals</b>	<b><u>\$193,967</u></b>	<b><u>\$221,750</u></b>	<b><u>\$203,245</u></b>	<b><u>\$229,800</u></b>
<b><u>Taxes</u></b>				
Local & school (property tax equivalency paid to City)	\$1,127,126	\$1,124,000	\$1,131,904	\$1,204,423 (2)
Payroll	\$109,909	\$120,000	\$113,946	\$120,000
P.S.C. remainder assessment (mandatory fee to state regulator)	\$8,448	\$10,000	\$10,000	\$10,000
<b>Totals</b>	<b><u>\$1,245,483</u></b>	<b><u>\$1,254,000</u></b>	<b><u>\$1,255,851</u></b>	<b><u>\$1,334,423</u></b>
<b><u>Interest Expense Long Term Debt</u></b>				
Expense (bonds, SDW loans, unfunded pension)	<b><u>\$268,182</u></b>	<b><u>\$387,937</u></b>	<b><u>\$303,852</u></b>	<b><u>\$283,686 (3)</u></b>

1) Includes \$220,000 offset due to WQNR lead grant monies

2) PILOT Increase due to UV project

3) Bonds: 2007, 2013, 2016; SDW loans: 2004, 2015



OPERATION AND MAINTENANCE EXPENSES

2018

	Actual 2016	Budget 2017	Estimate 2017	Budget 2018
<b><u>Administrative &amp; General Expenses</u></b>				
<b><u>Operations</u></b>				
Labor	\$203,171	\$255,000	\$215,000	\$255,000
Office supplies	\$17,254	\$15,000	\$15,000	\$15,000
Utilities	\$4,153	\$2,000	\$2,680	\$2,000
Outside services & lawyers (including cross connection)	\$67,798	\$75,000 (1)	\$33,319	\$70,000
Auditors (including rate study in 2015)	\$26,331	\$10,000	\$12,000	\$20,000
<b><u>Property Insurance</u></b>				
Property and contractors' equipment	\$29,580	\$30,000	\$27,212	\$32,000
Auto	\$9,679	\$9,000	\$6,364	\$7,000
Crime	\$824	\$1,000	\$939	\$1,000
<b><u>Injuries &amp; Damage Insurance</u></b>				
Workmen's Comp	\$33,284	\$32,000	\$33,000	\$35,000
General liability, public officials, umbrella	\$49,681	\$56,000	\$26,276	\$28,000
<b><u>Other Expenses</u></b>				
Hospitalization (actual claims inc prescrip + TPA, reduced by emp contribs)	\$449,386	\$520,000	\$460,000	\$510,000 (2)
Retirement	\$98,000	\$95,000	\$90,119	\$97,000
Life	\$3,948	\$4,000	\$1,779	\$4,000
Regulatory commission expense	\$2,986	\$3,000	\$9,000	\$5,000
Miscellaneous & administrative expense	\$33,408 (3)	\$20,000	\$20,000	\$20,000
Amortization of property loss	\$0	\$0	\$0	\$0
<b><u>Maintenance</u></b>				
Office equipment maintenance	\$1,313	\$1,000	\$1,000	\$1,000
Office facilities maintenance	\$13,945	\$9,000	\$9,000	\$9,000
<b>Total</b>	<b>\$1,044,740</b>	<b>\$1,137,000</b>	<b>\$962,698</b>	<b>\$1,111,000</b>
<b>EXPENDITURES (NOT INCLUDING CAPITAL)</b>	<b>Grand Total</b>	<b>\$5,284,938</b>	<b>\$5,640,658</b>	<b>\$5,411,977</b>

1) Increase due to state-mandated cross connection program. For 2018 includes legal review of contract documents.

2) Utility is self-insured, annual costs vary depending on actual claims.

3) Reconnection fee refunds due to billing errors.



**CAPITAL OUTLAY**

		2018		Actual & Estimate	Budget
		Actual	Budget	2017	2018
		2016	2017		
<b><u>New Construction and Meters</u></b>					
2018	Distribution mains, hydrants and related services (including laterals)				\$1,550,000 (1)
2018	Meters (all sizes)				\$58,000
2018	3000 Orion radio generators for 1/2" & 5/8" meters				\$397,000 (2)
2018	Replacement of 10 hydrants and 10 street valves				\$50,000
2018	South side water tower				\$2,400,000
2017	Distribution mains, hydrants and related services (including laterals)		\$1,525,000	\$1,525,000	
2017	Meters (all sizes)		\$61,000	\$61,000	
2017	3000 Orion radio generators for 1/2" & 5/8" meters		\$377,320	\$377,320	
2017	Automatic hydrant flushing devices (4)		\$10,000	\$10,000	
2017	Large meter testing		\$3,500	\$3,500	
2016	Distribution mains, hydrants and related services (inc. laterals)	\$1,535,455			
2016	Meters (all sizes)	\$61,666			
2016	2700 Orion radio generators for 1/2" & 5/8" meters	\$398,346			
2016	Trimble hand-held meter reader replacements (2)	\$13,215			
2016	Large meter testing	\$3,010			
	<b>Total new construction</b>	<b>\$2,011,692</b>	<b>\$1,976,820</b>	<b>\$1,976,820</b>	<b>\$4,455,000</b>
<b><u>Other capital outlay</u></b>					
<b><u>Pumping</u></b>					
2018	Wilgus Ave. pump station #2 replacement				\$25,000
2018	Georgia Ave. pump station upgrade design and generator replacement (phase 2)				\$595,000
2017	Georgia Ave. pump station upgrade design and generator replacement (phase 1)		\$320,000	\$50,000	
<b><u>Equipment</u></b>					
2018	1929 clear well sluice gate				\$55,000
2018	Clear well bypass engineering and design				\$35,000
2018	High lift sump pump and motor replacement				\$50,000
2017	Suction well level transmitter		\$2,500	\$2,495	
2017	Sludge pH level transmitter		\$2,500	\$2,500	
<b><u>Structures</u></b>					
2017	Taylor Hill reservoir masonry renovation		\$600,000	\$325,000	
2016	Taylor Hill reservoir masonry renovation	\$23,513			
<b><u>Water Treatment</u></b>					
<b><u>Equipment</u></b>					
2018	Chemical feed pump for potassium permanganate				\$4,500
2018	SCADA upgrades to remote booster stations and reservoirs				\$20,000
2017	Electric filter rate-of-flow actuator replacements (3)		\$25,000	\$25,000	
2017	PLC SCADA upgrades on AB system from 2000		\$65,000	\$61,000	
2017	Chlorine analyzer replacements (3)		\$15,000	\$15,000	
2016	Loss of head pressure transmitters	\$3,000			
2016	Insertion flow meters at GAPS and EAPS	\$8,280			
2016	Sludge pump VFD	\$9,945			
2016	Phosphate feed system upgrades including new bulk tank	\$10,000			
2016	Chemical feed pump for alum	\$24,288			
2016	SCADA programming	\$48,740			
2015	UV disinfection system (carryover from 2016 including engineering)	\$568,465			

1) S. 13th and Henry Street, Broadway to Mead Ave; S. 12th Street, from Wilson to Parkwood; Michigan Ave, N. 14th to N. 15th to Huron Ave. 10 hydrants and 10 valves. Paint 200 hydrants.  
 2) After investment in 2018, Utility would have 79% of radio-read meter system in place. (PSC approval not required due to grandfathering)



**CAPITAL OUTLAY**

		2018		Actual &	Budget
<u>Water Treatment (continued)</u>		Actual	Budget	Estimate	Budget
		2016	2017	2017	2018
<b>Structures</b>					
2018	Replace admin building HVAC controls				\$30,000
2017	Keyless entry/security upgrades in water treatment plant		\$17,000	\$19,200	
2017	Upgrade of plant phone system		\$15,000	\$0	
2017	Ongoing tuckpointing of masonry walls		\$5,000	\$5,000	
2017	Design of replacement high lift catwalk		\$32,000	\$32,000	
2017	Engineering design for new southside elevated storage tank		\$240,000	\$130,000	
2016	1939 filter building and low lift building roof replacements	\$25,855			
2016	Engineering feasibility study on intake/suction well options	\$0	\$35,000	\$35,000	
2016	Security cameras at booster stations	\$4,575			
2016	Plant tuckpointing	\$18,525			
2016	South water tower site acquisition	\$1,627			
2016	Engineering design for new southside elevated storage tank	\$23,866			
2016	Parking lot upgrades	\$81,857			
2016	Construction of storage enclosures	\$19,786			
<b>Lab Equipment</b>					
2017	Online phosphate monitor		\$12,000	\$12,000	
2016	Autoclave	\$8,626			
2016	Fluoride analyzer	\$5,785			
2016	Chlorine analyzer	\$4,805			
<b>Office Furniture &amp; Equipment</b>					
2018	PC replacements (5)				\$8,500
2018	Website security upgrades				\$2,400
2018	Server storage				\$1,000
2018	Remodel of break/lunch room				\$8,000
2017	Website security upgrades		\$2,400	\$2,400	
2017	Server storage		\$1,000	\$1,000	
2017	PC replacements		\$10,000	\$10,000	
2017	Additional Clarity license		\$2,000	\$2,000	
2016	Phone system upgrade	\$23,629			
2016	Copy machine replacement	\$9,141			
2016	Folder/insert replacement	\$13,053			
2016	Server storage	\$1,000			
2016	Website upgrades	\$0			
2016	Furniture replacement	\$8,344			
2016	Keyless office entry system	\$4,000			
<b>Transportation Equipment</b>					
2018	Replace 2004 (1) ton truck with utility box				\$65,000
2017	Replace 2003 Chevy 3/4 ton pickup		\$30,000	\$30,000	
2017	Walk-behind concrete saw		\$25,000	\$25,000	
2016	Replace 2003 GMC 1 ton dump	\$35,435			
<b>Power Operated Equipment</b>					
2018	Sand-blasting equipment				\$2,600
2017	Line-stopping tapping machine		\$25,000	\$25,000	
2016	Concrete breaker	\$12,500			



**CAPITAL OUTLAY**

**2018**

<b>Engineering Department</b>		<b>Actual 2016</b>	<b>Budget 2017</b>	<b>Actual &amp; Estimate 2017</b>	<b>Budget 2018</b>
2018	Rotating laser level				\$1,600
2018	Attachments for skid-steer, hydraulic interface, snowblower, 80" tooth bucket				\$8,100
2018	ATS-66 aluminum trench box				\$5,560
2017	AutoCad license renewals		\$3,000	\$3,000	
2017	ArcGIS license for desktop		\$5,000	\$5,000	
2017	GIS design consultation		\$10,000	\$10,000	
2017	ESRI cloud storage space		\$2,000	\$2,000	
2017	Digitize records, scanning and printing		\$3,000	\$3,000	
2016	Legal review of engineering documents	\$0			
2016	AutoCad license renewals	\$2,021			
2016	ESRI cloud storage space	\$2,000			
2016	Mobile tablet	\$1,100			
2016	GIS design consultation	\$21,490			
2016	Digitize records, scanning and printing	\$0			
2016	ArcGIS license for desktop	\$4,550			
<b>Total other capital</b>		<b>\$1,029,801</b>	<b>\$1,504,400</b>	<b>\$832,595</b>	<b>\$872,000</b>
<b>Total all capital expenditures</b>		<b>\$3,041,493</b>	<b>\$3,481,220</b>	<b>\$2,809,615</b>	<b>\$5,327,000</b>

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Res. No. 147-17-18 by Alderperson Sorenson resolving that if the Common Council fails to make a decision regarding the armory by April 16, 2018, the City of Sheboygan shall have a city-wide, non-binding referendum to decide the future of the armory.

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**REPORT PREPARED BY:** Darrell Hofland, City Administrator

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**REPORT DATE:** April 6, 2018      **MEETING DATE:** April 9, 2018

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**FISCAL SUMMARY:**

Budget Line Item:      N/A  
Budget Summary:      N/A  
Budgeted Expenditure:      N/A  
Budgeted Revenue:      N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes:      N/A  
Municipal Code:      N/A

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**BACKGROUND / ANALYSIS:** Alderperson Sorenson authored Res. No. 147-17-18 to resolve that if the Common Council fails to make a decision regarding the armory by April 16, 2018, the City of Sheboygan shall have a city-wide, non-binding referendum to decide the future of the armory.

This resolution was discussed at the February 26, 2018 and March 12, 2018 Finance and Personnel Committee. Based upon discussion at the meeting, the Office of the City Attorney was requested to draft possible amendments for Committee consideration.

**STAFF COMMENTS:**

The City Attorney will present possible amendments for Committee consideration.

**ACTION REQUESTED:**

For informational purposes only.

**ATTACHMENTS:**

- I. Res. No. 147-17-18

III

5.2

Res. No. 147 - 17 - 18. By Alderperson Sorenson. March 5, 2018.

WHEREAS, The Armory has historical significance for the City of Sheboygan; and

WHEREAS, the common council has failed to move forward with any decision regarding the armory cite for several years ; and

WHEREAS, on February 12th 2018, the committee of the whole voted to move forward with exploring the options of a referendum ; and

NOW, THEREFORE, BE IT RESOLVED, If the common council fails to make a decision regarding the armory by April 16th 2018, the City of Sheboygan shall have a city wide, non-binding referendum to decide the future of the armory,

THEREFORE, BE IT FURTHER RESOLVED, the question should be placed on the August 14th 2018 state primary election ballot ; and

THEREFORE, BE IT FINALLY RESOLVED, that the referendum question shall read: "What should the city do regarding the former Armory site?"

1. The city should allow the armory property to be operated and owned for the purposes of reviving and renovating the armory ; and
2. The city should allow a private company to repurpose and redevelop the armory site to be used for housing or other related business.

*Finance Personnel*

*Bar Sorenson*

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Referendum Question

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**REPORT PREPARED BY:** Charles C. Adams, City Attorney

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**REPORT DATE:** 9 April 2018

**MEETING DATE:** 9 April 2018

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

Aldersperson Sorenson proposed a resolution placing a question regarding the future of the Armory on the August 14, 2018, state primary ballot

**STAFF COMMENTS:**

The City Attorney's office was tasked by this Committee with reviewing Aldersperson Sorenson's resolution and providing "legal polish" to the resolution. We were not asked to opine on whether or not a referendum is a good option. As such, I will simply indicate that it is my legal opinion is that the statutes clearly indicate that it is the role of the Common Council to make the decision(s) contemplated in the proposed referendum resolution. With that said, there is nothing illegal about placing an advisory referendum on the August ballot.

As was initially discussed by this Committee at its March meeting, staff is recommending that the "drop-dead" date for a council decision referenced in the first portion of the resolution be moved from April 16 to June 4, to give the maximum opportunity for a developer's agreement to be reached and approved by the Council.

There are several competing components to this resolution that make drafting a simple referendum question more complicated than may have been anticipated.

Binding vs. Advisory

As mentioned above, a referendum is not a prerequisite to the development of the Armory Site.

When the referendum concept was first broached, there was some question about whether a referendum should be binding or advisory. There are only a limited number of circumstances in which a referendum may be binding. As this question has been formulated, it does not fit

within any of the circumstances in which a referendum may be binding. As such, any referendum would be advisory in nature.

As a legal matter, there is nothing to prevent an advisory question from being placed on the ballot. Likewise, as a legal matter, there is nothing to prevent a future Common Council from ignoring the results of the referendum.

#### Yes/No Questions vs. "Multiple Choice" Questions

The best referendum questions are simple yes/no questions. Nearly every advisor on how to draft referendum questions will advise the use of a yes/no question. In fact, when our City Clerk contacted representatives from the state's elections board, nearly every question was met with a response that suggested that regardless of what was permitted, it would be best to ask a simple yes/no question.

An example of such a yes/no question is the one on last week's statewide ballot regarding elimination of the State Treasurer: "Shall sections 1 and 3 of article VI and sections 7 and 8 of article X of the constitution be amended, and section 17 of article XIV of the constitution be created, to eliminate the office of state treasurer from the constitution and to replace the state treasurer with the lieutenant governor as a member of the Board of Commissioners of Public Lands?"

Note, however, that even this yes/no question included two items—the elimination of the office, and the official's replacement by the lieutenant governor on a board. What if a voter wished to eliminate the state treasurer, but felt that the lieutenant governor was not the appropriate official to serve as a public land commissioner? There was no option for nuance.

In this instance, nuance may be even more important. What if a voter prefers to save the armory, but only if it does not cost the taxpayers money? Or, what if a voter believes that the Armory should be saved, but that the most important factor is continued City control of that key piece of property? Would that person vote yes or no on a question that simply asks "Shall the City take all necessary steps to prevent the demolition of the Armory"?

Given that nuance, it is my recommendation that, despite the general advice that yes/no questions are preferable, any referendum question be a multiple choice answer.

#### Number of Options

Aldersperson Sorenson's proposed language provides two options: the first being permitting the Armory to be operated and owned (presumably by a non-City entity) in order to effect its revival and renovation, and the second being permitting a private company to repurpose and redevelop the armory site (presumably by demolishing the Armory) for housing or other related business uses.

While the language isn't entirely clear, this set of questions does not in any way deal with the cost issues, nor does it deal with those voters who may consider continued City ownership or

control of the site as the most important factor. That can be dealt with by increasing the number of options.

There is a downfall to increasing the number of options. First, you may increase the number of "overvotes." Despite the fact that the ballot will clearly tell people to vote for only one choice, both studies and experience shows that additional options could cause at least some level of confusion. Second, people may believe that more than one option is acceptable, but will only have the option to vote for their favorite. While systems of voting such as ranked choice voting and approval voting are clearly superior to "first-past-the-poll" voting, Wisconsin does not currently provide for such options. (NB: if they did, we could significantly reduce our elections budget, but that is an issue for another day.)

Again, however, given the importance of multiple issues, it is my recommendation that, if a referendum moves ahead, it do so with four options. Voters would vote for their favorite option. As such, I recommend the following advisory question be asked, should such a referendum occur:

**QUESTION 1: Future of the Armory site.** Which one of the following options would you advise the Common Council to choose with regard to the site of the Sheboygan Municipal Auditorium and Armory?

- A. The City should maintain ownership of the Armory Building and take all necessary actions to activate and preserve the building, even though no property taxes will be collected from this building, and there may be an adverse impact on other aspects of the City budget (such as an increase in taxes or cuts in other services).
- B. The City should transfer the Armory Building to a non-City owner who will preserve, own, and operate the Armory Building, even if the terms of the transfer result in an adverse impact on other aspects of the City budget (such as an increase in taxes or cuts in other services).
- C. The City should transfer the Armory Building to a non-City owner who will preserve, own, and operate the Armory Building, but only if the terms of the transfer do not result in an adverse impact on other aspects of the City budget (such as an increase in taxes or cuts in other services).
- D. The City should transfer the Armory Building site to a non-City owner who will completely redevelop the site.

**ACTION REQUESTED:**

Should the committee determine to hold a referendum, I recommend it amend Ald. Sorenson's resolution so as to include the referendum question language referred to above,

and to move the “drop-dead date” for deciding when the referendum be held to June 4. I also recommend clarifying what decision or action would need to be taken in order to avoid a referendum.

Note that the committee has other options: to recommend filing this ordinance, to refer this ordinance to the new council’s F&P Committee, or to take no action (thus, causing this matter to die in committee when the committee adjourns *sine die*.)

**ATTACHMENTS:**

None.

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** R. O. No. 328-17-18 by City Clerk submitting a communication from Harbor Centre Business Improvement District requesting that the City of Sheboygan release all funds collected on their behalf and those funds allocated to them for the fiscal year 2018.

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**REPORT PREPARED BY:** Nancy Buss, Finance Director

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**REPORT DATE:** April 5, 2018

**MEETING DATE:** April 9, 2018

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**FISCAL SUMMARY:**

**STATUTORY REFERENCE:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

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Wisconsin Statutes: N/A  
Municipal Code: N/A

**BACKGROUND / ANALYSIS:**

WI State Statutes 66.1109 creates a financial tool that allows a municipality to levy a special assessment on property owners within a defined Business Improvement District upon petition of those property owners. The special assessment is utilized to maintain and enhance the business environment within the district. The Common Council annually approves the budget and assessment rate for parcels located within the Business Improvement District boundaries. The City Finance Department bills the property owners the special assessment which is included in the tax collections.

