

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

III

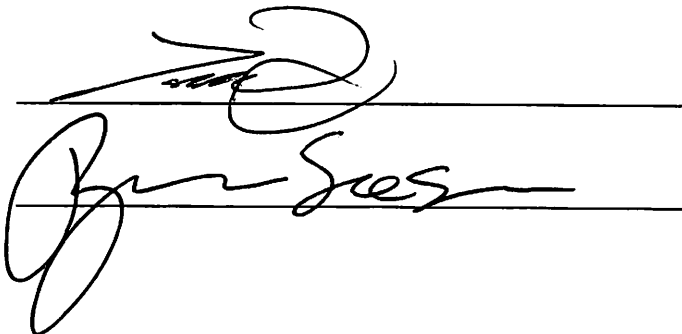
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Res. No. 154 - 19 - 20. By Alderpersons Wolf and Sorenson.  
January 20, 2020.

A RESOLUTION authorizing the appropriate City officials to execute a Statement of Willingness to Assume Financial Responsibility with regard to part of a line of railroad proposed for abandonment by Union Pacific Railroad.

RESOLVED: That the appropriate City officials are hereby authorized to execute the Statement of Willingness to Assume Financial Responsibility, a copy of which is attached hereto.

Public Works



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

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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**AB-33(SUB-NO. 321X)**

WISCONSIN CENTRAL LTD -- ABANDONMENT EXEMPTION --  
IN (SHEBOYGAN), SHEBOYGAN COUNTY, WISCONSIN

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**STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY BY  
(Trail User) WISCONSIN  
PURSUANT TO 49 CFR 1152.29**

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, the City of Sheboygan is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by the Union Pacific and operated by Union Pacific. The property, known as Sheboygan Old Main Line, extends from railroad milepost 148.2, near Union Avenue, to railroad milepost 149.5, near Pennsylvania Avenue, a distance of 1.3 miles in the City of Sheboygan and the County of Sheboygan, Wisconsin. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-33 (Sub-No. 321X).

A map depicting the property depicting the right-of-way is attached as **Exhibit 1**.

The City of Sheboygan acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad, Union Pacific, on the same date it is being served on the Board.

\_\_\_\_\_  
(Name of Trail User/Organization)

\_\_\_\_\_  
Date

By:



**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Resolution authorizing the appropriate City officials to execute a Statement of Willingness to Assume Financial Responsibility with regard to part of the line of the railroad proposed for abandonment by Union Pacific Railroad.

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**REPORT PREPARED BY:** Chad Pelishek, Director of Planning and Development

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**REPORT DATE:** January 22, 2020

**MEETING DATE:** January 28, 2020

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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 of Sheboygan has an executed purchase and sale agreement with Union Pacific Railroad to purchase abandoned railroad right-of-way from Pennsylvania Avenue to Union Avenue for a future recreational trail. The conditions of this agreement require an approval from the federal Surface Transportation Board to officially abandon the described section. The State of Wisconsin Department of Transportation is the requestor to the Surface Transportation Board for abandonment. In fall 2019, a request was made using a previously signed Statement of Willingness by Sheboygan County from 2014. The Board denied the application because the statement was too old and after discussions with the County it makes sense for the city to sign the statement.

Since the City will ultimately be the owner and developer, it makes sense for the City to sign this and assume responsibility, therefore city staff recommends approval.

**STAFF COMMENTS:**

None.

**ACTION REQUESTED:** Motion to recommend the Common Council adopt Res. No. 154-19-20 authorizing the appropriate City officials to execute a Statement of Willingness to Assume Financial Responsibility with regard to part of the line of railroad proposed for abandonment by Union Pacific Railroad.

**ATTACHMENTS:**

- I. Res. No. 154-19-20

III

5.6

Res. No. 155 - 19 - 20. By Alderpersons Wolf and Sorenson. January 20, 2020.

A RESOLUTION authorizing entering into an Authorization for Professional Services with ECS Midwest, LLC regarding soil borings in the vicinity of the Badger State Lofts development.

RESOLVED: That the Director of Public Works is hereby authorized to enter into an Authorization for Professional Services with ECS Midwest, LLC, a copy of which is attached hereto, for soil borings in the vicinity of the Badger State Lofts development.

BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to pay the total estimated fee of \$7,120.00 from Account No. 42761100-631100 (TID 17).

  
\_\_\_\_\_  
  
\_\_\_\_\_

Public Works.

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



# AUTHORIZATION FOR PROFESSIONAL SERVICES

ECS MIDWEST, LLC

1060 Breezewood Ln. Suite 102, Neenah, WI 54956

Phone: 920-886-1406 Fax: 920-886-1409

ECS is pleased to provide the professional services outlined in the proposed scope of services below. This contract confirms your authorization for the services requested, and your agreement to the incorporated Terms and Conditions under which the services will be provided.