**STAFF COMMENTS:**

On an annual basis, the Harbor Centre Business Improvement District requests the release of funds collected by the City on their behalf to be used for their operating budget. No city funds are allocated in the 2018 budget for business improvement district activities.

**ACTION REQUESTED:**

Motion to recommend the Common Council approve R. O. No. 328-17-18 to release all funds to the Harbor Centre Business Improvement District collected on their behalf and those funds allocated to them.

**ATTACHMENTS:**

- I. R. O. No. 328-17-18

II

3.1

R. O. No. 328 - 17 - 18. By CITY CLERK. April 4, 2018.

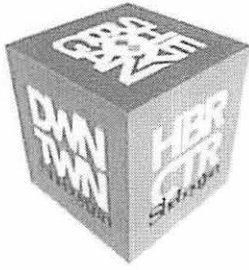
Submitting a communication from Harbor Centre Business Improvement District requesting that the City of Sheboygan release all funds collected on their behalf and those funds allocated to them for the fiscal 2018.

*Finance + Personnel*

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CITY CLERK

MAR 20 '18 AM 11:09



# SHEBOYGAN SQUARED™

March 14, 2018

Common Council  
City of Sheboygan  
828 Center Avenue  
Sheboygan, WI 53081

Dear Common Council,

The Harbor Centre Business Improvement District requests that the City of Sheboygan release all funds collected in our behalf and those funds allocated to us for fiscal 2018.

Thank you for your help in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'David O. Gass'.

David O. Gass  
President

A handwritten signature in black ink, appearing to read 'Amanda Salazar'.

Amanda Salazar  
Executive Director

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Res. No. 164-17-18 by Alderpersons Donohue and Bohren. A Resolution authorizing executing a lease for the former County Highway Department building on North 23<sup>rd</sup> Street for use by certain City Hall departments during construction at City Hall.

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**REPORT PREPARED BY:** Nancy Buss, Finance Director

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**REPORT DATE:** April 5, 2018

**MEETING DATE:** April 9, 2018

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**FISCAL SUMMARY:**

**STATUTORY REFERENCE:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

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Wisconsin Statutes: N/A  
Municipal Code: N/A

**BACKGROUND / ANALYSIS:**

The Common Council approved entering into contract with Quasius Construction Inc. for city hall renovations, as well as a contract for removal and disposal of all asbestos containing materials from City Hall and the City Hall garage in preparation for the City Hall renovation project. The Common Council approved the purchase of the former Social Security Administration property on North 9<sup>th</sup> Street, which the Department of City Development, Department of Finance (one Finance Clerk only) and the Office of the City Clerk will occupy. The space is inadequate for the remaining City Hall departments.

**STAFF COMMENTS:**

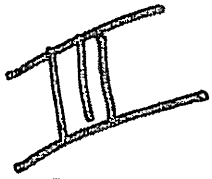
The future owner of the property located at 1211 N 23<sup>rd</sup> Street is Acquisitions Group, LLC. The following departments will occupy the building: Offices of the City Attorney, Mayor and City Administrator, Human Resources Department, IT Department and Finance Department. The proposed lease is for one year commencing June 1, 2018 and month-to-month thereafter, extending no later than May 31, 2020. The landlord base rent for the premise is \$5,333,33 per month. Additional rent of real estate taxes on a pro-rated basis for the premise will commence on January 1, 2019 as well as operating expenses for the premises in monthly installments.

**ACTION REQUESTED:**

Motion to recommend the Common Council approve Res. No. 164-17-18 authorizing executing a lease for the former County Highway Department building on North 23<sup>rd</sup> Street for use by certain City Hall departments during construction at City Hall.

**ATTACHMENTS:**

- I. Res. No. 164-17-18



A.1

Res. No. 164 - 17 - 18. By Alderpersons Donohue and Bohren. April 4, 2018.

A RESOLUTION authorizing executing a lease for the former County Highway Department building on North 23rd Street for use by certain City Hall departments during construction at City Hall.

RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to execute the attached Lease Agreement with 2017 Acquisition Group, LLC, in form substantially similar to the attached, for the use of the former County Highway Department building for a term to begin June 1, 2018.

Finance + Personnel

William Newton  
James A Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

## LEASE AGREEMENT

This Lease Agreement is entered into this \_\_\_\_ day of April, 2018, by and between 2017 ACQUISITION GROUP, LLC, a Wisconsin corporation ("Landlord"), and the CITY OF SHEBOYGAN, a Wisconsin municipal corporation ("Tenant").

**WHEREAS**, Tenant desires to lease the premises described in Section 1 (the "Premises") and Landlord is willing to lease the Premises on the terms and conditions hereinafter set forth; and

**WHEREAS**, Landlord and Tenant desire to enter into a Lease Agreement for the Premises for the operation of governmental offices.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the rents, agreements, and conditions herein contained, the parties agree as follows:

1. **PREMISES**. Landlord hereby leases to Tenant and Tenant leases from Landlord the real estate and building located at 1211 North 23<sup>rd</sup> Street, Sheboygan, Wisconsin 53081 (the "Premises").

2. **TERM**. Subject to the provisions herein, the term of this Lease shall be for one year commencing June 1, 2018, and month-to-month thereafter; provided, however, that in no event shall the term extend beyond May 31, 2020. If the Tenant desires to terminate the lease on May 31, 2019 or at the end of any given month prior to May 31, 2020, the Tenant shall provide notice in writing to the Landlord of said termination no fewer than 30 days in advance of the date of termination.

3. **USE AND COMPLIANCE WITH LAWS**. Tenant shall use the Premises exclusively for government use (the "Use"), and for no other purpose without the prior written consent of Landlord, subject to and in compliance with all other provisions of this Lease. Tenant shall at all times conduct its business in a first-class, professional, and businesslike manner. Tenant and Landlord shall comply with all federal, state, county, city or other governmental agency laws, regulations, rules, ordinances, or codes, relating to the Premises and Tenant's use thereof and to the Building and all tenants' uses thereof, including, without limitation, health, safety, and building codes, the Americans With Disabilities Act and the Wisconsin Barrier-Free Design Act, and any permit or license requirements.

4. **RENTAL**.

A. **Base Rent**. Tenant hereby covenants and agrees to pay Landlord Base Rent for the Premises in the sum of \$5,333.33 per month.

B. **Additional Rent**. Tenant shall pay to Landlord Additional Rent as follows: The Tenant shall reimburse Landlord for any/all real estate taxes on a pro-rated basis for the Premises, with the exception of the warehouse space. The property is currently tax exempt, and no proration of taxes shall be due for the period beginning June 1, 2018 and ending December 31, 2018. The Tenant shall pay operating expenses for the Premises, with the exception of the warehouse space, in monthly installments. Operating expenses are estimated at \$12,000.00 per year and shall be reconciled by March 31<sup>st</sup> of the following year.

5. **SECURITY DEPOSIT**. At the signing of this Lease, Tenant shall pay Landlord a security deposit in the amount of Zero Dollars (\$0.00).

6. **INSURANCE.** During the term of this Lease and any renewal thereof, Landlord shall provide and maintain a policy of property and general liability coverage insurance on the Building and pay all premiums thereon. All insurance requirements herein shall be obtained through responsible insurance companies licensed to do business in the State of Wisconsin. Landlord's insurance shall not cover Tenant's personal property. The Tenant shall be responsible for providing property, liability, and worker's compensation insurance with respect to the property and persons of the respective City departments that are utilizing the Premises.

7. **MUTUAL WAIVER OF SUBROGATION.** Landlord and Tenant hereby waive any rights each may have against the other arising out of any loss or damage connected in any way to or arising in any way out of any occurrence related to the Premises or in the Building to the extent that such damage or loss is insured under the insurance policies as specified in this Lease. Landlord and Tenant, on behalf of their respective insurance companies, waive any right of subrogation they may have against each other where such waiver of subrogation is not invalidated by applicable state law or the insurance policies.

8. **INDEMNIFICATION.** Tenant will protect, indemnify, save harmless, and defend Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including without limitation reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Landlord by reason of: (a) any failure on the part of Tenant to perform or comply with any of the terms of this Lease caused by the negligence of Tenant; or (b) any act or omission of Tenant or its employees, agents, licensees, or invitees. Landlord, at Landlord's option and at Tenant's expense, may contest, resist, and defend any such claim, action, or proceedings asserted or instituted against Landlord and may compromise or otherwise dispose of the same as it sees fit. If Landlord does not defend any such claim, action, or proceedings as herein provided, Tenant shall at Tenant's expense contest, resist, and defend any such claim, action, or proceeding asserted or instituted against Landlord. Tenant agrees to give Landlord immediate written notice of any liability, obligation, claim, damage, penalty, or cause of action.

Landlord will protect, indemnify, save harmless, and defend Tenant from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including without limitation reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Tenant by reason of: (a) any failure on the part of Landlord to perform or comply with any of the terms of this Lease; or (b) any act or omission of Landlord or its employees, agents, licensees, or invitees. Tenant, at Tenant's option and at Landlord's expense, may contest, resist, and defend any such claim, action, or proceedings asserted or instituted against Tenant and may compromise or otherwise dispose of the same as it sees fit. If Tenant does not defend any such claim, action, or proceedings as herein provided, Landlord shall, at Landlord's expense, contest, resist, and defend any such claim, action, or proceeding asserted or instituted against Tenant. Landlord agrees to give Tenant immediate written notice of any liability, obligation, claim, damage, penalty, or cause of action.

9. **DAMAGE AND DESTRUCTION.** In the event the Premises or the Building is damaged by any peril to an extent which is less than ten percent (10%) of the cost of replacement, the damage shall except as hereinafter provided promptly be repaired by Landlord, at Landlord's expense but in no event shall Landlord be required to repair or replace Tenant's stock-in-trade, trade fixtures, furniture, furnishings, equipment, or personal property. In the event the Premises or the Building is damaged to the extent of ten percent (10%) or more of the cost of replacement, Landlord may elect to terminate this Lease upon giving notice of such election in writing to Tenant within sixty (60) days after the event causing the damage.

**10. DEFAULT.** Should Tenant fail to make any payment of Rent when due or should it violate or fail to perform any of the other terms or conditions herein contained and such failure or default is not cured within thirty (30) days after Landlord gives notice of such default to Tenant or should Tenant abandon the Premises, then at Landlord's option: (i) this Lease shall be immediately terminated upon written notice to Tenant with the same effect as if the Lease provided for expiration on that day, (ii) Tenant's right to possession shall be immediately terminated upon written notice to Tenant and Tenant shall continue to be liable for all rent due for the remainder of the term, or (iii) Landlord shall have the right to exercise any other remedy provided by Wisconsin law.

In the event that either party shall default under any of the provisions of this Agreement and the non-defaulting party shall employ attorneys or incur other expenses for the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party contained in this Agreement, the defaulting party agrees that it shall on demand pay to the non-defaulting party the reasonable fees of such attorney and such other reasonable expenses so incurred by the non-defaulting party.

**11. MISCELLANEOUS.**

A. **Discharge of Liens.** Tenant will not permit any mechanics' or similar liens for labor or materials furnished to the Premises during the term of this Lease to be filed against the Premises or any part thereof; and if any such lien shall be filed, Tenant will either pay the same or procure the discharge thereof by giving security or in such other manner as may be required or permitted by law within thirty (30) days after such filing. Tenant shall indemnify Landlord against and save Landlord harmless from any and all loss, damage, claims, liabilities, judgments, costs, and expenses arising out of the filing of any such lien. Nothing contained herein shall constitute any consent or request by Landlord, express or implied, to or for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises, nor as giving Tenant any right, power, or authority to contract for or permit the performance of any labor or services or the furnishings of any materials or other property in such fashion as would permit the making of any claim against Landlord in respect thereof.

B. **As-is Condition.** The Premises will be turned over to the Tenant in "as-is" condition.

C. **Notices.** Any notice or demands to be given hereunder shall be in writing and shall be given by mailing the notice by certified or registered mail, return receipt requested, postage prepaid, and any such notice shall be deemed to have been given when deposited in the mail. If intended for Landlord, the notice shall be mailed to:

To Landlord:                    Jack Price  
    Principal  
    THE BOERKE COMPANY, INC.  
    731 N. Jackson Street, Suite 700  
    Milwaukee, WI 53202

or such other address as Landlord may designate by notice to Tenant; and if intended for Tenant, the notice shall be mailed to:

To Tenant:                      City Clerk  
    CITY OF SHEBOYGAN  
    828 Center Avenue  
    Sheboygan, WI 53081

or such other address as Tenant may designate by notice to Landlord.

D. Commission. The Landlord is responsible for payment of all real estate commissions due to Cushman & Wakefield | Boerke as a result of this transaction.

E. Quiet Enjoyment. So long as Tenant shall perform its obligations under this Lease, it shall be entitled to peaceful and quiet enjoyment of the Premises subject to the applicable terms of this Lease.

F. Signage. The Tenant has the right to install and place signage associated with its Use.

G. Surrender of Premises. Tenant agrees that upon the expiration or prior termination of the Lease, Tenant will vacate and surrender the Premises to Landlord in good order and repair, ordinary wear and tear excepted. Should Tenant remain in possession of the Premises after expiration or termination of this Lease without Landlord's approval, no tenancy or interest in the Premises shall result therefrom.

H. Successors and Assigns. This Lease and all of the covenants, provisions and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns, respectively of the parties hereto provided, however, that no assignment in violation of the provisions hereof shall vest in the assigns any right, title, or interest whatever.

I. Entire Agreement. This Lease sets forth all of the covenants, promises, agreements, conditions, and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between them other than as herein set forth. No alteration, amendment, change, or addition to this Lease shall be binding upon the parties unless in writing and signed by them.

J. Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Wisconsin.

K. Severability. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable under applicable law, the remainder of this Lease or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant, or condition of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

L. Subject to Common Council Approval. This agreement shall not be effective until a resolution approving this lease is approved by the City of Sheboygan Common Council.

**IN WITNESS WHEREOF**, Tenant and Landlord have hereunto set their hands and seals on the date first written above.

**2017 ACQUISITION GROUP, LLC**

**CITY OF SHEBOYGAN**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Michael J. Vandersteen, Mayor

Attest: \_\_\_\_\_  
Meredith DeBruin, City Clerk

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Res. No. 171-17-18 by Alderpersons Donohue and Bohren. A Resolution providing for the sale of General Obligation Promissory Notes and Bond Anticipation Notes for the 2018 Capital Projects.

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**REPORT PREPARED BY:** Nancy Buss, Finance Director

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**REPORT DATE:** April 5, 2018

**MEETING DATE:** April 9, 2018

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**FISCAL SUMMARY:**

**STATUTORY REFERENCE:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

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Wisconsin Statutes: N/A  
Municipal Code: N/A

**BACKGROUND / ANALYSIS:**

The 2018 budget includes capital improvement projects; City Hall renovations; projects in TID 14, TID 16, and TID 18. In addition, bids have been received and accepted for infrastructure improvements in the South Pointe Enterprise Campus. On April 4, 2018, the Common Council approved entering into contract with Quasius Construction, Inc for City Hall renovations and PTS Contractors, Inc for the South Pointe Enterprise Campus infrastructure improvements upon approval of funding for the projects.

**STAFF COMMENTS:**

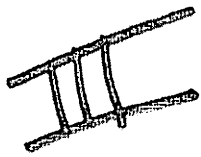
Staff members have been in discussions with Carol Wirth of WI Public Finance Professional LLC to coordinate the borrowing of funds for projects included in the 2018 budget and the bids received for the South Pointe Enterprise Campus. It is anticipated the sale of the notes will take place on June 18, 2018 with closing on the loans and delivery of funds on July 2, 2018.

**ACTION REQUESTED:**

Motion to recommend the Common Council approve Res. No. 171-17-18 providing for the sale of general obligation promissory notes and bonds and direct the Finance Director to proceed with the sale and acceptance.

**ATTACHMENTS:**

- I. Res. No. 171-17-18



Res. No. 171 - 17 - 18. By Alderpersons Donohue and Bohren. April 4, 2018.

A RESOLUTION PROVIDING FOR THE SALE OF GENERAL OBLIGATION PROMISSORY NOTES AND BOND ANTICIPATION NOTES FOR 2018 CAPITAL PROJECTS.

WHEREAS, the City of Sheboygan, Sheboygan County, Wisconsin (the "City") is presently in need of approximately \$25 million dollars for public purposes, including capital improvement projects in the amount of \$5,250,863; city hall renovations in the amount of \$5,000,000; TID 14 projects in the amount of \$765,000; TID 16 projects in the amount of \$171,400; TID 18 projects in the amount of \$1,050,000; and the bids for TID 18 infrastructure projects resulting in additional borrowing of \$12,700,000; and

WHEREAS, the Common Council of the City hereby finds and determines that the Projects are within the City's power to undertake and therefore serves a "public purpose" as that term is defined in Section 67.04(1)(b), Wisconsin Statutes; and

WHEREAS, the Common Council of the City hereby finds and determines that general obligation promissory notes in an amount of approximately \$11.2 million and bond anticipation notes in an amount of approximately \$13.8 million should be issued pursuant to Section 67.12 (12), Wisconsin Statutes, for the purpose of paying the cost of the projects.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City that:

Section 1. Issuance of the Notes. The City shall issue general obligation promissory notes designated "General Obligation Promissory Notes, Series 2018A" (the "Notes") in an amount of approximately \$11.2 million for the purpose of paying the cost of the 2018 Capital Improvement Projects; City Hall renovations; TID 14, and TID 16 projects;

Finance + Personnel

Section 2. Issuance of the Bonds. The City shall issue bond anticipation notes designated "Bond Anticipation Notes, Series 2018B" (the "Bonds") in an amount of approximately \$13.8 million for the purpose of paying the cost of the TID 18 projects.

Section 3. Sale of the Notes and Bonds. The Common Council hereby authorizes and directs that the Notes and Bonds be offered for public sale. At a subsequent meeting, the Common Council shall consider such bids for the Notes and Bonds as may have been received and take action hereon.

BE IT FURTHER RESOLVED, the Common Council approves the issuance of the Notes and Bonds and directs the Finance Director to proceed with the sale and acceptance.

*James A. Boh*  
\_\_\_\_\_  
*James A. Boh*  
\_\_\_\_\_

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

III

City Matters

73

Res. No. 173 - 17 - 18. By Alderpersons Donohue and Wolf. April 4, 2018.

A RESOLUTION to authorize the demolition of the Sheboygan Armory, a provision to return the site in its entirety to green space, and allowance for further development opportunities that may present in the future.

WHEREAS; The Sheboygan Armory in its present state is not suitable for commercial or other public use and;

WHEREAS; The City has made extended efforts to find a suitable, commercially viable project that is suitable for development of the property given its location in the center of the City's lakefront and;

WHEREAS; And as a result, two proposals have come before the Common Council, namely the Sheboygan Armory Project to refurbish and operate the Sheboygan Armory, and an apartment complex proposal by Scott Crawford LLC that requires the demolition of the Sheboygan Armory and;

WHEREAS; each proposal presents benefits to the community and;

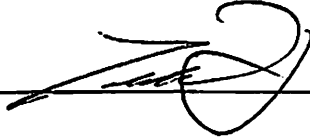
WHEREAS; each proposal also raises significant concerns regarding the economic viability of its specific proposal and;

WHEREAS; if the Armory building is razed, as previously authorized by actions of the Common Council, and restored to a neutral green space, the City will be in a position to consider further proposals for development of the site.

Finance +  
Personnel

RESOLVED: That the Sheboygan Armory be razed as previously authorized by the Common Council, and restored to green space.

AND BE IT FURTHER RESOLVED: That the City is authorized to consider other proposals for development of the site as may be presented in the future.



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I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Res. No. 174-17-18. A Resolution approving the terms and conditions of the Contract for Sale of Land for Private Development between the City and Scott Crawford, Inc. for a project on the Armory site which will be a mixed used building comprised of retail/commercial space and market rate and affordable rate residential apartments.

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**REPORT PREPARED BY:** Darrell Hofland, City Administrator, Chad Pelishek, Director of Planning and Development, Nancy Buss, Finance Director, David Biebel, Director of Public Works, and Charles Adams, City Attorney

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**REPORT DATE:** April 6, 2018      **MEETING DATE:** April 9, 2018

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**FISCAL SUMMARY:**

Budget Line Item:      N/A  
Budget Summary:      N/A  
Budgeted Expenditure:      N/A  
Budgeted Revenue:      N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes:      N/A  
Municipal Code:      N/A

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**BACKGROUND / ANALYSIS:** City staff met with Que El-Amin of Scott Crawford, Inc., Chris Laurent, Cinnaire (capital investor) and Mark Ernst, Engberg Anderson (architect) on March 7, 2018. The details of the project have been refined after additional information was gathered. The revised development project includes:

- 122 units, (42- 1 Bedroom, 46- 2 Bedrooms, 22- 3 Bedrooms, and 12- 4 Bedrooms)
- 61 units are market rate apartment units and 61 units are affordable apartment units
- Market rate apartment units with rents averaging about \$1,500/month for 1,050 square feet up to \$1,950/month for 1,500 square feet for stand-alone townhomes.
- Affordable apartment units with rents averaging \$750/month for 650 square feet to \$875/month for 950 square foot units.
- Total construction cost: \$23,740,201
- Land purchase cost: \$100,000
- Owner's equity: \$5,633,397
- First Mortgage: \$11,000,000
- Affordable Housing Tax Credit: \$5,003,227
- TIF request: \$1,751,126 over 10 years (7% of the project costs)
- Architectural design and site plan layout has stayed the same from the original proposal.

**STAFF COMMENTS:**

The city staff negotiation team has prepared the following pros/cons related to the development agreement:

Pros

- Provides the opportunity for mixed incomes to benefit from lakefront living.
- Provides additional housing options to encourage more working-age employees to relocate to Sheboygan.
- Based on the city's tax rate, project generates \$372,245 in annual real estate taxes.
- Project would allow the TID to fund the reconstruction of Pennsylvania Avenue (estimated at \$1,500,000) from N. 4<sup>th</sup> Street to the lakefront as well as create a terminus between the US Coast Guard Station and the Yacht Club which the public could enjoy.
- Project is slated to begin construction in October 2018.
- Sale price of \$100,000.

Cons

- Requires a tax incremental financing district and incentive provided to be completed.
- Requires the city to demolish the former Armory at a cost of \$355,000.

**ACTION REQUESTED:**

For informational purposes only.

**ATTACHMENTS:**

- I. Res. No. 174-17-18

III

Other Matters

2

7.4

Res. No. 174 - 17 - 18. By Alderpersons Donohue and Bohren. April 4, 2018.

A RESOLUTION approving the terms and conditions of the Contract for Sale of Land for Private Development between the City of Sheboygan and Scott Crawford, Inc. for a project on the Armory site which will be a mixed use building comprised of retail/commercial space and market rate and affordable residential apartments.

RESOLVED: That the City of Sheboygan hereby approves the terms and conditions of the Contract for Sale of Land for Private Development between the City of Sheboygan and Scott Crawford, Inc., in form substantially similar to the document attached hereto.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan.

Finance  
+  
Personnel

Thelma Nowlan  
James A Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

**CONTRACT FOR SALE OF LAND FOR PRIVATE DEVELOPMENT  
BY AND BETWEEN**

**CITY OF SHEBOYGAN  
and  
SCOTT CRAWFORD, INC**

**THIS DEVELOPMENT AGREEMENT ("Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Sheboygan, Wisconsin, a municipal corporation of the State of Wisconsin (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called "City"), having its principal offices at 828 Center Avenue in the City of Sheboygan, Wisconsin, and Scott Crawford, Inc., a Wisconsin incorporated business (hereinafter called "Developer"), having an office for the transaction of business at 4201 N. 27<sup>th</sup> St, Suite 7227, Milwaukee, WI 53216**

**RECITALS**

The City is in the process of establishing a Tax Incremental District ("TID #19"), in accordance with §66.1105, Wis. Stats. ("the Tax Increment Law"), in order to provide a viable method of financing eligible project costs within the district for appropriate private development, which will contribute to the overall development of the City.

The City is authorized by the Tax Increment Law to pay Project Costs, as defined in §66.105(2)(f), Wis. Stats., from the special fund of TID #19 or from the proceeds of municipal obligations issued pursuant to statute.

The City is authorized by the Tax Increment Law to enter into any contract or agreement necessary or convenient to implement the provisions and effectuate the purposes of a Project Plan, as defined in §66.1105(2)(g), Wis. Stats.

The Project Plan for TID #19 includes development incentive payments as eligible project costs for purposes of carrying out the Project Plan.

The City proposes to enter into this Development Agreement with the Developer to achieve the objectives of TID #19 and to facilitate the implementation of TID #19's Project Plan. The City is prepared to provide financial assistance to the Developer through development incentives in order to bring about the continued development in accordance with this Agreement.

The City has offered to sell and the Developer is willing to purchase certain real property ("the Property") described in Exhibit "A," which exhibit is attached and made a part of this agreement) and to develop the Property by constructing a building ("the Project") estimated to cost twenty-three million, seven hundred forty thousand, two hundred one dollars (\$23,740,201.00). The project will be a mixed use building comprised of retail/commercial space and market rate and affordable residential apartments.

The City believes that the development of the Property through construction of the Project pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and of the health, safety and welfare of its residents.

## **AGREEMENT**

**NOW, THEREFORE,** it is in the mutual interest of all parties to proceed with development of the Project, and in return for the benefits to be derived therefrom, the City is prepared to provide financial assistance to the Developer through development incentives in order to bring about the development and thereby promote the sound redevelopment of the City's lakefront.

### **ARTICLE I. OVERVIEW OF THE PROJECT**

**Section 101.** The project consists of a mixed use building comprised of retail/commercial space and market rate and affordable residential apartments. The project will also include up to 12 townhomes and up to 5,000 square feet of first floor retail/office space.

### **ARTICLE II. DEFINITIONS**

**Section 201.** All capitalized terms used herein and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

"Agreement" or "Development Agreement" means this Agreement, as the same may be from time to time modified, amended, or supplemented.

"Developer" means Scott Crawford, Inc. and its permitted successors and assigns.

"Plans and Specifications" means the plans and specifications for the Project prepared from time to time by the Developer which are approved by the City in accordance with all procedures and requirements of the City for such approvals.

"Project" means the development proposed by Developer.

"Tax Increment Revenue" means the Tax Increment (as defined in §66.1105(2)(i), Wis. Stats.) generated by the property upon which the Project is situated.

"TID Project Plan" means the Project Plan for the TID #19 of the City of Sheboygan, Wisconsin.

**ARTICLE III.  
SALE; PURCHASE PRICE; CONSTRUCTION SCHEDULE**

**Section 301.** Subject to all the terms, covenants and conditions of this Agreement, the City will sell the Property to the Developer for, and the Developer will purchase the Property from the City and pay therefor, the total amount of One Hundred Thousand and 00/100 (\$100,000) dollars, hereinafter called "Purchase Price," to be paid in cash, by certified check, or via wire transfer, simultaneously with the delivery of the Deed (as defined below) conveying the Property to the Developer (the "Sale").

**Section 302.** It is anticipated that the construction schedule for the Project will be carried out as follows:

City Plan Approvals	August 31, 2018
Creation of TID	September 30, 2018
Issuance of Building Permits	October 31, 2018
Start Construction	October 31, 2018
Substantial Completion	October 31, 2019

It is anticipated that the Property will be sold and conveyed as of October 1, 2018.

**ARTICLE IV.  
CONVEYANCE OF PROPERTY**

**Section 401. Form of Deed.** The City shall convey to the Developer title to the Property described in Exhibit "A" by warranty deed (the "Deed"). Such conveyance and title shall be in addition to all conditions, covenants and restrictions set forth or referred to in this Agreement, subject to:

- (a) Rights or claims of parties in possession not shown by the public records;
- (b) Easements or claims of easements, not shown by the public records;
- (c) Encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey and inspection of the premises;
- (d) Any lien or right to a lien, for services, labor, or material hereto or hereafter furnished, imposed by law and not shown by the public records.
- (e) And such other liens, encumbrances, covenants or restrictions disclosed in the title insurance commitment to be provided by the City as set forth in Section 404 below; provided, however, that Developer has consented to and approved of such liens, encumbrances, covenants or restrictions as permitted encumbrances. The items referenced in Subsections (a) through (d) above and this Subsection (e) are referred to herein collectively as "Permitted Liens".

Furthermore, both the City and Developer recognize and acknowledge that there may be easements, encumbrances or reservations disclosed in the title insurance commitment with respect to the Property which will be continued, or newly created or reserved in the conveyance of the Property from the City to the

Developer. The City shall use its best efforts to minimize the impact upon Developer's Project of any such easement(s) or encumbrance(s), and Developer's obligation to purchase the Property shall be conditioned upon Developer satisfying itself of the feasibility and suitability of the Property, subject to such easements or encumbrances, prior to the date of closing of the Sale.

**Section 402. Time and Place for Delivery of Deed.** The closing of the Sale and conveyance of the Deed referred to herein shall occur on October 1, 2018 (the "Closing Date"), or such other date as mutually agreed to by the parties, at the principal office of the City, and the Developer shall accept such conveyance and pay the Purchase Price to the City at such time and place.

**Section 403. Recording of Deed.** The Developer shall promptly file the Deed for recording among the land records of Sheboygan County. The Developer shall pay all costs for so recording the Deed.

**Section 404. Conditions Precedent to Developer's Obligations.** The Developer's obligation to conclude the Sale contemplated herein shall be subject to the Developer's satisfaction, or waiver thereof, of each of the following conditions on or prior to ten (10) days before the Closing Date:

- (a) **Title.** The City shall deliver to Developer, within thirty (30) days after execution of this Agreement, a commitment in favor of Developer for an ALTA Form (2006 or its current equivalent form) owner's policy of title insurance (the "Title Commitment") with respect to the Property, from a title insurance company agreed upon by the parties ("Title Company") (the title insurance premium for such Title Commitment shall be paid by the City).

Within twenty (20) days after Developer's receipt of the Title Commitment, Developer shall notify the City in writing of any unacceptable exceptions which are disclosed in the Title Commitment; in the absence of such notification, such exceptions shall be deemed accepted by Developer. The Title Commitment shall contain such endorsements required by Developer, which endorsements shall be obtained at the Developer's expense. In the event Developer disapproves of any matter pertaining to title, Developer may request and the City shall, upon receipt of written request from Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from Developer. During such period that the City is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to title shall be extended for a commensurate period. Any mortgages, liens or judgments shown on the Title Commitment will be paid or satisfied by the City or insured over by the Title Company on or prior to the Closing Date.

In the event that the City elects to cure, but is unable to satisfy any such defect or disapproved matter within such fifteen (15) day period, or in the event that the City elects not to cure any defect or disapproved matter, Developer may, within ten (10) days after receipt of written notice from the City that the City has been unable to cure or is unwilling to cure:

- (1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or
  - (2) take title to the Property "as-is."
- (b) **Survey.** Developer may arrange for a survey of the property subject to this agreement (the "Survey") to be made by a surveyor licensed in the State of Wisconsin.

Within thirty-five (35) days after execution of this Agreement and Developer's review of the Survey, Developer shall notify the City in writing of any unacceptable exceptions which are disclosed in the Survey; in the absence of such notification, the Survey shall be deemed accepted by Developer. In the event Developer disapproves of any matter pertaining to the Survey, Developer may request and the City shall, upon receipt of written request from Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from Developer. During such period that the City is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to the Survey shall be extended for a commensurate period.

If such Survey continues to show the existence of any condition that would burden, interfere with or impair Developer's contemplated development of the Property, as determined by Developer, within Developer's sole discretion, Developer may

- (1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or
- (2) accept the Property "as-is" despite the existence of such condition on the Survey.

**Section 405. Obligations of Developer.** The Developer understands and agrees that the following are obligations and duties of the Developer prior to transfer of the property, and are not in any way conditions precedent to Developer's duties under this Agreement. Failure to fulfill said obligations are grounds for termination of this Agreement by the City:

- (a) **Financing.** Developer shall obtain a written loan commitment from a lending institution of Developer's choice in an amount sufficient for the construction of the Project and any and all improvements related thereto. Additionally, as promptly as possible, but not later than sixty (60) days after approval by the City of the Construction Plans, the Developer shall submit to the City evidence reasonably satisfactory to the City that the Developer has the equity capital and commitments for mortgage financing necessary for the timely completion of construction of the Project and the improvements.
- (b) **Environmental.** Developer shall accept the property subject to this agreement "as-is," regardless of the potential presence of hazardous materials, conditions, or substance, or the existence of such recognized environmental condition or other environmental condition. Upon request by the Developer, the City agrees to deliver to Developer, within fifteen (15) days after receipt of a written request, all

environmental information in the possession of the City and/or the City's agents, attorneys, consultants or independent contractors, including, but not limited to, any and all environmental Phase I and Phase II environmental reports, soil and groundwater test results, correspondence with and orders or directives from governmental agencies (e.g. the Environmental Protection Agency, the Wisconsin Dept. of Natural Resources and other such agencies), case closure letters, remedial action plans and similar information.

- (c) **Governmental Permits, Licenses and Approvals.** Developer is responsible for obtaining, prior to Closing Date, all necessary permits, licenses and approvals from the City, and/or any other applicable governmental entity or agency, for the Project and related Improvements, as determined by Developer, within Developer's sole discretion. The City agrees to use its best efforts and cooperate with Developer in the application for any such permits, licenses and approvals.
- (d) **Utility Connections.** Developer shall be solely responsible for any and all costs and expenses related to bringing sewer and water laterals to the Property boundary line, in the event that sewer and water laterals are not stubbed off at the mains and located at the Property boundary line.
- (e) **Soil and Topographic Conditions.** Developer shall obtain, at Developer's sole expense, on or prior to the Closing Date, the following:
  - (1) Written confirmation from a recognized and qualified soil and engineering firm (selected by Developer) that the soil and subsoil conditions of the Property are sufficient and suitable, as determined by Developer, in its sole discretion, for the Project and the Improvements related thereto, and
  - (2) Soil borings and soil reports which verify a minimum poundage per square foot (psf) of soil bearing capacity, as determined by Developer

Developer may also, at Developer's sole expense, obtain reports, documentation, or otherwise relating to the soil and topographic conditions of the Property.

If the above written confirmations or reports show the existence of any condition that would burden, interfere with or impair Developer's contemplated development of the Property, as determined by Developer in its sole discretion, no later than thirty (30) days before the Closing Date, may

- (1) Terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or
- (2) Accept the Property "as-is" despite the existence of such condition(s).

**ARTICLE V.  
TIME FOR COMMENCEMENT AND COMPLETION OF  
IMPROVEMENTS**

**Section 501.** The construction of the Project shall be commenced pursuant to the schedule in Article III, but in any event within three (3) months after the Closing Date of the Sale and, except as otherwise provided in this Agreement, shall be substantially completed within twelve (12) months after commencement of construction.

**ARTICLE VI.  
SPECIAL PROVISIONS**

**Section 601. Minimum Investment.** Developer shall utilize the Property by constructing the Project and all related improvements, at a minimum investment of Twenty Three Million, Seven Hundred Forty Thousand, Two Hundred One and 00/100 Dollars (\$23,740,201.00) ("Minimum Investment"). Minimum Investment includes all hard costs for construction of all buildings and other improvements on the Property and leasehold improvements, excluding all soft costs, made or incurred by Developer, its successors or assigns, in connection with the Project, on or before the completion date of construction of the Project on the Property as required by this Agreement, or such later date as the parties may hereafter agree. Hard costs includes costs incurred for the following: demolition; sitework; remediation; utilities serving the new project (including relocation of existing utilities); all labor and materials required for new construction including contractor general conditions and customary allowance for contingency; offsite improvements required to service the new project; stormwater facilities (both offsite and onsite); geotechnical and other testing; construction completion and payment and performance bonds. Such costs include any and all costs (remediation costs or otherwise) Developer may incur with respect to any environmental contamination, hazardous materials, conditions or substances, recognized environmental conditions or any other environmental condition, which may exist on, in or with respect to the Property. Developer shall provide evidence reasonably satisfactory to the City at least 90 days prior to the date of the first incentive payment in 2021 that Developer has expended not less than \$23,740,201 in hard costs.

**Section 602. Development Incentives.** Provided that the conditions set forth in Section 405 above, in this Article, and in Article VII below are met, the city agrees to provide to the Developer each year for a maximum period of ten (10) years, an annual incentive payment based on financial performance of the Development Project, in a total principal sum over the ten years not to exceed \$1,751,126 (the "Incentive Principal Amount") as an inducement to Developer for the development of the Project. The annual incentive payments shall be calculated and provided to the Developer as follows: Each year for a maximum period of ten (10) years, commencing in 2021 and ending in 2030, the City will pay the Developer a development performance incentive payment in an amount equal to one half of the Tax Increment Revenue received by the City with respect to the real property upon which the Project is situated in that year, but in no event shall the total aggregate sum of the annual development performance incentive payments to the Developer exceed \$1,751,126. The terminology "real Property upon which the Project is situated" is used in this Section to make it clear that personal property shall not be included in determining Tax Increment Revenue. The City shall make the payment due to the developer, if any, under this Section no later than September 30 of each year, commencing in 2021. Payment by the City of the annual incentive will only be made if the Developer has paid current year property taxes (real and personal) to the City in full.

**ARTICLE VII.  
TID CONTINGENCY**

**Section 701.** Developer's and the City's obligations hereunder are contingent upon the City creating and obtaining Joint Review Board approval of a Tax Incremental District encompassing, at a minimum, the Property, as contemplated herein, on or before September 30, 2018, and having the base year certified by the Wisconsin Department of Revenue as 2018.

If the contingency set forth in this Article is not timely satisfied, amended or waived, then this Agreement shall terminate and the parties shall be relieved of all liability to one another under this Agreement.

**ARTICLE VIII.  
PREPARATION OF PROPERTY FOR DEVELOPMENT**

**Section 801. City Responsibilities.** The City shall, without expense to the Developer, cooperate with the Developer, other authorities, and other agencies, their departments, officers and employees, and provide such assistance as may be reasonably requested by the Developer in connection with the fulfillment of the Developer's obligations under this Agreement.

**Section 802. Developer's Responsibilities.** The Developer shall, without expense to the City:

- (a) **Assist City.** Cooperate with the City, other authorities, and other agencies, their departments, officers and employees, and provide such assistance as may be reasonably requested by the City in connection with the fulfillment of the City's obligations under this Agreement.
- (b) **Conduct Studies.** Prior to the Closing Date of the Sale of the Property from the City, conduct sufficient market, architectural and engineering studies, soils analyses, environmental assessments and any other investigations deemed necessary by the Developer to satisfy Developer of the feasibility and suitability of the Property to the Project.

**ARTICLE IX.  
RIGHTS OF ACCESS TO PROPERTY**

**Section 901. Right of Entry for Utility Service.** The City reserves for itself, and any public utility company, as may be appropriate, the unqualified right to enter upon the Property at all reasonable times for the purpose of reconstructing, maintaining, repairing, or servicing any public utilities located within the Property boundary lines.

**Section 902. Developer Not to Construct Over Utility Easements.** The Developer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in such easement or has been approved by the City, and unless Developer indemnifies and agrees to hold harmless the City and any public utility company as may be appropriate from all loss or damage to property or injury to persons arising from such construction.

**Section 903. Access to Property.** Prior to the Sale of the Property by the City to the Developer, the City shall permit representatives of the Developer to have access to the Property, at all reasonable times for the purpose of obtaining data and making various tests concerning the Property necessary to carry out this Agreement. After the Sale of the Property by the City to the Developer, upon advance written request, the Developer shall permit the representatives of the City access to the Property at all reasonable times which the City deems necessary for the purposes of this Agreement including, but not limited to, inspection of all work being performed in connection with the construction of the Improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this section.