## PROJECT INFORMATION

<b>Project Name:</b>	Sheboygan 2019 TID #17	<b>ECS Project No:</b>	
<b>Street Address:</b>	Illinois Ave, Maryland Ave & S. 11 <sup>th</sup> St.	<b>ECS Proposal No:</b>	59:2253
<b>City, State:</b>	Sheboygan, Wisconsin		

## CLIENT INVOICE INFORMATION

<b>Firm:</b>	City of Sheboygan	<b>Attn:</b>	Mr. Kevin Jump
<b>Address:</b>	2026 New Jersey Ave		
<b>City, State:</b>	Sheboygan, Wisconsin	<b>Zip Code:</b>	53081

## PROPOSED SCOPE OF SERVICES

Foundation Testing     Compaction Testing     Concrete Testing     Reinforcing Steel Observation  
 Masonry Testing     Rebar Inspection     Subgrade Observations     Cylinder Testing

## SCOPE OF SERVICES

- Field Density Testing: 1.5 hours per site visit to document compaction level of fill materials
- Soils Laboratory Testing: 1 Moisture-Density Relationship (Proctors) and 1 Mechanical Analysis (Gradations)
- Concrete Testing: 1.5 hours per site visit to document slump, air content and temperature of concrete
- Cylinder Testing: 1 set of cylinders cast per trip for compressive strength testing

## SPECIAL PROVISIONS

- We request 24 hours notice when scheduling testing.
- Please contact Tim Hendrickson, ECS Midwest Project Manager, with any questions pertaining to proposal amount or number of site visits being proposed at 920-886-1406 ext. 2557

## ESTIMATED FEES (Rates per attached CMT Fee Schedule)

- Site Visits: Includes personnel site time and mobilization, equipment, project coordination and report generation and review
- Field Density Testing: 20 trips at \$315 per trip
- Soils Laboratory Testing: \$270
- Concrete Testing: 2 trips at \$550 per trip
- Cylinder Testing: 2 sets of cylinders included in Concrete Trips
- Total Estimated Fee: \$7,120**

## PROJECT ASSUMPTIONS

- As a savings to your project, our technicians will perform multiple services each trip whenever possible
- Unless notified otherwise, ECS will only provide electronic test reports to you for distribution

The services described above will be rendered portal-to-portal from our office in Neenah. Unit rates are based on a normal 8 hour work day, Monday through Friday, between normal business hours of 7:00 a.m. to 6:00 p.m. Overtime beyond 8 hours/day, outside normal hours, and on Saturday, Sunday or holidays will be invoiced at a rate of 1.5 times the normal hourly rate indicated above. Scheduling of services should occur by 3:30pm day before anticipated activities.

Complete this page and return one copy of this proposal to ECS Midwest, LLC to indicate acceptance of this proposal and to initiate work on the above-referenced project. The client's signature below also indicates that he/she has read or has had the opportunity to read the accompany General Conditions of Service and agrees to be bound by such General Conditions of Service.

**BILLING INFORMATION**  
(Please Print or Type)

Name of Client: \_\_\_\_\_  
 Project Manager: \_\_\_\_\_  
 Phone number of Project Manager: \_\_\_\_\_

Party Responsible for Payment: \_\_\_\_\_  
 Company Name: \_\_\_\_\_  
 Person/Title \_\_\_\_\_  
 Department: \_\_\_\_\_  
 Billing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Telephone Number: \_\_\_\_\_  
 Fax Number: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_  
 Client PO/Job Number \_\_\_\_\_  
 Special Conditions for Invoice \_\_\_\_\_

Report Distribution:  
 Name: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Email Address: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

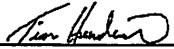
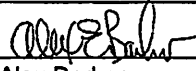
Site Contact:  
 Name: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_

**Work Authorized By:**

<b>Signature:</b>		<b>Date:</b>	
<b>Print Name:</b>		<b>Title:</b>	
<b>Firm:</b>			

Signatory warrants his/her authority to bind the entity represented

**For ECS MIDWEST, LLC:**

<b>Signature:</b>		<b>Date:</b>	11/7/2019
<b>Sr. Project Manager:</b>	Tim Hendrickson		
<b>Signature:</b>		<b>Date:</b>	11/7/2019
<b>Principal Engineer:</b>	Alex Barker		

**NOTE: Proposal Incorporating Terms and Conditions.** ECS Terms and Conditions are attached to this proposal and are an integral part of your Authorization to Proceed. Please read the Terms and Conditions before signing this proposal. By your acceptance of this proposal you agree to accept all of the Terms and Conditions. Should these services be authorized without receiving a written copy of this contract, the terms and conditions of this contract shall, nevertheless be in effect, even in the absence of a written acceptance by you.