**ARTICLE X.  
CONSTRUCTIONS PLANS; CONSTRUCTION OF IMPROVEMENTS;  
CERTIFICATE OF COMPLETION**

**Section 1001. Plans for Construction of Improvements.** Plans and specifications with respect to the development of the Property and the construction of Improvements thereon shall be in material conformity with this Agreement, and all applicable federal, state and local laws and regulations. As promptly as possible after the date of execution of this Agreement, but no sooner than sixty (60) days of execution of this Agreement, the Developer shall submit to the City, for approval by the City, plans, drawings, specifications and related documents, and the proposed construction schedule (which plans, drawings, specifications, related documents and progress schedule, together with any and all changes therein that may thereafter be made and submitted to the City as herein provided are, except as otherwise clearly indicated by the context, hereinafter collectively called "Construction Plans"), with respect to the Improvements to be constructed by the Developer on the Property, in sufficient completeness and detail to show that such Improvements and construction thereof will be materially in accordance with the provisions of this Agreement.

The City shall, if the Construction Plans originally submitted materially conform to the provisions of this Agreement, approve in writing such Construction Plans and no further filing by the Developer or approval by the City thereof shall be required, except with respect to any material change. Such Construction Plans shall, in any event, be deemed approved unless rejection thereof in writing by the City, in whole or in part, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of their receipt by the City.

If the City, in its reasonable discretion, so rejects the Construction Plans in whole or in part as not being in material conformity with this Agreement, the Developer shall submit new or corrected Construction Plans which are in material conformity with this Agreement within thirty (30) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans hereinabove provided with respect to the original Construction Plans shall continue to apply until the Construction Plans have been approved by the City, which approval shall not be unreasonably withheld or delayed, provided, that in any event the Developer shall submit Construction Plans which are in material conformity with the requirements of this Agreement, as determined by the City, no later than ninety (90) days after the date the Developer receives written notice from the City of the City's first rejection of the original Construction Plans submitted to it by the Developer.

All work with respect to the Improvements to be constructed or provided by the Developer on the Property shall be in material conformity with the Construction Plans as approved by the City. The term "Improvements," as used in this Agreement, shall be deemed to have reference to the Improvements as provided and specified in the Construction Plans as approved.

Developer, as an inducement to the City to proceed with establishment of a Tax Incremental District and to provide development incentive payments as provided herein to Developer for the development of the Project, hereby represents that the contemplated Project will be fully subject to real estate and personal property taxes under state law. Developer further represents and agrees for itself, its successors and assigns, that it shall take no action(s) or advocate any position or change in state law which would jeopardize or call into question the taxability of the Project.

Notwithstanding the above, in the event that the Project, or the Property, or any part thereof, is determined at any time to be exempt from real and/or personal property taxation under state law, Developer, for itself, its successors and assigns, agrees to make payments in lieu of taxes to the City, County, school district, and any other property taxing jurisdictions in the amounts and within the time periods that would otherwise be required as if the property were fully taxable, in recognition of the valuable governmental services and benefits available and/or provided to the Project and the Property.

**Section 1002. Changes in Construction Plans.** If the Developer desires to make any material change in the Construction Plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the Construction Plans, as modified by the proposed change, materially conform to the requirements of Section 701 hereof with respect to such previously approved Construction Plans, the City shall approve the proposed change and notify the Developer in writing of its approval, which approval shall not be unreasonably withheld or delayed. Such change in the Construction Plans shall, in any event, be deemed approved by the City unless rejection thereof, in whole or in part, by written notice thereof by the City to the Developer, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of the City's receipt of notice of such change.

**Section 1003. Approvals of Construction Plans and Evidence of Financing as Conditions Precedent to Conveyance.** The submission of Construction Plans and their approval by the City as provided in Section 701 hereof, and the submission of satisfactory evidence of equity capital and commitments for mortgage financing as provided in Section 204(b)(2) hereof, are conditions precedent to the obligations of the Developer to purchase the Property and the City to convey the Property to the Developer pursuant to the Sale.

**Section 1004. Progress Reports.** Subsequent to the Sale of the Property, or any part thereof, to the Developer, and until construction of the Improvements has been completed, the Developer shall make monthly reports, in such detail as may reasonably be requested by the City, as to the actual progress of the Developer with respect to such construction.

**ARTICLE XI.  
RESTRICTIONS UPON USE OF PROPERTY**

**Section 1101. Restrictions on Use.** The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain covenants on the part of the Developer for itself, and such successors and assigns, that the Developer, and such successors and assigns, shall:

- (a) devote the Property to, and only to and in accordance with, the uses specified in this Agreement for a period of not less than twenty-seven (27) years from date of completion of the Project; and
- (b) not discriminate upon the basis of race, color, creed, sex, religion, ancestry, disability, sexual orientation, marital status, family status, lawful source of income, age or national origin in the sale, lease or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

**Section 1102. Covenants; Binding Upon Successors in Interest; Period of Duration.** It is intended and agreed, and the Deed shall so expressly provide, that the agreements and covenants provided in Section 801 hereof shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City and any successor in interest to the Property, or any part thereof, against the Developer, its successors and assigns and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

**Section 1103. City Rights to Enforce.** In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its governmental successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 801 hereof, for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided in Section 801. Such agreements and covenants shall (and the Deed shall so state) run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any material breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

**ARTICLE XII.  
PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

**Section 1201. Representations as to Development.** The Developer represents and agrees that its purchase of the property upon which the Project is situated, and its other undertakings pursuant to this Agreement are, and will be used, for the purpose of development of the Property and not for speculation in land holding. The Developer further recognizes that, in view of:

- (a) the importance of the development of the Property to the general welfare of the community; and
- (b) the below market purchase price that has been made available by the City for the purpose of making such development possible;

the qualifications and identity of the Developer are of particular concern to the community and the City. The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and, in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby by it to be performed without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

**Section 1202. Prohibition Against Transfer of Ownership Interests.** For the foregoing reasons, the Developer represents and agrees for itself, its members, and any successor in interest of itself and its members, respectively, that prior to completion of the Improvements as certified by the City in the form of a final Occupancy Certificate for the Project ("Occupancy Certificate"), and without the prior written approval of the City:

- (a) there shall be no transfer of ownership interests in the Developer by any party owning ten percent (10%) or more of the ownership interests in the Developer (which term shall be deemed for the purposes of this and related provisions to include successors in interest);
- (b) nor shall any such owner suffer any such transfer to be made; and
- (c) nor shall there be or be suffered to be by the Developer, or by any owner of ten percent (10%) or more of the ownership interests therein, any other similarly significant change in the ownership of such company, or with respect to the identity of the parties in control of the Developer or the degree thereof, by any other method or means.

With respect to this provision, the Developer and the parties signing this Agreement on behalf of the Developer represent that they have the authority of all of its existing members to agree to this provision on their behalf and to bind them with respect thereto.

**Section 1203. Prohibition Against Transfer of Property and Assignment of Agreement.**  
For the foregoing reasons the Developer represents and agrees for itself and its successors and assigns, that:

- (a) Except only by way of security for, and only for,
  - (1) The purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to constructing the Project under this Agreement; and
  - (1) Any other purpose or as otherwise authorized by this Agreement, the Developer, its successors or assigns, (except as so authorized) has not made or created, and that it will not, prior to the proper completion of the Project as certified by the City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed.
- (b) The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:
  - (1) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part).
  - (2) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Property or any

part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the City would have had, had there been no such transfer or change.

- (3) There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer; and if approved by the City, which approval shall not be unreasonably withheld or delayed, its approval shall be indicated to the Developer in writing.

In the event, the transferee satisfies the conditions set forth in this section and City approves the sale, assignment, conveyance, lease or transfer to the transferee, then any and all obligations under this Agreement shall be transferred to the transferee and the Developer shall be released from any and all obligations under this Agreement. Notwithstanding anything contained in this section or Agreement to the contrary, Developer, prior to completion of the Project, shall have the right to enter into agreements with third parties for the pre-leasing or leasing of any apartments which are part of the Project and such third parties (and the agreements entered into by Developer with them) shall not be subject to any approval by the City.

For purposes of clarity, notwithstanding anything contained in this Agreement to the contrary, upon the issuance of a certificate of completion for the Project, the Developer may transfer, assign, sell, or convey the Property or any portion thereof to any person without the consent of the City. It being understood that all restrictions on transfer in this Article shall terminate upon completion of the Project

**Section 1204, Information as to Members.** In order to assist in the effectuation of the purposes of this Article, the Developer agrees that during the period between execution of this Agreement and completion of the Project as certified by the City:

- (a) the Developer will promptly notify the City of any and all changes of greater than ten percent (10%) in the ownership of the company, legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership of such company, or with respect to the identity of the parties in control of the Developer or the degree thereof, of which it or any of its members have been notified or otherwise have knowledge or information; and
- (b) the Developer, its successors or assigns, shall, at such time or times as the City may request, furnish the City with a complete statement, subscribed and sworn to by the authorized or managing member(s) of the Developer, setting forth all of the members of the Developer and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the company their names and the extent of such interest, all as determined or indicated by the records of the Developer, by specific inquiry made by any such member, of all parties who on the basis of such records own ten percent (10%) or more interest in the Developer, and by such other knowledge or information as such authorized representative shall have. Such lists, data and information shall in any event be furnished to the City immediately prior to the delivery of the Deed to the Developer and as a condition precedent thereto and annually thereafter on the anniversary of the Closing Date.

**ARTICLE XIII.  
REMEDIES**

**Section 1301. In General.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach and, in any event, within seventy-five (75) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time after the initial seventy-five (75) days, the aggrieved party may take such action as set forth under this Agreement or allowed by law as may be necessary or desirable in its opinion to cure and remedy such default or breach including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

**Section 1302. Termination by Developer Prior to Conveyance.** In the event that:

- (a) the City does not tender conveyance of the Property, or possession thereof, by Deed as part of the Sale in the manner and condition provided in this Agreement; or,
- (b) the Developer shall, after preparation of Construction Plans satisfactory to the City, furnish evidence reasonably satisfactory to the City that Developer has been unable, after and despite diligent effort for a period of sixty (60) days after approval by the City of the Construction Plans, to obtain mortgage financing for the construction of the Project on a basis and on terms that are satisfactory to Developer; or,
- (c) the Developer is unable to satisfy (and otherwise has not waived), any of the conditions precedent contained in this Agreement;

then this Agreement shall, at the option of the Developer, be terminated by written notice thereof to the City and neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement.

**Section 1303. Termination by City Prior to Conveyance.** In the event that:

- (a) prior to conveyance of the Property by Deed as part of the Sale to the Developer and except as otherwise permitted under this Agreement,
  - (1) the Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein or in the Property; or
  - (2) there is any change of more than ten percent (10%) in the ownership of the Developer or with respect to the identity of the parties in control of the Developer or the degree thereof; or
- (b) the Developer does not submit Construction Plans within the permitted time period, as required by this Agreement, or (except as excused under subdivision (b) of Section 1102 hereof) evidence that it has the necessary equity capital and mortgage financing, in reasonably satisfactory forms and in the manner and by the dates respectively provided in this Agreement therefor; or

- (c) the Developer does not pay the Purchase Price and take title to the Property upon tender of Deed by the City pursuant to the Sale, and if any default or failure referred to in subdivisions (a) and (b) of this Section 1103 shall not be cured within thirty (30) days after the date of written demand by the City;

then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the City or the Property shall, at the option of the City, be terminated by the City by written notice thereof to the Developer, in which event, neither the Developer (or assignee or transferee) nor the City shall have any further rights against or liability to the other under this Agreement.

**Section 1304. Other Rights and Remedies of City; No Waiver by Delay.** The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title and interest of the Developer and its successors in interest and assigns in the Property, and the reversioning of title thereto in the City. Provided, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this section because of concepts of waiver, laches or otherwise) to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Developer under this section be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Developer under this section or with respect to the particular default except to the extent specifically waived in writing.

**Section 1305. Rights and Remedies Cumulative.** The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

**Section 1306. Indemnification.**

- (a) Developer releases from and covenants and agrees that the City, the governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "City Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the City Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, provided that the foregoing indemnification shall not be effective for any actions of the City

Indemnified Parties that are not contemplated by this Agreement or which result from negligent acts or willful misconduct of the City Indemnified Parties in fulfilling the obligations of the City or their agents as set forth under this Agreement.

- (b) Except for any negligent acts or any willful misrepresentation of the City Indemnified Parties, Developer agrees to protect and defend the City Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Developer (or other persons acting on its behalf or under its direction or control) with respect to the Project work to be performed by Developer under this Agreement.
- (c) The City agrees to protect and defend Developer, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Developer Indemnified Parties"), and further agrees to hold Developer Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the negligence, willful misrepresentation of the City (or other persons acting under their direction or control) under this Agreement, or the transactions contemplated hereby. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City, as the case may be.

#### **ARTICLE XIV. MISCELLANEOUS**

**Section 1401. Conflict of Interests: City Representatives Not Individually Liable.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

**Section 1402. Equal Employment Opportunity.** The Developer, for itself and its successors and assigns, agrees that during the construction of the Project provided for in this Agreement:

- (a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, marital status, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours. The Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or

national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

- (b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin, ancestry, disability, marital status, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours.
- (c) The Developer will furnish all information and reports required by law and any and all applicable federal, state and local rules, regulations and orders, and will permit access to the Developer's books, records and accounts by the City, or appropriate governmental entity, for purposes of investigation to ascertain compliance with such laws, rules, regulations and orders.
- (d) In the event of the Developer's noncompliance with the nondiscrimination clauses of this section, or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and such other sanctions may be imposed and remedies invoked as provided by such law, rule, regulation or order, or as otherwise provided by law.
- (e) The Developer will include the provisions of Paragraphs (a) through (d) of this section in every contract or purchase order, and will use its best efforts to require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by such rules, regulations or orders, so that such provisions will be binding upon each such contractor, subcontractor or vendor, as the case may be. The Developer will take such action with respect to any construction contract, subcontract or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract or purchase order, as required hereby, the first three lines of this section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:" and the term "Developer" shall be changed to "Contractor."

**Section 1403. Provisions Not Merged with Deed.** None of the provisions of this Agreement are intended to or shall be merged by reason of the Deed transferring title to the Property from the City to the Developer or any successor in interest, and the Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

**Section 1404. Titles of Articles and Sections.** Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 1405. Successors and Assigns.** This Agreement shall be binding upon the respective successors and assigns of the parties. Notwithstanding anything contained in this Agreement to the contrary, Developer may assign this Agreement by one or more successive assignments at any time prior to closing to any related entity or affiliate of Developer. Upon any such assignment, the assignee shall have the rights and obligations of Developer hereunder and Developer shall thereupon, automatically and without execution of further instruments or documents, be relieved and released from any obligations under this Agreement, without any further action or approval of the parties.

**Section 1406. Notices and Demands.** A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (a) in the case of the Developer, is addressed to or delivered personally to the Developer at 4201 North 27<sup>th</sup> Street, Milwaukee, WI 53216, Attn: Que El-Amin; and
- (b) in the case of the City, is addressed to or delivered personally to the City, Attention: City Clerk, at 828 Center Avenue, Sheboygan, Wisconsin 53081;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section. If delivered by registered or certified mail, such notice, demand or other communication shall be deemed delivered and received upon deposit in the U.S. Mail.

**Section 1407. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

**Section 1408. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signatures delivered by facsimile, email (in pdf.) or similar electronic methods shall be deemed to be original signatures for all purposes.

**Section 1409. Recoding.** This agreement or a memorandum of this Agreement shall be recorded in the Office of Sheboygan County Register of Deeds against the Property at the cost of the Developer.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by its members, on or as of the day first above written.

**CITY OF SHEBOYGAN,  
WISCONSIN**

**SCOTT CRAWFORD, INC.**

**BY:** \_\_\_\_\_  
Michael J. Vandersteen, Mayor

**BY:** \_\_\_\_\_  
Que El-Amin, Manager

**ATTEST:** \_\_\_\_\_  
Meredith DeBruin, City Clerk

**ACKNOWLEDGMENTS**

STATE OF WISCONSIN    )  
  ) ss  
SHEBOYGAN COUNTY    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2018, the above-named Michael J. Vandersteen, Mayor, and Meredith DeBruin, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission \_\_\_\_\_

STATE OF WISCONSIN    )  
  ) ss  
\_\_\_\_\_ COUNTY    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2018, the above-named Que El-Amin, Manager, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission \_\_\_\_\_

**This instrument drafted by:**  
  
City Attorney Charles Adams  
828 Center Ave., Suite 304  
Sheboygan, WI 53081-4442  
WI State Bar No. 1021454

**EXHIBIT "A"**  
**Description of Property**

**SEC 23 T15N R23E ALL THAT TRACT OF LAND BOUNDED AS FOLLOWS; ON THE NORTH BY CENTER AVE, ON THE EAST BY BROUGHTON DRIVE, ON THE SOUTH BY PENNSYLVANIA AVE., & ON THE WEST BY N. 4TH ST. 2.69 AC. (MUNICIPAL AUDITORIUM & ARMORY)**

**EXHIBIT "B"**  
**Hard Costs for Project**

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Res. No. 175-17-18, by Alderpersons Donohue and Bohren approving the terms and conditions of the Redevelopment Agreement between The Armory Community Project, Inc. and the City of Sheboygan for a project involving rehabilitating the Municipal Auditorium and Armory for re-purposing it into a community center.

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**REPORT PREPARED BY:** Darrell Hofland, City Administrator, Chad Pelishek, Director of Planning and Development, Nancy Buss, Finance Director, David Biebel, Director of Public Works, and Charles Adams, City Attorney

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**REPORT DATE:** April 3, 2018      **MEETING DATE:** April 9, 2018

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**FISCAL SUMMARY:**

Budget Line Item:      N/A  
Budget Summary:      N/A  
Budgeted Expenditure:      N/A  
Budgeted Revenue:      N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes:      N/A  
Municipal Code:      N/A

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**BACKGROUND / ANALYSIS:** The city staff negotiation team, met with Jennifer Lehrke, Dane Schaefer of the Armory Community Project, Inc. and Ted Makom of Gorman on March 6 and 12, 2018. The basis for the meetings was to fine tune the dates in Res. No. 145-17-18 and determine milestones for the project. City staff has proposed the following milestones; however, the Armory Community Project has agreed to the provisions listed below.

- **Non-Profit Status:** status is underway by the Armory Community Project as of March 12, 2018 with the filings to the Wisconsin Department of Financial Institutions.
- **Historic Preservation Tax Credits:** work has begun on hiring a historic preservation architect as well as the National Register of Historic Places nomination process. The developer's agreement provides additional timelines for filing of the two parts of the application.
- **Federal New Market Tax Credits:** Baker Tilly has provided an opinion that the project will qualify for new market tax credits.
- **Major Gift Commitments:** The development agreement requires the developer to obtain funding from the sale of tax credits in the amount of \$4,600,000 within 240 days from the date of the Agreement, receive major gift commitments of not less than \$1,500,000 within 120 days of the date of Agreement, and an additional \$900,000 within 180 days of the date of the Agreement. If the Developer does not achieve these Commitments, the City shall have the right to terminate the Agreement.
- **Financing:** the Developer shall no later than 240 days after execution of this Agreement, obtain necessary financing to cover all expenses necessary to complete the project.

- Project- Apartment: The City and Apartment Developer shall have an executed an agreement for the development of the apartments. No more than 10% of the value of this portion of the project will be provided in an incentive or subsidy.
- Escrow to Reduce TIF Incentive for Project - Apartments: removed from documents (\$355,000 for the demolition shall reduce any TIF incentive for the Apartment Developer on a dollar-for-dollar basis.)
- Construction of the Project: the project shall commence in no later than 360 days after execution of the agreement.
- Reversionary Clause: The city staff negotiation team and the developer have not agreed to language related to this clause. Per Res. No. 145-17-18, language was provided on the reversionary clause to allow the City to re-purchase the property at its sole discretion.
- Survey: Developer agrees to reimburse the City up to \$1,000 for these services to create multiple parcels for the two developments.
- PILOT Payments: The Developer agrees to annual PILOT payments in the amount of \$10,000 to start in 2020.
- Undertaking of the City: City agrees to work with Developer to apply to the National Park Service to list the building as a National Register of Historic Place in order to apply for historic preservation tax credits.

City staff and the Developer were unable to come to an agreement on Section 305 – Reversionary Clause:

**City staff preferred language:** The Developer agrees that for no less than ten years after completion of construction (but subject to any requirements related to tax credits), the City shall retain the right, at its sole discretion, to repurchase the Property upon which the Project is situated for the same amount it sold the property should there be any default on this Agreement, should there be any insolvency or bankruptcy on the part of the owner or operator, should any portion of the Property be subject to a foreclosure or seizure action by creditor, should the property go dark for a period of two years, should the Project not continue to be operational pursuant to the business plan contained in Exhibit “C,” or should the owner or operator show an inability to continue to maintain and/or operate the site. This clause shall apply to the Developer, the Apartment Developer, and any of Developer’s successors or assigns, including partial successors and assigns. The Developer hereby agrees and covenants to include a provision clearly delineating the terms of this Section in any Agreement it makes with co-Developers, successors, and assigns. This provision does not apply to the portion of the Property dedicated to the Project-Apartment.

**Developer recommended language:** Should The Developer fail to meet the Construction Deadline, the City shall have the right, at its sole discretion, to repurchase the Property for the same amount it sold the Property, provided that any tax credit or bank financing secured by the Developer at that time does not prevent such repurchase.

Subsequent to the meeting with city staff, the Armory Community Project has provided the following documents to allow the Common Council to make its final determination:

- ❖ Business Plan including 3-year projections.
- ❖ Utility Cost Study
- ❖ Programming Guide
- ❖ Safety, Health and Environmental Plan and Procedures

❖ Transportation and Parking Plan

These documents were provided by City Administrator Darrell Hofland to the Alderpersons via a link that was emailed on Monday, April 2, 2018. Given the short timeframe, the city negotiation team has reviewed the business plan and has determined that preliminarily the income, expenses and programming appears to be solid; however, the team understands that further scrutiny will happen as part of the tax credit process and financing requirements and looks forward to updated information on the plan. Ideally it may be important to have an independent third party consultant review the operation plan.

The Armory Community Project, Inc. is requesting, for tax credit purposes, the City to split the parcel into two parcels prior to a real estate closing and enter separately into a sale and development agreement with Apartment Developer.

**STAFF COMMENTS:**

One of the biggest concerns with the plan for city staff is in order to file for the Historic Preservation Tax Credits the building needs to be designated on the federal National Register of Historic Places. Should for some reason the tax credits not be allocated, the building will be on the National Register which will make it very difficult for the city to consider demolition in the future.

The city staff negotiation team has prepared the following pros/cons related to the development agreement:

Pros

- Based upon proposed 42-unit apartment development, project generates \$90,000 in annual real estate taxes.
- Preserves and repurposes the building.
- If successful, could fill a recreational, cultural and entertainment need in the community for the upcoming workforce and other residents/tourists.
- Provides additional housing options to encourage more working-age employees to relocate to Sheboygan.

Cons

- Building needs to be put on the National Register of Historic Places prior to being allocated historic preservation tax credits.
- The city staff negotiation team has concerns over the total project budget of \$5,900,000 being sufficient to complete the project.
- The business plan projects attendance at certain events of 1,500-2,500 people. There are concerns on whether these are achievable.
- May require the creation of the Tax Incremental Finance District to fund the gap in the Apartment-Developer proforma to complete the apartment development.
- The plan utilizes the boat launch parking facilities for parking for the events and may cause concerns in the future related to capital replacement costs.
- Sale price of \$1.

**ACTION REQUESTED:**

For informational purposes only.

**ATTACHMENTS:**

I. Res. No. 175-17-18

III

Other Matters

7.5

Res. No. 175- 17 - 18. By Alderpersons Donohue and Bohren. April 4, 2018.

A RESOLUTION approving the terms and conditions of the Redevelopment Agreement between The Armory Community Project, Inc. and the City of Sheboygan for a project involving rehabilitating the Municipal Auditorium and Armory and re-purposing it into a community center.

RESOLVED: That the City of Sheboygan hereby approves the terms and conditions of the Redevelopment Agreement between the Armory Community Project, Inc. and the City of Sheboygan, in form substantially similar to the document attached hereto.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan.

Finance + Personnel

[Signature]  
James A Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

**REDEVELOPMENT AGREEMENT  
BY AND BETWEEN**

**THE ARMORY COMMUNITY PROJECT, INC.  
AND  
THE CITY OF SHEBOYGAN**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between The Armory Community Project, Inc., a not for profit corporation with its principal offices located at 605 Erie Ave. Suite 101, Sheboygan, WI 53081 (hereinafter "Developer"), and the City of Sheboygan, a municipal corporation of the State of Wisconsin, with its principal offices located at 828 Center Avenue, Sheboygan, WI 53081 (hereinafter "City").

**RECITALS**

**WHEREAS**, the City has offered to sell and the Developer is willing to purchase certain real property more particularly described in Exhibit "A" for the purpose of rehabilitating the Municipal Auditorium and Armory, located at 516 Broughton Drive, Sheboygan, WI 53081 (hereinafter "Armory"), and re-purposing it into a state of the art community center at a minimum estimated cost of \$5,900,000, as more specifically described in Exhibit "B".

**WHEREAS**, the City has already expended \$160,000 performing lead and asbestos abatement work.

**WHEREAS**, Developer has proposed that the western 0.64 acres of the real property on which the Armory is situated be assigned to an independent developer to construct approximately 40 multi-family housing units at an additional estimated cost of \$6,600,000.00.

**WHEREAS**, it is in the mutual interest of all parties to proceed with this development project.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the Recitals, the agreements and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I. DEFINITIONS**

**Section 101. Definitions.** All capitalized terms used herein and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

"Agreement" or "Redevelopment Agreement" means this Agreement, as the same may be from time to time modified, amended or supplemented.

"Apartment Developer" means the party who will undertake the development of the Project-Apartment.

"Developer" means The Armory Community Project, Inc. and its permitted successors and assigns.

"Events of Default" means any of the events described in Section 9.1 hereof.

"Plans and Specifications" means the plans and specifications for the Project prepared from time to time by the Developer which are approved by the City in accordance with all procedures and requirements of the City for such approvals.

"Project" means the development proposed by Developer, as more specifically described in Exhibit "C," for rehabilitation of the Armory and re-purposing it into a state of the art community center to include, by example, a "Rathskeller"-style pub, mini-storage, a flexible events hall, a culinary incubator, breakout rooms, a business incubator, a corridor café, restrooms, storage for performances, offices for the Developer and event concessions.

"Project-Apartment" means the development proposed by the Apartment Developer consisting of approximately 40 multi-family housing units on approximately 0.64 acres west of the Property

"Property" means that portion of the real property on which the Armory is located and upon which the Project is to be constructed and generally located at 516 Broughton Drive, the final size and configuration of which shall be determined in accordance with the provisions of Section 301(h) hereafter.

## ARTICLE II. OVERVIEW OF THE PROJECT

**Section 201. *Project Overview.*** The Project consists of redevelopment of the existing Sheboygan Municipal Armory and Auditorium constructed in 1941 as a Works Progress Administration project (WPA) on the site of the former Freyberg Lumber Company located at 516 Broughton Drive, Sheboygan, WI 53081, shown on the plan drawing attached as Exhibit "A" into a state of the art community center with a variety of uses.

## ARTICLE III. UNDERTAKINGS OF THE DEVELOPER

**Section 301. *Sale of the Property.*** The City shall transfer the Property for \$1.00 (the Purchase Price) at Closing (as hereafter defined) and only upon completion of the following:

- (a) **Non-Profit Status:** The Developer shall have created a business entity that is eligible for status as a non-profit organization under section 501(c)(3) of the Internal Revenue Code, and shall file for said status no later than forty-five (45) days after execution of this Agreement. In the alternative, the Developer may, by a date no later than forty-five (45) days after execution of this Agreement, enter into a fully executed agreement with an existing 501(c)(3) organization to serve as the fiscal agent for the organization and provide a copy of the said agreement to the City.
- (b) **Historic Preservation Tax Credits:** The Developer shall apply to have the Armory listed in the National Register of Historic Places, contracting with a preservation architect, and apply to the Wisconsin Historical Society for Income-Producing Tax Credits ("Historic Tax Credits") by no later than thirty (30) days after execution of this Agreement and shall have received approval of Historic Tax Credits pursuant to an filed Historic Preservation Certification Application Part 2 – Description of Rehabilitation within one hundred eighty (180) days of the date of this Agreement. Additionally, but subject to Unavoidable Delay, the Developer shall have received approval within one hundred five (105) days of the date of this

Agreement (Eligibility Deadline) that the Project is eligible for Historic Tax Credits pursuant to a filed Historic Preservation Certification Application Part 1 – Evaluation of Significance. If the Developer does not receive such approval by the Eligibility Deadline, the City shall have the right to terminate this Agreement.

- (c) **Federal New Market Tax Credits:** The Developer shall obtain and provide to the City by no later than sixty (60) days after execution of this Agreement evidence (including an opinion from an attorney or licensed tax accountant) indicating that the project will qualify for federal new market tax credits. If the Developer does not receive such approval by the deadline provided in this subsection, the City shall have the right to terminate this Agreement.
- (d) **Major Gift Commitments:** The Developer shall obtain funding from the sale of tax credit in the amount of \$4,600,000.00 within two hundred forty (240) days of the date of this Agreement. Additionally, the Developer shall have received major gift commitments (including from the sale of naming rights) of not less than \$1,500,000.00 within one hundred twenty (120) days of the date of this Agreement, and an additional \$900,000.00 within one hundred eighty (180) days of the date of this Agreement. Developer shall have obtained total funding (from the sale of tax credit, naming rights, and gift commitments) in the amount of \$7,100,000 within two hundred forty (240) days of the date of this Agreement. (“Commitments Progress”). If the Developer has not achieved the Commitments Progress, the City shall have the right to terminate this Agreement.
- (e) **Financing:** The Developer shall, by no later than two hundred forty (240) days after the execution of this Agreement, obtain the necessary financing complete construction of the project.
- (f) **Project-Apartment:** The City and Apartment Developer shall have executed an agreement for the completion of the Project-Apartment. The Apartment Developer shall receive no greater than ten-percent (10%) of the value of that portion of the project in an incentive or subsidy contributed by the City.
- (g) **Survey/Certified Survey Map:** The City will complete and record a certified survey map to create the necessary parcels and easements to serve the Project-Apartment and Project. The Developer will reimburse the costs of the City hereunder at Closing or the termination of this Agreement, whichever occurs first.

**Section 303. Closing.** The closing of the sale of the Property shall take place within thirty (30) days of the completion of all the contingencies set forth in Section 301 above, but in any event no later than two hundred seventy (270) days of the date of this Agreement (the Closing). At Closing, (i) the City shall deliver the following to the Developer a warranty deed conveying the Property free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility, municipal services, recorded building and use restrictions and covenants and (ii) the Developer shall deliver the Purchase Price. The City shall complete and execute the documents necessary to record the conveyance at Developer’s cost. Not less than 30 days before Closing, the City shall give evidence of title in the form of an owner’s policy of title insurance issued by an insurer licensed to write title insurance in Wisconsin. The City shall pay all costs of providing said owner’s policy of title insurance to Buyer.

**Section 304. Construction of the Project.** The Developer shall have commenced construction of the Project no later than ninety (90) days after the Closing (“Construction Deadline”).

**Section 305. Compliance with Codes, Plans, and Specifications, etc.** The construction of the Project shall be in compliance with all applicable codes and ordinances of the City, and with all pertinent provisions of this Agreement and the Plans and Specifications. While the acceptance of this Agreement and granting of any and all approvals, licenses and permits by the City shall not obligate the City to grant any variances, the City does understand that the Developer may need to apply for zoning variances or conditional uses and shall reasonably assist the Developer in the same.

**Section 306. Reversionary Clause.** The Developer agrees that for no less than ten years after completion of construction (but subject to any requirements related to tax credits), the City shall retain the right, at its sole discretion, to repurchase the Property upon which the Project is situated for the same amount it sold the property should there be any default on this Agreement, should there be any insolvency or bankruptcy on the part of the owner or operator, should any portion of the Property be subject to a foreclosure or seizure action by creditor, should the property go dark for a period of two years, should the Project not continue to be operational pursuant to the business plan contained in Exhibit “C,” or should the owner or operator show an inability to continue to maintain and/or operate the site. This clause shall apply to the Developer, the Apartment Developer, and any of Developer’s successors or assigns, including partial successors and assigns. The Developer hereby agrees and covenants to include a provision clearly delineating the terms of this Section in any Agreement it makes with co-Developers, successors, and assigns. This provision does not apply to the portion of the Property dedicated to the Project-Apartment.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER**

**Section 401. Representations and Warranties.** The Developer makes the following representations and warranties which the City may rely upon in entering into this and all other agreements with the Developer and granting all approvals, permits and licenses for the Project.

(a) Developer is a duly organized and recognized not for profit corporation under the laws of the State of Wisconsin.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by Developer, and no other or further acts or proceedings of Developer are necessary to authorize and approve the execution, delivery and performance of this Agreement and the matters contemplated hereby. This Agreement, and the exhibits, documents and instruments associated herewith and made a part hereof, have been duly executed and delivered by Developer and constitute the legal, valid and binding agreement and obligation of Developer, enforceable against it in accordance with their respective terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors’ rights generally, and by general equitable principles.

(c) There are no lawsuits filed or pending, or to the knowledge of Developer, threatened against Developer that may in any way jeopardize the ability of Developer to perform its obligations hereunder.

(d) Developer has the ability to obtain sufficient funds through, pledges, donations, tax credits and lending sources for the completion of the Project, and Developer shall, from time to time upon the request of the City based on reasonable need, provide evidence thereof satisfactory to the City. The Developer shall promptly notify the City of any material adverse change in the Developer's financial condition. Subject to applicable law, the City agrees to use its best efforts to keep such financial information made available to it hereunder confidential; provided, however, the City may, to the extent it deems necessary, disclose such information in the exercise of its remedies hereunder.

(e) While a part of the Project is intended to be exempt from taxation under Wisconsin's property tax laws, the Project will be partially subject to taxation. Developer, for itself, its successors and assigns, shall take no action(s), and shall file no claim(s) contesting any determination by the City Assessor regarding the taxability of any portion of the Project.

#### **ARTICLE V. PILOT PAYMENTS FOR CITY SERVICES TO TAX-EXEMPT PORTIONS OF THE PROJECT**

**Section 501. City Services Typically Covered by Property Tax.** Irrespective of Property tax status, the City agrees to continue to furnish general governmental administrative services and police services to the Developer and the Property of the same type, and to the same extent, as are furnished, from time to time, without cost or charge (except by means of property tax and authorized fees, assessments and charges), to other similarly situated projects in the City. Nothing in this Agreement shall be construed to give Developer a contractual right to governmental services, or to impose upon City any additional duties, it being the parties' intent that the City provide public service subject to the same duties and liability as apply to the public generally. Services included herein are general governmental administrative services and police services. The City shall not have breached its obligations hereunder if it is prevented from providing such services because of typical force majeure reasons (e.g. war, flood, fire, labor dispute, supply shortage, act of God, natural disaster, etc.), or because of budgetary constraints or because any person or entity shall assert a right which prevents delivery of such services as are furnished from time to time without cost or charge (except by means of property tax) to other similar facilities in the City.

**Section 502. Special Assessment, Special Charges and Fees.** Notwithstanding Section 501 or the property tax exempt status of the Property or a portion of the Property, the Developer understands that it will be subject to special assessments, special charges and special taxes as defined in Wis. Stats. 74.01 (and as also referred to in Wis. Stats. Ch. 66) and fees charged by the City in the same manner and to the same extent that such special assessments, special charges, special taxes and fees are charged for similar services and/or undertakings to the Project within the City. This provision shall not affect the City's powers, consistent with the law, to determine the services (other than those typically covered by the property tax) that shall be provided to the Property and/or similarly situated property pursuant to this paragraph. Nothing contained herein shall preclude the Owner from appealing, as provided by law, the imposition of such special assessments, special charges, special taxes or fees by the City.

#### **Section 503. PILOT Payments.**

(a) *Calculation for Tax Years 2019 and Subsequent Tax Years.* In recognition of

those services covered by Section 501 of this Agreement, in the event the Property, or a portion thereof, is determined to be tax exempt for tax year 2019 and subsequent tax years, Developer agrees to pay the City an annual PILOT payment for the exempt portion of the Property for each tax year (or portion thereof) during which the Developer owns the Property. If the Developer transfers or conveys the Property, the PILOT for that year will be prorated based upon the number of full months for which the Owner owned the Property.

- (b) *Annual PILOT Payments.* The annual PILOT payments for such services shall be \$10,000. The PILOT payment due shall be adjusted annually based upon the change in the United States Bureau of Labor Statistics Consumer Price Index ([www.bls.gov](http://www.bls.gov)) all Urban Consumers Midwest Area, Size B/C from January through December 2019 and each year thereafter.
- (c) *Payment Due Date.* PILOTs for tax year 2019 and subsequent years shall be due and payable in full on or before January 31 of the year following the tax year for which the PILOT was calculated.
- (d) *Use of Payment.* The City may use and expend PILOTs hereunder in such manner and for such purposes as to offset the City levy for those services covered under Section 501.
- (e) *Nonpayment.* The Developer has a good faith duty to take affirmative steps to satisfy its PILOT obligations hereunder by making timely payments to the City. A lien shall attach to the Property in the event of nonpayment or partial payment. The City expressly retains its governmental rights, authority and powers available at law or in equity.

**Section 504. Exempt Status.** Even if the City initially determines that, if the Developer uses the Property, or a portion thereof, for the purposes described to City in an application for exemption, all or a portion of the Property will qualify for real and personal property tax exemption under Wisconsin law, the City Assessor's Office may review the Property's exempt status under Wis. Stats. 70.11 from time to time with the respective January dates being the reference dates for those exemption reviews. If the City, as a result of those reviews or otherwise, determines that the Property no longer qualifies for exemption from property tax, for the year in which the determination is made:

- (a) The City will provide notice of such determination to the Developer, no later than April 30th of that year;
- (b) Section 503 shall be ineffective with respect to that and any subsequent years for which exemption no longer applies;
- (c) If a PILOT has been paid for that year, the City shall promptly refund such PILOT, or at the option of the City, offset such payments against any property taxes due from Developer; and
- (d) The Property shall be placed on the property tax rolls for that and any subsequent years for which exemption has been determined not to apply.

If the Developer disagrees with the City's determination that the Property no longer qualifies for tax exemption, the Developer may challenge such determination by the appropriate

City Staff Version

procedure provided under Wisconsin law for similarly situated property.

**Section 505. Term.** Section 503 of this Agreement shall be ineffective (whether temporarily or permanently) on the soonest of any of the following-described dates:

- (a) The day before the respective January 1 of the year concerning which the City determines that the Property no longer qualifies for the property tax exemption;
- (b) The effective date of an enactment by the State of Wisconsin of a mandatory payment for municipal services by owners of a property exempt from the general property tax or similarly situated owners of exempt property;
- (c) The effective date of a repeal by the State of Wisconsin of the property tax exemption for the Property and other similarly situated property; and
- (d) The effective date of legislation or case law, which indicates that PILOT payments are not permitted by exempt property owners.

**Section 506. Documents, Inspection, Cooperation.** Developer agrees to cooperate with the City (including, but not limited to, the City Assessor's Office, the City Development Office, the City Attorney's Office and the City Finance Office) with respect to this Agreement by allowing inspections of the Property upon reasonable written request of the City and by allowing inspection of leases of the Property and other documents requested of the Developer. Notwithstanding the foregoing, the City expressly reserves all its rights in law and equity to inspect and to obtain disclosure, documents, inspection and information to the extent the property owner is required to allow any such inspection under Wisconsin Law. The Developer is not hereby granting rights to inspection beyond those provided by law.

#### **ARTICLE VI. UNDERTAKINGS OF THE CITY**

**Section 601. National Register of Historic Places.** The City agrees to work with the Developer to apply to the National Park Service to list the Armory building in the National Register of Historic Places in order to apply for historic preservation tax credits. This agreement includes a commitment to provide, as the current owner of the Property, a letter of support for the listing within thirty (30) days of execution of this Agreement.

#### **ARTICLE VII. CONDITIONS TO THE UNDERTAKINGS OF THE CITY**

**Section 701. All Obligations of the City under this Agreement.** As a condition to each and all of the covenants, agreements and other obligations of the City under this Agreement, all of the following shall occur, in addition to all other requirements and conditions set forth in this Agreement:

- (a) Developer shall have satisfied all Conditions Precedent set forth in Article III hereof.
- (b) The Project shall be completed within the timeframe of approved schedule of construction, except to the extent failure to complete within such timeframe is due to Unavoidable Delay.

- (c) All representations and warranties of Developer set forth in Article IV and otherwise in this Agreement and in all agreements expressly referred to herein shall be true, complete and correct.
- (d) All covenants and obligations of Developer under this Agreement are duly performed, observed and satisfied.
- (e) No Event of Default, as defined in Section 901, has occurred, or with the giving of notice or lapse of time would occur.

## **ARTICLE VIII. INDEMNIFICATION OF THE CITY**

**Section 801. Indemnification.** The Developer hereby indemnifies and holds harmless the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section collectively referred to as the "Indemnified Parties"), against any loss or damage to property or any injury to or death of any person occurring at or about or arising out of the Developer's performance of the construction of the Project, provided that the foregoing indemnification shall not be effective for any negligent acts of the Indemnified Parties in fulfilling the obligations of the City or its agents as set forth in this Agreement. Except for any willful misrepresentation, any willful misconduct, or negligent acts of the Indemnified Parties, the Developer will protect and defend the Indemnified Parties from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the action or inaction of the Developer (or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership and operation of the Project. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

## **ARTICLE IX. DEFAULT/REMEDIES**

**Section 901. Events of Default** An Event of Default is any of the following:

- (a) A failure by the Developer to cause substantial completion of the Project to occur pursuant to the terms, conditions and limitations of this Agreement, or the failure of the Developer to perform or observe any and all covenants, conditions, obligations, guarantees or agreements on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the Developer of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the Developer commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed as promptly as possible under the circumstances, then the event will not be an Event of Default.
- (b) Developer becomes insolvent or is the subject of bankruptcy or insolvency proceedings.
- (c) Developer fails to insure that the project is an ongoing concern with a substantial

portion of the Property in regular, consistent use, including those portions identified in the Developer's business plan as daily operations.

**Section 902. Remedies on Default.** Whenever an event of default occurs and is continuing, the non-defaulting party may take any one or more of the following actions:

- (a) The non-defaulting party may immediately suspend its performance under this Agreement from the time any notice of an Event of Default is given until it receives assurances from the defaulting party deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement.
- (b) The non-defaulting party may take any action, including legal or administrative action, in law or in equity, which may appear necessary or desirable to enforce performance and observance of any covenant, condition, obligation, guarantee or agreement of the defaulting party under this Agreement.

**Section 903. No Remedy Exclusive.** No remedy or right conferred upon or reserved to the City or the Developer in this Agreement is intended to be exclusive of any other remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 904. No Implied Waiver.** In the event 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 any other concurrent, previous or subsequent breach hereunder.

**Section 905. Agreement to Pay Attorneys' Fees and Expenses.** Whenever any event of default occurs and either the non-defaulting party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any covenant, condition, obligation, guarantee or agreement on the part of the defaulting party herein contained, the defaulting party shall, on demand thereof, pay the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party by reason of such default.

## ARTICLE X. FORCE MAJEURE

**Section 1001. Force Majeure.** No party will be responsible to any other party for any resulting losses if the fulfillment of any of the terms of this Agreement (other than any financial obligation) is delayed or prevented by war, strikes, fires, floods, acts of God, delay by federal or state governmental agencies, and other reasons wholly without the control of the party with whose performance there was interference, and which, by the exercise of reasonable diligence, such party is unable to prevent (Unavoidable Delay"), and the time for performance will be extended by the period of delay occasioned by any such cause.

## ARTICLE XI. ADDITIONAL PROVISIONS

**Section 1101. Conflicts of Interest.** No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Property or

the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer's successors or assigns on any obligations under the terms of this Agreement.

**Section 1102. Incorporation by Reference.** All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

**Section 1103. No Implied Approvals.** Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of Developer to obtain all necessary approvals, licenses and permits from the City in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the City to approve or disapprove the Development Plans, or any part thereof, or to impose any limitations, restrictions and requirements on the development, construction and/or use of the Project as a condition of any such approval, license or permit; including, without limitation, requiring any and all other development and similar agreements.

**Section 1104. No Assignment.** Developer may not assign its rights in this Agreement without the express prior written consent of the City. Except with the prior written consent of the City, Developer shall not sell, transfer or convey the Property unless and until an occupancy permit has been issued.

**Section 1105. Time of the Essence.** Time is deemed to be of the essence with regard to all dates and time periods set forth herein or incorporated herein.

**Section 1106. Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

**Section 1107. Entire Agreement.** This document and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer and the City with respect to the matters set forth herein. This Agreement may be modified only by a writing signed by all parties.

**Section 1108. Amendment.** The City and the Developer expressly reserve the right to modify and amend this Agreement from time to time, as they shall mutually agree in writing executed by both parties.



**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by its members, on or as of the day first above written.

**CITY OF SHEBOYGAN, WISCONSIN**

**ARMORY COMMUNITY PROJECT, INC**

**BY:** \_\_\_\_\_  
Michael J. Vandersteen, Mayor

**BY:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
Meredith DeBruin, City Clerk

**ATTEST:** \_\_\_\_\_

**ACKNOWLEDGMENTS**

STATE OF WISCONSIN     )  
  ) ss  
SHEBOYGAN COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above-named Michael J. Vandersteen, Mayor, and Meredith DeBruin, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of  
Wisconsin My Commission

STATE OF WISCONSIN     )  
  ) ss  
\_\_\_\_\_ COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above-named \_\_\_\_\_, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of  
Wisconsin My Commission

This instrument drafted by:

City Attorney Charles Adams  
828 Center Ave., Suite 304  
Sheboygan, WI 53081-4442  
WI State Bar No. 1021454

This document authorized by and in accordance with Res. No. \_\_\_\_-17-18

**EXHIBIT "A"**  
**PLAN DRAWING**

**EXHIBIT "B"**  
**RESPONSE TO REQUEST FOR PROPOSALS**

**EXHIBIT "C"**  
**PROJECT PLAN**

## COMMENTS

**Re: Section 306:** This section contains the original language of the Reversionary Clause proposed by the City, which the Developer does not accept, with one addition, as noted below. The City has not accepted the Developer's Reversionary Clause language. Developer will provide its proposed language separately. The change to the original City language reflects the City's desire to retain language regarding the necessity of the Project not only being redeveloped, but continuing to operate pursuant to the proposed business plan. This language was deleted in other sections; the City has agreed to those deletions, and instead includes that language here.

**Re: Article V:** The Developer has not agreed to Article V and requested it be deleted. The City has rejected the Developer's proposal to delete Article V.

**Re: Article VII:** With the exception of the one paragraph (which has been deleted as the terms have been dealt with elsewhere), the City has not agreed to delete this Article. However, the City and the Developer have indicated an openness to different language from the Developer that protects the City that reflects the Developer's need to have an agreement that will allow it to obtain the necessary financing.

**REDEVELOPMENT AGREEMENT  
BY AND BETWEEN**

**THE ARMORY COMMUNITY PROJECT, INC.  
AND  
THE CITY OF SHEBOYGAN**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between The Armory Community Project, Inc., a not for profit corporation with its principal offices located at 605 Erie Ave. Suite 101, Sheboygan, WI 53081 (hereinafter "Developer"), and the City of Sheboygan, a municipal corporation of the State of Wisconsin, with its principal offices located at 828 Center Avenue, Sheboygan, WI 53081 (hereinafter "City").

**RECITALS**

**WHEREAS**, the City has offered to sell and the Developer is willing to purchase certain real property more particularly described in Exhibit "A" for the purpose of rehabilitating the Municipal Auditorium and Armory, located at 516 Broughton Drive, Sheboygan, WI 53081 (hereinafter "Armory"), and re-purposing it into a state of the art community center at a minimum estimated cost of \$5,900,000, as more specifically described in Exhibit "B".

**WHEREAS**, the City has already expended \$160,000 performing lead and asbestos abatement work, which abatement work is not completed.

**WHEREAS**, Developer has proposed that the western 0.64 acres of the real property on which the Armory is situated be assigned to an independent developer to construct approximately 40 multi-family housing units at an additional estimated cost of \$6,600,000.00.

**WHEREAS**, it is in the mutual interest of all parties to proceed with this development project.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the Recitals, the agreements and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I. DEFINITIONS**

**Section 101. Definitions.** All capitalized terms used herein and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

"Agreement" or "Redevelopment Agreement" means this Agreement, as the same may be from time to time modified, amended or supplemented.

"Apartment Developer" means the party who will undertake the development of the Project-Apartment.

"Developer" means The Armory Community Project, Inc. and its permitted successors and assigns.

"Events of Default" means any of the events described in Section 9.1 hereof.

"Plans and Specifications" means the plans and specifications for the Project prepared from time to time by the Developer which are approved by the City in accordance with all procedures and requirements of the City for such approvals.

"Project" means the development proposed by Developer, as more specifically described in Exhibit "C," for rehabilitation of the Armory and re-purposing it into a state of the art community center to include, by example, a "Rathskeller"-style pub, mini-storage, a flexible events hall, a culinary incubator, breakout rooms, a business incubator, a corridor café, restrooms, storage for performances, offices for the Developer and event concessions.

"Project-Apartment" means the development proposed by the Apartment Developer consisting of approximately 40 multi-family housing units on approximately 0.64 acres west of the Property

"Property" means that portion of the real property on which the Armory is located and upon which the Project is to be constructed and generally located at 516 Broughton Drive, the final size and configuration of which shall be determined in accordance with the provisions of Section 301(h) hereafter.

## ARTICLE II. OVERVIEW OF THE PROJECT

**Section 201. *Project Overview.*** The Project consists of redevelopment of the existing Sheboygan Municipal Armory and Auditorium constructed in 1941 as a Works Progress Administration project (WPA) on the site of the former Freyberg Lumber Company located at 516 Broughton Drive, Sheboygan, WI 53081, shown on the plan drawing attached as Exhibit "A" into a state of the art community center with a variety of uses.

## ARTICLE III. UNDERTAKINGS OF THE DEVELOPER

**Section 301. *Sale of the Property.*** The City shall transfer the Property for \$1.00 (the Purchase Price) at Closing (as hereafter defined) and only upon completion of the following:

- (a) **Non-Profit Status:** The Developer shall have created a business entity that is eligible for status as a non-profit organization under section 501(c)(3) of the Internal Revenue Code, and shall file for said status no later than forty-five (45) days after execution of this Agreement. In the alternative, the Developer may, by a date no later than forty-five (45) days after execution of this Agreement, enter into a fully executed agreement with an existing 501(c)(3) organization to serve as the fiscal agent for the organization and provide a copy of the said agreement to the City.
- (b) **Historic Preservation Tax Credits:** The Developer shall apply to have the Armory listed in the National Register of Historic Places, contracting with a preservation architect, and apply to the Wisconsin Historical Society for Income-Producing Tax Credits ("Historic Tax Credits") by no later than thirty (30) days after execution of this Agreement and shall have received approval of Historic Tax

Credits pursuant to an filed Historic Preservation Certification Application Part 2 – Description of Rehabilitation within one hundred eighty (180) days of the date of this Agreement. Additionally, but subject to Unavoidable Delay, the Developer shall have received approval within one hundred five (105) days of the date of this Agreement (Eligibility Deadline) that the Project is eligible for Historic Tax Credits pursuant to a filed Historic Preservation Certification Application Part 1 – Evaluation of Significance. If the Developer does not receive such approval by the Eligibility Deadline, the City shall have the right to terminate this Agreement.

- (c) Federal New Market Tax Credits: The Developer shall obtain and provide to the City by no later than sixty (60) days after execution of this Agreement evidence (including an opinion from an attorney or licensed tax accountant) indicating that the project will qualify for federal new market tax credits. If the Developer does not receive such approval by the deadline provided in this subsection, the City shall have the right to terminate this Agreement.
- (d) Major Gift Commitments: The Developer shall obtain funding from the sale of tax credit in the amount of \$4,600,000.00 within two hundred forty (240) days of the date of this Agreement. Additionally, the Developer shall have received major gift commitments (including from the sale of naming rights) of not less than \$1,500,000.00 within one hundred twenty (120) days of the date of this Agreement, and an additional \$900,000.00 within one hundred eighty (180) days of the date of this Agreement. Developer shall have obtained total funding (from the sale of tax credit, naming rights, and gift commitments) in the amount of \$7,100,000 within two hundred forty (240) days of the date of this Agreement. (“Commitments Progress”). If the Developer has not achieved the Commitments Progress, the City shall have the right to terminate this Agreement.
- (e) Financing: The Developer shall, by no later than two hundred forty (240) days after the execution of this Agreement, obtain the necessary financing complete construction of the project.
- (f) Project-Apartment: The City and Apartment Developer shall have executed an agreement for the completion of the Project-Apartment. The Apartment Developer shall receive no greater than ten-percent (10%) of the value of that portion of the project in an incentive or subsidy contributed by the City.
- (g) Survey/Certified Survey Map: The City will complete and record a certified survey map to create the necessary parcels and easements to serve the Project-Apartment and Project. The Developer will reimburse the costs of the City hereunder at Closing or the termination of this Agreement, whichever occurs first at a maximum cost of \$1000.00.

**Section 303302. Closing.** The closing of the sale of the Property shall take place within thirty (30) days of the completion of all the contingencies set forth in Section 301 above, but in any event no later than two hundred seventy (270) days of the date of this Agreement (the Closing). At Closing, (i) the City shall deliver the following to the Developer a warranty deed conveying the Property free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility, municipal services, recorded building and use restrictions and covenants and (ii) the Developer shall deliver the Purchase Price. The City shall complete and

execute the documents necessary to record the conveyance at Developer's cost. Not less than 30 days before Closing, the City shall give evidence of title in the form of an owner's policy of title insurance issued by an insurer licensed to write title insurance in Wisconsin. The City shall pay all costs of providing said owner's policy of title insurance to Buyer.

**Section 304303. Construction of the Project.** The Developer shall have commenced construction of the Project no later than ninety (90) days after the Closing ("Construction Deadline").

**Section 305304. Compliance with Codes, Plans, and Specifications, etc.** The construction of the Project shall be in compliance with all applicable codes and ordinances of the City, and with all pertinent provisions of this Agreement and the Plans and Specifications. While the acceptance of this Agreement and granting of any and all approvals, licenses and permits by the City shall not obligate the City to grant any variances, the City does understand that the Developer may need to apply for zoning variances or conditional uses and shall reasonably assist the Developer in the same.

**Section 306305. Reversionary Clause.** Should The Developer ~~agrees that for no less than ten years after completion of construction (but subject to any requirements related to tax credits);~~ meet the Construction Deadline, the City shall ~~retain~~ have the right, at its sole discretion, to repurchase the Property ~~upon which the Project is situated~~ for the same amount it sold the ~~property should there be any default on this Agreement, should there be any insolvency or bankruptcy on the part of the owner or operator, should any portion of the~~ Property ~~be subject to a foreclosure or seizure action,~~ provided that any tax credit or bank financing secured by ~~creditor, should the property go dark for a period of two years, should the Project not continue to be operational pursuant to the business plan contained in Exhibit "C," or should the owner or operator show an inability to continue to maintain and/or operate the site. This clause shall apply to the Developer, the Apartment Developer, and any of Developer's successors or assigns, including partial successors and assigns. The Developer hereby agrees and covenants to include a provision clearly delineating the terms of this Section in any Agreement it makes with co-Developers, successors, and assigns. This provision~~ at that time does not ~~apply to the portion of the Property dedicated to the Project-Apartment~~ prevent such repurchase.

#### ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

**Section 401. Representations and Warranties.** The Developer makes the following representations and warranties which the City may rely upon in entering into this and all other agreements with the Developer and granting all approvals, permits and licenses for the Project.

(a) Developer is a duly organized and recognized not for profit corporation under the laws of the State of Wisconsin.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by Developer, and no other or further acts or proceedings of Developer are necessary to authorize and approve the execution, delivery and performance of this Agreement and the matters contemplated hereby. This Agreement, and the exhibits, documents and instruments associated herewith and made a part hereof, have been duly executed and delivered by Developer and constitute the legal, valid and binding agreement and obligation of Developer, enforceable against it in accordance with their respective terms, except as the enforceability thereof may be limited by applicable

bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally, and by general equitable principles.

(c) There are no lawsuits filed or pending, or to the knowledge of Developer, threatened against Developer that may in any way jeopardize the ability of Developer to perform its obligations hereunder.

(d) Developer has the ability to obtain sufficient funds through, pledges, donations, tax credits and lending sources for the completion of the Project, and Developer shall, from time to time upon the request of the City based on reasonable need, provide evidence thereof satisfactory to the City. The Developer shall promptly notify the City of any material adverse change in the Developer's financial condition. Subject to applicable law, the City agrees to use its best efforts to keep such financial information made available to it hereunder confidential; provided, however, the City may, to the extent it deems necessary, disclose such information in the exercise of its remedies hereunder.

(e) While a part of the Project is intended to be exempt from taxation under Wisconsin's property tax laws, the Project will be partially subject to taxation. ~~Developer, for itself, its successors and assigns, shall take no action(s), and shall file no claim(s) contesting any determination by the City Assessor regarding the taxability of any portion of the Project.~~

#### **ARTICLE V. PILOT PAYMENTS FOR CITY SERVICES TO TAX-EXEMPT PORTIONS OF THE PROJECT**

**Section 501. City Services Typically Covered by Property Tax.** Irrespective of Property tax status, the City agrees to continue to furnish general governmental administrative services and police services to the Developer and the Property of the same type, and to the same extent, as are furnished, from time to time, without cost or charge (except by means of property tax and authorized fees, assessments and charges), to other similarly situated projects in the City. Nothing in this Agreement shall be construed to give Developer a contractual right to governmental services, or to impose upon City any additional duties, it being the parties' intent that the City provide public service subject to the same duties and liability as apply to the public generally. Services included herein are general governmental administrative services and police services. The City shall not have breached its obligations hereunder if it is prevented from providing such services because of typical force majeure reasons (e.g. war, flood, fire, labor dispute, supply shortage, act of God, natural disaster, etc.), or because of budgetary constraints or because any person or entity shall assert a right which prevents delivery of such services as are furnished from time to time without cost or charge (except by means of property tax) to other similar facilities in the City.

**Section 502. Special Assessment, Special Charges and Fees.** Notwithstanding Section 501 or the property tax exempt status of the Property or a portion of the Property, the Developer understands that it will be subject to special assessments, special charges and special taxes as defined in Wis. Stats. 74.01 (and as also referred to in Wis. Stats. Ch. 66) and fees charged by the City in the same manner and to the same extent that such special assessments, special charges, special taxes and fees are charged for similar services and/or undertakings to the Project within the City. This provision shall not affect the City's powers, consistent with the law, to determine the services (other than those typically covered by the property tax) that shall be provided to the Property and/or similarly situated property pursuant

to this paragraph. Nothing contained herein shall preclude the Owner from appealing, as provided by law, the imposition of such special assessments, special charges, special taxes or fees by the City.

**Section 503. PILOT Payments.**

- (a) *Calculation for Tax Years 2019 and Subsequent Tax Years.* In recognition of those services covered by Section 501 of this Agreement, in the event the Property, or a portion thereof, is determined to be tax exempt for tax year 2019 and subsequent tax years, Developer agrees to pay the City an annual PILOT payment for the exempt portion of the Property for each tax year (or portion thereof) during which the Developer owns the Property. If the Developer transfers or conveys the Property, the PILOT for that year will be prorated based upon the number of full months for which the Owner owned the Property.
- (b) *Annual PILOT Payments.* The annual PILOT payments for such services shall be \$10,000. The PILOT payment due shall be adjusted annually based upon the change in the United States Bureau of Labor Statistics Consumer Price Index ([www.bls.gov](http://www.bls.gov)) all Urban Consumers Midwest Area, Size B/C from January through December 2019 and each year thereafter.
- (c) *Payment Due Date.* PILOTs for tax year 2019 and subsequent years shall be due and payable in full on or before January 31 of the year following the tax year for which the PILOT was calculated, e.g. the payment for tax year 2019 shall be payable on or before January 31 of 2020.
- (d) *Use of Payment.* The City may use and expend PILOTs hereunder in such manner and for such purposes as to offset the City levy for those services covered under Section 501.
- (e) *Nonpayment.* The Developer has a good faith duty to take affirmative steps to satisfy its PILOT obligations hereunder by making timely payments to the City. A lien shall attach to the Property in the event of nonpayment or partial payment. The City expressly retains its governmental rights, authority and powers available at law or in equity.

**Section 504. Exempt Status.** Even if the City initially determines that, if the Developer uses the Property, or a portion thereof, for the purposes described to City in an application for exemption, all or a portion of the Property will qualify for real and personal property tax exemption under Wisconsin law, the City Assessor's Office may review the Property's exempt status under Wis. Stats. 70.11 from time to time with the respective January dates being the reference dates for those exemption reviews. If the City, as a result of those reviews or otherwise, determines that the Property no longer qualifies for exemption from property tax, for the year in which the determination is made:

- (a) The City will provide notice of such determination to the Developer, no later than April 30th of that year;
- (b) Section 503 shall be ineffective with respect to that and any subsequent years for which exemption no longer applies;

- (c) If a PILOT has been paid for that year, the City shall promptly refund such PILOT, or at the option of the City, offset such payments against any property taxes due from Developer; and
- (d) The Property shall be placed on the property tax rolls for that and any subsequent years for which exemption has been determined not to apply.

If the Developer disagrees with the City's determination that the Property no longer qualifies for tax exemption, the Developer may challenge such determination by the appropriate procedure provided under Wisconsin law for similarly situated property.

**Section 505. Term.** Section 503 of this Agreement shall be ineffective (whether temporarily or permanently) on the soonest of any of the following-described dates:

- (a) The day before the respective January 1 of the year concerning which the City determines that the Property no longer qualifies for the property tax exemption;
- (b) The effective date of an enactment by the State of Wisconsin of a mandatory payment for municipal services by owners of a property exempt from the general property tax or similarly situated owners of exempt property;
- (c) The effective date of a repeal by the State of Wisconsin of the property tax exemption for the Property and other similarly situated property; and
- (d) The effective date of legislation or case law, which indicates that PILOT payments are not permitted by exempt property owners.

**Section 506. Documents, Inspection, Cooperation.** Developer agrees to cooperate with the City (including, but not limited to, the City Assessor's Office, the City Development Office, the City Attorney's Office and the City Finance Office) with respect to this Agreement by allowing inspections of the Property upon reasonable written request of the City and by allowing inspection of leases of the Property and other documents requested of the Developer. Notwithstanding the foregoing, the City expressly reserves all its rights in law and equity to inspect and to obtain disclosure, documents, inspection and information to the extent the property owner is required to allow any such inspection under Wisconsin Law. The Developer is not hereby granting rights to inspection beyond those provided by law.

## ARTICLE VI. UNDERTAKINGS OF THE CITY

**Section 601. National Register of Historic Places.** The City agrees to work with the Developer to apply to the National Park Service to list the Armory building in the National Register of Historic Places in order to apply for historic preservation tax credits. This agreement includes a commitment to provide, as the current owner of the Property, a letter of support for the listing within thirty (30) days of execution of this Agreement.

**Section 602. Lead and Asbestos Abatement.** Prior to Closing, the City shall have completed all required lead and asbestos abatement work in a manner that does not compromise the nature of the Armory for the Project. The Developer will provide advice on reasonable actions by the City to comply with this paragraph.

## ARTICLE VII. CONDITIONS TO THE UNDERTAKINGS OF THE CITY

**Section 701. All Obligations of the City under this Agreement.** As a condition to each and all of the covenants, agreements and other obligations of the City under this Agreement, ~~all of the following shall occur, in addition to all other requirements and conditions set forth in this Agreement:~~

- (a) Developer shall have satisfied all Conditions Precedent set forth in ~~Article III~~ Section 301 hereof before the City should proceed with the obligations in Section 301.
- (b) ~~The Project shall be completed within the timeframe of approved schedule of construction, except to the extent failure to complete within such timeframe is due to Unavoidable Delay.~~
- (c) All representations and warranties of Developer set forth in Article IV and otherwise in this Agreement and in all agreements expressly referred to herein shall be true, complete and correct as required for the performance of obligations by the City in this Agreement.
- (d) All covenants and obligations of Developer under this Agreement are duly performed, observed and satisfied as required for the performance of obligations by the City in this Agreement.
- (e) No Event of Default, as defined in Section 901, has occurred, or with the giving of notice or lapse of time would occur as required for the performance of obligations by the City in this Agreement.

## ARTICLE VIII. INDEMNIFICATION OF THE CITY

**Section 801. Indemnification.** The Developer hereby indemnifies and holds harmless the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section collectively referred to as the "Indemnified Parties"), against any loss or damage to property or any injury to or death of any person occurring at or about or arising out of the Developer's performance of the construction of the Project, provided that the foregoing indemnification shall not be effective for any negligent acts of the Indemnified Parties in fulfilling the obligations of the City or its agents as set forth in this Agreement. Except for any willful misrepresentation, any willful misconduct, or negligent acts of the Indemnified Parties, the Developer will protect and defend the Indemnified Parties from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the action or inaction of the Developer (or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership and operation of the Project. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

## ARTICLE IX. DEFAULT/REMEDIES

**Section 901. Events of Default** An Event of Default is any of the following:

- (a) A failure by the Developer to cause substantial completion of the Project to occur pursuant to the terms, conditions and limitations of this Agreement, or the failure of the Developer to perform or observe any and all covenants, conditions, obligations, guarantees or agreements on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the Developer of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the Developer commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed as promptly as possible under the circumstances, then the event will not be an Event of Default.
- (b) Developer becomes insolvent or is the subject of bankruptcy or insolvency proceedings.
- (c) Developer fails to insure that the project is an ongoing concern with a substantial portion of the Property in regular, consistent use, including those portions identified in the Developer's business plan as daily operations.

**Section 902. Remedies on Default.** Whenever an event of default occurs and is continuing, the non-defaulting party may take any one or more of the following actions:

- (a) The non-defaulting party may immediately suspend its performance under this Agreement from the time any notice of an Event of Default is given until it receives assurances from the defaulting party deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement.
- (b) The non-defaulting party may take any action, including legal or administrative action, in law or in equity, which may appear necessary or desirable to enforce performance and observance of any covenant, condition, obligation, guarantee or agreement of the defaulting party under this Agreement.

**Section 903. No Remedy Exclusive.** No remedy or right conferred upon or reserved to the City or the Developer in this Agreement is intended to be exclusive of any other remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 904. No Implied Waiver.** In the event 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 any other concurrent, previous or subsequent breach hereunder.

**Section 905. Agreement to Pay Attorneys' Fees and Expenses.** Whenever any event of default occurs and either the non-defaulting party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any covenant, condition, obligation, guarantee or agreement on the part of the defaulting party herein contained, the defaulting party shall, on demand thereof, pay the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party by reason of such default.

#### ARTICLE X. FORCE MAJEURE

**Section 1001. Force Majeure.** No party will be responsible to any other party for any resulting losses if the fulfillment of any of the terms of this Agreement (other than any financial obligation) is delayed or prevented by war, strikes, fires, floods, acts of God, delay by federal or state governmental agencies, and other reasons wholly without the control of the party with whose performance there was interference, and which, by the exercise of reasonable diligence, such party is unable to prevent (Unavoidable Delay”), and the time for performance will be extended by the period of delay occasioned by any such cause.

#### ARTICLE XI. ADDITIONAL PROVISIONS

**Section 1101. Conflicts of Interest.** No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer's successors or assigns on any obligations under the terms of this Agreement.

**Section 1102. Incorporation by Reference.** All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

**Section 1103. No Implied Approvals.** Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of Developer to obtain all necessary approvals, licenses and permits from the City in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the City to approve or disapprove the Development Plans, or any part thereof, or to impose any limitations, restrictions and requirements on the development, construction and/or use of the Project as a condition of any such approval, license or permit; including, without limitation, requiring any and all other development and similar agreements.

**Section 1104. No Assignment.** Developer may not assign its rights in this Agreement without the express prior written consent of the City. Except with the prior written consent of the City, Developer shall not sell, transfer or convey the Property unless and until an occupancy permit has been issued.

**Section 1105. Time of the Essence.** Time is deemed to be of the essence with regard to all dates and time periods set forth herein or incorporated herein.



Developer Version

benefit of the parties hereto and their respective representatives, successors, heirs, and permitted assigns.

**Section 1113. Recording.** This Agreement or a memorandum of this Agreement shall be recorded in the Office of the Sheboygan County Register Deeds against the Property at the cost of the Developer.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by its members, on or as of the day first above written.

**CITY OF SHEBOYGAN, WISCONSIN**

**ARMORY COMMUNITY PROJECT, INC**

**BY:** \_\_\_\_\_  
Michael J. Vandersteen, Mayor

**BY:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
Meredith DeBruin, City Clerk

**ATTEST:** \_\_\_\_\_

**ACKNOWLEDGMENTS**

STATE OF WISCONSIN    )  
  ) ss  
SHEBOYGAN COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above-named Michael J. Vandersteen, Mayor, and Meredith DeBruin, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of  
Wisconsin My Commission

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  ) ss  
\_\_\_\_\_ COUNTY )

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\_\_\_\_\_  
Notary Public, State of  
Wisconsin My Commission

This instrument drafted by:

City Attorney Charles Adams  
828 Center Ave., Suite 304  
Sheboygan, WI 53081-4442  
WI State Bar No. 1021454

This document authorized by and in accordance with Res. No. \_\_\_\_-17-18

EXHIBIT "A"

~~PLAN DRAWING~~ REAL PROPERTY DESCRIPTION

**EXHIBIT "B"**  
**RESPONSE TO REQUEST FOR PROPOSALS**

**EXHIBIT "C"**  
**PROJECT PLAN**

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**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Res. No. 176-17-18 by Alderpersons Donohue and Bohren authorizing the purchase of approximately 0.83 acres (land and building) located on the northern portion of 1211 North 23<sup>rd</sup> Street for future use by the City.

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**REPORT PREPARED BY:** Darrell Hofland, City Administrator

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**REPORT DATE:** April 6, 2018      **MEETING DATE:** April 9, 2018

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**FISCAL SUMMARY:**

Budget Line Item:      N/A  
Budget Summary:      N/A  
Budgeted Expenditure:      N/A  
Budgeted Revenue:      N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes:      N/A  
Municipal Code:      N/A

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**BACKGROUND / ANALYSIS:** Sheboygan County is finalizing the terms of the sale of the property located at 1211 North 23<sup>rd</sup> Street to Acquisition Group, LLC. The property is presently being used for office, operations and storage for the County Highway Department. The County is completing the construction of a consolidated Highway Department complex in another community.

The city has an interest in purchasing a portion of the property, a 0.83 acre “chimney” parcel which is directly east of the adjacent Police Station. On the parcel, a structure exists – a salt storage building.

Sheboygan County has agreed to sell the “chimney” parcel to the city prior to their sale of the 1211 North 23<sup>rd</sup> Street parcel to Acquisition Group, LLC at a price of \$60,000.

**STAFF COMMENTS:**

Attached is an Offer to Purchase for the “chimney” parcel. The Offer to Purchase has been forwarded to Sheboygan County for their consideration.

The city has been informed by Sheboygan County that they will submit a counter-offer (with no anticipated change in the purchase price). It is unknown if the counter offer will be submitted prior to the Monday, April 9 Finance and Personnel Committee meeting.

The source of funds for this unbudgeted purchase is the Capital Projects Fund. The Fund has a fund balance amount of \$2,874,426.

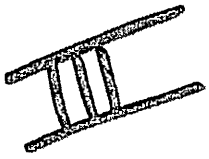
Should the city not receive a counter offer prior to the Finance and Personnel Committee, the requested action will be for the Committee to recommend the Common Council refer this resolution to the Finance and Personnel Committee of the new Council.

**ACTION REQUESTED:**

Motion to recommend the Common Council approve Res. No. 176-17-18 authorizing the purchase of approximately 0.83 acres (land and building) located on the northern portion of 1211 North 23<sup>rd</sup> Street for future use by the City.

**ATTACHMENTS:**

- I. Res. No. 176-17-18



Other Matters.

7.6

Res. No. 176 - 17 - 18. By Alderpersons Donohue and Bohren. April 4, 2018.

A RESOLUTION authorizing the purchase of approximately .83 acres (land and building located on the northern portion of 1211 North 23rd Street) for future use by the City.

RESOLVED: That the City of Sheboygan hereby approves the terms and conditions of the Commercial Offer to Purchase between the City of Sheboygan and the Sheboygan County Highway Department, in form substantially similar to the document attached hereto.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan to purchase the property.

Finance +  
Personnel

Thelma Donohue  
James A Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_, Mayor

**WB-15 COMMERCIAL OFFER TO PURCHASE**

1 LICENSEE DRAFTING THIS OFFER ON March 14, 2016 [DATE] IS (AGENT OF BUYER)  
2 (AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER)  STRIKE THOSE NOT APPLICABLE  
3 **GENERAL PROVISIONS** The Buyer, City of Sheboygan  
4 \_\_\_\_\_, offers to purchase the Property known as [Street Address] approx. 0.83 acres as shown on  
5 Exhibit A (land & building located on the northern portion of 1211 N. 23 St.) in the City  
6 of Sheboygan, County of Sheboygan, Wisconsin  
7 (Insert additional description, if any, at lines 109-115 or 277-288 or attach as an addendum per line 478), on the following terms:  
8 ■ PURCHASE PRICE: Sixty Thousand and 00/100  
9 \_\_\_\_\_ Dollars (\$ 60,000.00 ).  
10 ■ EARNEST MONEY of \$ 0 accompanies this Offer and earnest money of \$ 0 will be  
11 mailed, or commercially or personally delivered within \_\_\_\_\_ days of acceptance to listing broker or  
12 \_\_\_\_\_.  
13 ■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise provided below.  
14 ■ INCLUDED IN PURCHASE PRICE: Seller is including in the purchase price the Property, all Fixtures on the Property on the date of this Offer  
15 not excluded at lines 20-22, and the following additional items: \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 All personal property included in purchase price will be transferred by bill of sale or \_\_\_\_\_  
19 \_\_\_\_\_  
20 ■ NOT INCLUDED IN PURCHASE PRICE: \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 **CAUTION:** Identify trade fixtures owned by tenant, if applicable, and Fixtures that are on the Property (see lines 303-310) to be excluded  
24 by Seller or which are rented and will continue to be owned by the lessor.  
25 **NOTE:** The terms of this Offer, not the listing contract or marketing materials, determine what items are included/excluded.  
26 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer.  
27 **CAUTION:** Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines running from  
28 acceptance provide adequate time for both binding acceptance and performance.  
29 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before  
30 April, 2016. Seller may keep the Property on the market and accept  
31 secondary offers after binding acceptance of this Offer.  
32 **CAUTION:** This Offer may be withdrawn prior to delivery of the accepted Offer.  
33 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX (  ) ARE PART OF THIS OFFER ONLY IF  
34 THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A" OR ARE LEFT BLANK.  
35 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and written notices to a  
36 Party shall be effective only when accomplished by one of the methods specified at lines 37-54.  
37 (1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line 38 or 39.  
38 Seller's recipient for delivery (optional): \_\_\_\_\_  
39 Buyer's recipient for delivery (optional): \_\_\_\_\_  
40 (2) **Facs fax transmission** of the document or written notice to the following telephone number:  
41 Seller: ( \_\_\_\_\_ ) Buyer: ( \_\_\_\_\_ )  
42 (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a commercial delivery  
43 service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at  
44 line 47 or 48.  
45  (4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party, or to the Party's  
46 recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at line 47 or 48.  
47 Delivery address for Seller: Greg Schnell, Sheboygan County Transportation Dept., 1211 N. 23rd Street, Sheboygan, WI 53081  
48 Delivery address for Buyer: Darrell Holland, City of Sheboygan, 828 Center Ave., Suite 202, Sheboygan, WI 53081  
49 (5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line 53 or 54. If this is a  
50 consumer transaction where the property being purchased or the sale proceeds are used primarily for personal, family or household purposes,  
51 each consumer providing an e-mail address below has first consented electronically to the use of electronic documents, e-mail delivery and  
52 electronic signatures in the transaction, as required by federal law.  
53 E-Mail address for Seller (optional): \_\_\_\_\_  
54 E-Mail address for Buyer (optional): \_\_\_\_\_  
55 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller constitutes personal delivery  
56 to, or Actual Receipt by, all Buyers or Sellers.

57 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge  
58 of Conditions Affecting the Property or Transaction (lines 181-215) other than those identified in Seller's disclosure report dated \_\_\_\_\_  
59 and Real Estate Condition Report, if applicable, dated \_\_\_\_\_, which was/were received by Buyer prior to Buyer  
60 signing this Offer and which before made a part of this offer by reference **COMPLETE DATES OR STRIKE AS APPLICABLE** and  
61 \_\_\_\_\_

62 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE OR CONDITION REPORT(S).**  
63 **CAUTION:** If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures provided in Wis. Stat. §  
64 709.03 may be required. Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real  
65 estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal representatives who have never occupied  
66 the Property). Buyer may have rescission rights per Wis. Stat. § 709.03.

67 **CLOSING** This transaction is to be closed no later than July 1, 2018  
68 \_\_\_\_\_ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

69 **CLOSING PRORATIONS:** The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes,  
70 rents, prepaid insurance (if assumed), private and municipal charges, property owners association assessments, fuel and none  
71 \_\_\_\_\_

72 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**  
73 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.  
74 Real estate taxes shall be prorated at closing based on (CHECK BOX FOR APPLICABLE PRORATION FORMULA):

- 75  The net general real estate taxes for the preceding year, or the current year if available (Net general real estate taxes are defined as  
76 general property taxes after state tax credits and lottery credits are deducted) (NOTE: THIS CHOICE APPLIES IF NO BOX IS CHECKED)
- 77  Current assessment times current mill rate (current means as of the date of closing)
- 78  Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year, or current year if  
79 known, multiplied by current mill rate (current means as of the date of closing)
- 80

81 **CAUTION:** Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be substantially  
82 different than the amount used for proration especially in transactions involving new construction, extensive rehabilitation, remodeling  
83 or area-wide re-assessment. Buyer is encouraged to contact the local assessor regarding possible tax changes.

84  Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on the actual tax bill for  
85 the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5 days of receipt, forward a copy of the bill  
86 to the forwarding address Seller agrees to provide at closing. The Parties shall re-prorate within 30 days of Buyer's receipt of the actual tax  
87 bill. Buyer and Seller agree that is a post-closing obligation and is the responsibility of the Parties to complete, not the responsibility of the real  
88 estate brokers in this transaction.

89 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 109-115  
90 or 277-288 or in an addendum attached per line 478. At time of Buyer's occupancy, Property shall be in broom swept condition and free of all  
91 debris and personal property except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent.  
92 Occupancy shall be given subject to tenant's rights, if any.

93 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights under said lease(s)  
94 and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) (oral) **STRIKE ONE** lease(s), if any,  
95 are \_\_\_\_\_

96 \_\_\_\_\_ . Insert additional terms, if any, at lines 109-115 or 277-288 or attach as an addendum per line 478.  
97  **ESTOPPEL LETTERS:** Seller shall deliver to Buyer no later than \_\_\_\_\_ days before closing, estoppel letters dated within  
98 \_\_\_\_\_ days before closing, from each non-residential tenant, confirming the lease term, rent installment amounts, amount of security  
99 deposit, and disclosing any defaults, claims or litigation with regard to the lease or tenancy.

100 **RENTAL WEATHERIZATION** This transaction (s) (is not) **STRIKE ONE** exempt from Wisconsin Rental Weatherization Standards (Wis. Admin.  
101 Code Ch. SPS 387). If not exempt, (Buyer) (Seller) **STRIKE ONE** ("Buyer" if neither is stricken) shall be responsible for compliance, including all  
102 costs, with Wisconsin Rental Weatherization Standards. If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at  
103 closing.

104 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3) occupancy; (4) date of  
105 closing; (5) contingency Deadlines **STRIKE AS APPLICABLE** and all other dates and Deadlines in this Offer except: \_\_\_\_\_

106 \_\_\_\_\_ . If "Time  
107 is of the Essence" applies to a date or Deadline, failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence"  
108 does not apply to a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

109 **ADDITIONAL PROVISIONS/CONTINGENCIES** \_\_\_\_\_  
110 \_\_\_\_\_  
111 \_\_\_\_\_  
112 \_\_\_\_\_  
113 \_\_\_\_\_  
114 \_\_\_\_\_  
115 \_\_\_\_\_

118  PROPOSED USE CONTINGENCES: Buyer is purchasing the Property for the purpose of: \_\_\_\_\_  
117 Property Address: Approximately 0.83 acres as shown on Exhibit A

119  EASEMENTS AND RESTRICTIONS: The Offer is contingent upon Buyer obtaining, within \_\_\_\_\_ days of acceptance, at  
120 (Buyer's) (Seller's) (Strike One) (Buyer's) If neither is stricken, copies of all public and private easements, covenants and  
121 restrictions affecting the Property and a written determination by a qualified independent third party that none of these prohibit or significantly  
122 delay or increase the cost of the proposed use or development identified at lines 116 to 118.  
123  APPROVALS: The Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) (Strike One) (Buyer's) If neither is stricken, expense,  
124 all applicable governmental permits, approvals and licenses, as necessary and appropriate, or the final discretionary action by the granting  
125 authority prior to the issuance of such permits, approvals and licenses, for the following items related to Buyer's proposed use:  
126 or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which significantly increase  
127 the cost of Buyer's proposed use, all within \_\_\_\_\_ days of acceptance of this Offer.

128  ACCESS TO HIGHWAY: This Offer is contingent upon Buyer obtaining, within \_\_\_\_\_ days of acceptance, at (Buyer's) (Seller's)  
129 (Strike One) (Buyer's) If neither is stricken, expense, with verification that there is legal vehicular access to the Property from public roads.  
130  LAND USE APPROVAL: The Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) (Strike One) (Buyer's) If neither is stricken,  
131 expense, a  zoning;  conditional use permit;  license;  variance;  building permit;  occupancy permit;  other  
132  CHECK ALL THAT APPLY, for the Property for its proposed use described  
133 at lines 116-118 or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which  
134 significantly increase the cost of Buyer's proposed use, all within \_\_\_\_\_ days of acceptance.  
135  MAP OF THE PROPERTY: This Offer is contingent upon (Buyer obtaining) (Seller providing) (Strike One) (Seller providing) If neither is  
136 stricken) a  
137 survey (ALTA/ACSM Land Title Survey if survey type is not  
138 expected) dated subsequent to the date of acceptance of this Offer and prepared by a registered land surveyor, within \_\_\_\_\_ days of  
139 acceptance, at (Buyer's) (Seller's) (Strike One) (Seller's) If neither is stricken) expense. The map shall show minimum of \_\_\_\_\_  
140 acres, the legal description of the Property, the Property's boundaries and dimensions, visible encroachments upon  
141 the Property, the location of improvements, if any, and;

142 Additional map features  
143 which may be added include, but are not limited to: siting of all corners of the Property, identifying dedicated and apparent streets; lot  
144 dimensions; total acreage or square footage; utility lines; easements or rights-of-way. Such survey shall be in satisfactory form and  
145 accompanied by any required surveyor's certificate sufficient to enable Buyer to obtain removal of the standard survey exception on the title policy.  
146 CAUTION: Consider the cost and the need for map features before selecting them. Also consider the time required to obtain the map  
147 when setting the deadline.  
148 This contingency shall be deemed satisfied unless Buyer, within five (5) days of the earlier of: (1) Buyer's receipt of the map; or (2) the deadline for  
149 delivery of said map, delivers to Seller a copy of the map and a written notice which identifies: (1) a significant encroachment; (2) information  
150 materially inconsistent with prior representations; (3) failure to meet requirements stated within the contingency; or (4) the existence of conditions  
151 that would prohibit the Buyer's intended use of the Property described at lines 116-118. Upon delivery of Buyer's notice, the Offer shall be null and  
152 void.  
153  DOCUMENT REVIEW CONTINGENCY: This Offer is contingent upon Seller delivering the following documents to Buyer within \_\_\_\_\_  
154 days of acceptance:  CHECK THOSE THAT APPLY, STRIKE AS APPROPRIATE:  
155  Documents evidencing that the sale of the Property has been properly authorized, if Seller is a business entity.  
156  A complete inventory of all furniture, fixtures, equipment and other personal property included in the transaction which is consistent with  
157 representations made prior to and in this Offer.  
158  Uniform Commercial Code lien search as to the personal property included in the purchase price, showing the Property to be free and clear  
159 of all liens, other than liens to be released prior to or at closing.  
160  Rent roll.  
161  Other \_\_\_\_\_

162 Additional items which may be added include, but are not limited to: building, construction or component warranties, previous environmental site  
163 assessments, surveys, site commitments and policies, maintenance agreements, other contracts relating to the Property, existing permits and assessments  
164 licenses, recent financial operating statements, current and future rental agreements, notices of termination and non-renewal, and assessment  
165 notices.  
166 All documents Seller delivers to Buyer shall be true, accurate, current and complete. Buyer shall keep all such documents confidential and  
167 disclose them to third parties only to the extent necessary to implement other provisions of this Offer. Buyer shall return all documents (withheld  
168 and any reproductions) to Seller if this Offer is terminated.  
169  CONTINGENCY SATISFACTION: This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of the earlier of  
170 receipt of the final document to be delivered or the deadline for delivery of the documents, delivers to Seller a written notice indicating that this  
171 days of the earlier of

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176 contingency has not been satisfied. Such notice shall identify which document(s) have not been timely delivered or do not meet the standard set  
177 forth for the document(s). Upon delivery of such notice, this Offer shall be null and void.

178 **DEFINITIONS**

179 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or written notice  
180 physically in the Party's possession, regardless of the method of delivery.

181 ■ **CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION:** "Conditions Affecting the Property or Transaction" are defined to include:

- 182 a. Defects in structural components, e.g. roof, foundation, basement or other walls.
- 183 b. Defects in mechanical systems, e.g. HVAC, electrical, plumbing, septic, well, fire safety, security or lighting.
- 184 c. Underground or aboveground storage tanks presently or previously on the Property for storage of flammable or combustible liquids, including  
185 but not limited to gasoline and heating oil.
- 186 d. Defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, lead paint, asbestos, radon, radium in water  
187 supplies, mold, pesticides or other potentially hazardous or toxic substances on the premises.
- 188 e. Production of or spillage of methamphetamine (meth) or other hazardous or toxic substances on the Property.
- 189 f. Zoning or building code violations, any land division involving the Property for which required state or local permits had not been obtained,  
190 nonconforming structures or uses, conservation easements, rights-of-way.
- 191 g. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority to impose  
192 assessments against the real property located within the district.
- 193 h. Proposed, planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property  
194 or the present use of the Property.
- 195 i. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.
- 196 j. Flooding, standing water, drainage problems or other water problems on or affecting the Property.
- 197 k. Material damage from fire, wind, floods, earthquakes, expansive soils, erosion or landslides.
- 198 l. Near airports, freeways, railroads or landfills, or significant odor, noise, water intrusion or other irritants emanating from neighboring property.
- 199 m. Portion of the Property in a floodplain, wetland or shoreland zoning area under local, state or federal regulations.
- 200 n. Property is subject to a mitigation plan required under administrative rules of the Department of Natural Resources related to county  
201 shoreland zoning ordinances, which obligates the owner of the Property to establish or maintain certain measures related to shoreland  
202 conditions and which is enforceable by the county.
- 203 o. Encroachments; easements, other than recorded utility easements; access restrictions; covenants, conditions and restrictions; shared  
204 fences, walls, wells, driveways, signage or other shared usages; or leased parking.
- 205 p. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.
- 206 q. Structure on the Property designated as a historic building, any part of the Property located in a historic district, or burial sites or  
207 archaeological artifacts on the Property.
- 208 r. All or part of the land has been assessed as agricultural land, the owner has been assessed a use-value conversion charge or the payment  
209 of a use-value conversion charge has been deferred.
- 210 s. All or part of the Property is subject to, enrolled in or in violation of a certified farmland preservation zoning district or a farmland preservation  
211 agreement, or a Forest Crop, Managed Forest (see disclosure requirements in Wis. Stat. § 710.12), Conservation Reserve or comparable  
212 program.
- 213 t. A pier is attached to the Property that is not in compliance with state or local pier regulations.
- 214 u. Government investigation or private assessment/audit (of environmental matters) conducted.
- 215 v. Other Defects affecting the Property.

216 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding the day the event  
217 occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as a specific number  
218 of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and other day designated by the  
219 President such that the postal service does not receive registered mail or make regular deliveries on that day. Deadlines expressed as a specific  
220 number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24  
221 hours per calendar day. Deadline expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at  
222 midnight of that day.

223 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair  
224 the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect  
225 the expected normal life of the premises.

226 (Definitions Continued on page 6)



287 ■ ENVIRONMENTAL SITE ASSESSMENT: An "Environmental Site Assessment" (also known as a "Phase I Site Assessment") (see lines 378-395) may include, but is not limited to: (1) an inspection of the Property for a period of 60 years prior to the visual inspection; (2) a review of historic and search of title records showing private ownership of the Property for a period of 60 years prior to the visual inspection; (3) a review of historic and recent aerial photographs of the Property, if available; (4) a review of environmental licenses, permits or orders issued with respect to the Property; (5) an evaluation of results of any environmental sampling and analysis that has been conducted on the Property; and (6) a review to determine if the Property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment including the National Priorities List, the Department of Nature Resources' (DNR) Registry of Waste Deposited Sites, the DNR's Contaminated Lands Environmental Action Network, and the DNR's Remediation and Redevelopment (RR) Sites Map including the Geographical Information System (GIS) Registry and related resources. Any Environmental Site Assessment performed under this Offer shall comply with generally recognized industry standards (e.g. current American Society of Testing and Material's "Standard Practice for Environmental Site Assessments"), and state and federal guidelines, as applicable.

288 CAUTION: Unless otherwise agreed an Environmental Site Assessment does not include subsurface testing of the soil or groundwater or other testing of the Property for environmental pollution. If further investigation is required, insert provisions for a Phase II Site Assessment (collection and analysis of samples), Phase III Environmental Site Assessment (evaluation of remediation alternatives) or other site evaluation at lines 103-115 or 277-285 or attach as an addendum per line 478.

289 ■ FIXTURE: A "Fixture" is an item of property which is physically attached to or so closely associated with land or improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises and items customarily treated as fixtures, including, but not limited to, etc. garden beds; plants; shrubs; hems; screens and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shades; central heating and cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor coverings; awnings; attached antennas; garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; swings; swings buildings on permanent foundations and docks/piers on permanent foundations. A Fixture does not include trade fixtures owned by tenants of the Property.

290 CAUTION: Exclude Fixtures not owned by Seller such as rented fixtures. See lines 20-22.

291 ■ PROPERTY: Unless otherwise stated, "Property" means the real estate described at lines 4-7.

292 ■ DISTRIBUTION OF INFORMATION: Buyer and Seller authorize the agents of Buyer and Seller to (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold database; and (iii) provide active listing, pending sales, closed sales and financing concession information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry.

293 ■ HELD BY: Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker (Buyer's agent if Property is not listed or Seller's account if no broker is involved), until applied to purchase price or otherwise disbursed as provided in the Offer.

294 CAUTION: Should persons other than a broker hold earnest money, an earnest agreement should be drafted by the Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special disbursement agreement.

295 ■ DISBURSEMENT: If negotiators do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If the Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse the earnest money; (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order or (4) any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorney's fees, not to exceed \$250, prior to disbursement.

296 ■ LEGAL RIGHTS/ACTION: Broker's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer or Seller's legal right to earnest money cannot be determined by broker. At least 30 days prior to disbursement per (1) or (4) above, broker, Buyer or Seller must provide notice of the disbursement by certified mail. If Buyer or Seller agrees with broker's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with 1-4 dwelling units and certain other earnest money disputes. Buyer and Seller should consider consulting attorneys regarding their legal rights under the Offer in case of a dispute. Both Parties agree to hold the broker harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.



396 **DEFAULT** Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions of this Offer. A  
 397 material failure to perform any obligation under this Offer is a default which may subject the defaulting party to liability for damages or other legal  
 398 remedies.

399 If Buyer defaults, Seller may:

- 400 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or  
 401 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual damages.

402 If Seller defaults, Buyer may:

- 403 (1) sue for specific performance; or  
 404 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

405 In addition, the Parties may seek any other remedies available in law or equity.

406 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the discretion of the  
 407 courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above.  
 408 By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the arbitration agreement.

409 **NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS**  
 410 **DOCUMENT CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE**  
 411 **PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE**  
 412 **SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.**

413 **ENTIRE CONTRACT** This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller regarding the  
 414 transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds and inures to the benefit of the Parties  
 415 to this Offer and their successors in interest.

416 **PROPERTY DIMENSIONS AND SURVEYS** Buyer acknowledges that any land, building or room dimensions, or total acreage or building square  
 417 footage figures, provided to Buyer by Seller or by a broker, may be approximate because of rounding, formulas used or other reasons, unless  
 418 verified by survey or other means.

419 **CAUTION:** Buyer should verify total square footage or acreage figures and land, building or room dimensions, if material to Buyer's  
 420 decision to purchase.

421 **BUYER'S PRE-CLOSING WALK-THROUGH** Within 3 days prior to closing, at a reasonable time pre-approved by Seller or Seller's agent, Buyer  
 422 shall have the right to walk through the Property to determine that there has been no significant change in the condition of the Property, except for  
 423 ordinary wear and tear and changes approved by Buyer, and that any Defects Seller has agreed to cure have been repaired in the manner agreed  
 424 to by the Parties.

425 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** Seller shall maintain the Property until the earlier of closing or occupancy of  
 426 Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If, prior to closing, the Property  
 427 is damaged in an amount of not more than five percent (5%) of the selling price, Seller shall be obligated to repair the Property and restore it to  
 428 the same condition that it was on the day of this Offer. No later than closing, Seller shall provide Buyer with lien waivers for all fixable repairs and  
 429 restoration. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at  
 430 option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any, relating  
 431 to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However,  
 432 if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring the  
 433 Property.

434 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons registered with the  
 435 registry by contacting the Wisconsin Department of Corrections on the internet at <http://www.wdofoffenders.org> or by telephone at  
 436 (800) 240-5830.

437 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of this Offer. An  
 438 "inspection" is defined as an observation of the Property which does not include an appraisal or testing of the Property, other than testing for  
 439 leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. A "test" is defined as  
 440 the taking of samples of materials such as soils, water, air or building materials from the Property and the laboratory or other analysis of those  
 441 materials. Seller agrees to allow Buyer's inspectors, testers, appraisers and qualified third parties reasonable access to the Property upon  
 442 advance notice, if necessary to satisfy the contingencies in this Offer. Buyer and licensees may be present at all inspections and testing. Except  
 443 as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property.

444 **NOTE:** Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the test, (e.g., to  
 445 determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of the  
 446 contingency.

447 Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed unless otherwise agreed  
 448 to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller. Seller acknowledges that certain inspections  
 449 or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

450  **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 437-449). This Offer is contingent upon  
451 a qualified independent inspector(s) conducting an inspection(s) of the Property which discloses no Defects. This Offer is further contingent upon  
452 a qualified independent inspector or qualified independent third party performing an inspection of \_\_\_\_\_

453 \_\_\_\_\_ (list any Property feature(s) to be separately inspected, e.g., dumps, etc.) which  
454 discloses no Defects. Buyer shall order the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections  
455 recommended in a written report resulting from an authorized inspection performed provided they occur prior to the deadline specified at line 461.  
456 Each inspection shall be performed by a qualified independent inspector or qualified independent third party.

457 **CAUTION:** Buyer should provide sufficient time for the primary inspection and/or any specialized inspection(s), as well as any follow-up  
458 inspection(s).

459 For the purpose of this contingency, Defects (see lines 223-225) do not include conditions the nature and extent of which Buyer had actual  
460 knowledge or written notice before signing the Offer.

461  **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance,  
462 delivers to Seller a copy of the inspection report(s) and a written notice listing the Defect(s) identified in the inspection report(s) to which Buyer  
463 objects (Notice of Defects).

464 **CAUTION:** A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.

465  **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have a right to cure the Defects. If Seller has the right to  
466 cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of Buyer's delivery of the Notice of Defects stating  
467 Seller's election to cure Defects, (2) curing the Defects in a good and workmanlike manner and (3) delivering to Buyer a written report detailing the  
468 work done within 3 days prior to closing. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written  
469 inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will  
470 not cure or (b) Seller does not timely deliver the written notice of election to cure.

471  **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at  
472 \_\_\_\_\_, no later than \_\_\_\_\_. If Seller accepts a bona fide secondary offer,  
473 Seller may give written notice to Buyer of acceptance. If Buyer does not deliver to Seller a written waiver of the Closing of Buyer's Property  
474 Contingency and \_\_\_\_\_

476 **[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL CONTINGENCIES, OR**  
477 **PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.)] within \_\_\_\_\_ hours of Buyer's Actual Receipt of said notice, this Offer shall be**  
478 **null and void.**

479  **ADDENDA:** The attached Exhibit A and Exhibit B is/are made part of this Offer.

480 This Offer was drafted by [Licensee and Firm] City Attorney Charles C. Adams

481 \_\_\_\_\_ on March 14, 2018

482 Buyer Entity Name (if any): City of Sheboygan

483 (X) \_\_\_\_\_  
484 Buyer's/Authorized Signature ▲ Print Name/Title Here ► Michael J. Vandersteen, Mayor Date ▲ \_\_\_\_\_

485 (X) \_\_\_\_\_  
486 Buyer's/Authorized Signature ▲ Print Name/Title Here ► Meredith DeBruin, City Clerk Date ▲ \_\_\_\_\_

487 **[EARNEST MONEY RECEIPT]** Broker acknowledges receipt of earnest money as per line 10 of the above Offer.

488 \_\_\_\_\_ Broker (By)

489 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER SURVIVE CLOSING**  
490 **AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON THE TERMS AND CONDITIONS AS**  
491 **SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.**

492 Seller Entity Name (if any): Sheboygan County Highway Department

493 (X) \_\_\_\_\_  
494 Seller's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

495 (X) \_\_\_\_\_  
496 Seller's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

497 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_

498 \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

499 This Offer is rejected \_\_\_\_\_ This Offer is countered (See attached counter) \_\_\_\_\_  
500 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

EXHIBIT A

LEGAL DESCRIPTION OR MAP OF THE LAND AND BUILDING  
LOCATED ON THE NORTHERN PORTION OF THE PROPERTY (THE  
"CHIMNEY PARCEL"), EAST OF THE EXISTING POLICE DEPARTMENT

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**EXHIBIT B**

**ADDITIONAL PROVISIONS/CONTINGENCIES**

1. **CERTIFIED SURVEY MAP**. Certified Survey Map (CSM) shall be prepared at the City's expense. All approvals associated with the CSM are the responsibility of the City.

2. **EASEMENT**. The access easement along the south lot line of the Main Parcel shall be relocated to the north lot line of the Main Parcel in such location as mutually acceptable to 2017 Acquisition Group, LLC and the City. The purpose of relocating the easement is to provide the City with additional access to the Chimney Parcel.

3. **AS IS**. The City is purchasing the Chimney Parcel in its "AS IS" condition without representations or warranties of any kind, express or implied, oral or written, including, without limitation, zoning, availability of access or utilities, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, or underground storage tanks in, on or around the Chimney Parcel.

4. **COMMISSION**. The City shall not be responsible for payment of real estate commissions due to Cushman & Wakefield | Boerke as a result of this transaction.