## 2019 CMT FEE SCHEDULE

### LABORATORY:

	<u>Fees</u>
1. Laboratory Moisture-Density Relationship	
a. Modified Proctor (ASTM D1557)	\$175.00/each
b. Standard Proctor (ASTM D698)	\$155.00/each
c. One-Point Proctor (ASTM D698 or D1557)	\$100.00/each
2. Mechanical Analysis on Submitted Samples	
a. Sieve Analysis of fine and coarse agg. (ASTM C136)	\$90.00/each
b. Sieve Analysis #200 Only	\$50.00/each
c. Grain Size Analysis Washed (ASTM D422)	\$110.00/each
3. Atterberg Limits Testing (ASTM D4318)	\$75.00/each
4. Falling Head Permeability Test (ASTM D5084)	\$375.00/each
5. Handling, Curing and Compression Test of Concrete Cylinders	
a. Cast by ECS	\$16.00/each
b. Cast by Others	\$24.00/each
6. Bitumen Content Only (ASTM D2172)	\$100.00/each
7. Compressive Strength Mortar Cubes	\$20.00/each
8. Compressive Strength Grout Cubes	\$20.00/each
9. Compressive Strength Grout Prisms	\$20.00/each

### EQUIPMENT:

10. Nuclear Density Gauge	\$40.00/day
11. "Cone Penetrometer Rental"	\$32.00/day
12. Concrete Equipment Rental	\$23.00/day
13. Cylinder Molds (case of 20) (cylinder molds (Case)	
a. 6" x 12"	\$55.00/each
b. 4" x 8"	\$35.00/each
14. Mileage	\$0.25/mile

### TECHNICAL STAFF:

15. Field Technician	\$51.00/hour
16. Clerical	\$35.00/hour

### PROFESSIONAL SERVICES:

17. Senior Principal Engineer	\$250.00/hour
18. Principal Engineer	\$195.00/hour
19. Senior Department Manager	\$140.00/hour
20. Construction Services Manager	\$105.00/hour
21. Project Manager	\$90.00/hour
22. Assistant Project Manager	\$65.00/hour

ECS MIDWEST, LLC

## ECS MIDWEST, LLC TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS MIDWEST, LLC ("ECS") pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

**1.0 INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants

**2.0 SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

### **3.0 STANDARD OF CARE**

**3.1** In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.

**3.2** CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

**3.3** If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.

**3.4** If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.

### **4.0 CLIENT DISCLOSURES**

**4.1** Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.

**4.2** "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.

**4.3** If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

**5.0 INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.

**6.0 CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.

### **7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**

**7.1** CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

**7.2** CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.

**7.3** ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.

**7.4** CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

### **8.0 UNDERGROUND UTILITIES**

**8.1** ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.

**8.2** CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.

**8.3** CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.

### **9.0 SAMPLES**

**9.1** Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.

**9.2** Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.

### **10.0 ENVIRONMENTAL RISKS**

**10.1** When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.

**10.2** When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.

**10.3** Unless explicitly stated in the Scope of Services, ECS will neither subcontract nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

**10.4** In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

**10.5** Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.

**10.6** CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 **OWNERSHIP OF DOCUMENTS**

- 11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it (the "Documents of Service") and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.
- 11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, its licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
- 11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
- 11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.
- 11.5 ECS and CLIENT recognize that CLIENT is a public entity and, therefore, subject to the Wisconsin Public Records Law. As a result, CLIENT may be required to provide one or more Documents of Service to someone unaffiliated with CLIENT pursuant to a Public Records Request or similar request. Such disclosure does not violate this Agreement. Neither CLIENT nor ECS have any control how a Document of Service may be used by someone who receives it pursuant to a Public Records Request or similar request, or whether unauthorized modifications may be made to the Document of Service. ECS shall have no liability for how its Documents of Service are used or modified by someone who receives them pursuant to a Public Records Request or similar request.

12.0 **SAFETY**

- 12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.
- 12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 **CONSTRUCTION TESTING AND REMEDIATION SERVICES**

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.
- 13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.

14.0 **CERTIFICATIONS** - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it

relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 **BILLINGS AND PAYMENTS**

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.
- 15.2 CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. However, if funds for the continued fulfillment of this Agreement by the CLIENT are at any time not forthcoming or are insufficient, through the failure of any entity—including the CLIENT itself—to appropriate funds or otherwise, then the CLIENT shall have the right to terminate this Agreement without penalty. This shall not affect the CLIENT'S obligation to make payment to ECS for services previously rendered. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.
- 16.0 **DEFECTS IN SERVICE**
- 16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT'S personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
- 16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.
- 17.0 **INSURANCE** - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.
- 18.0 **LIMITATION OF LIABILITY**
- 18.1 CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.
- 18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.

- 18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$50,000, or two (2) times the total fee for the services rendered, whichever is greater.
- 18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.
- 18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.
- 19.0 INDEMNIFICATION**
- 19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.) ECS does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, or any other statute.
- 19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.
- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. If CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HERUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.
- 19.4 IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.
- 19.5 IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND. However, either party will pay reasonable costs of defense in the event that they are called on to indemnify the other party pursuant to this Section 19.
- 20.0 CONSEQUENTIAL DAMAGES**
- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.
- 21.0 SOURCES OF RECOVERY**
- 21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS Entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.
- 22.0 THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.
- 23.0 DISPUTE RESOLUTION**
- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.
- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.
- 23.3 Litigation shall be instituted in a court of competent jurisdiction in Sheboygan County, Wisconsin. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the State of Wisconsin. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.
- 24.0 CURING A BREACH**
- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.
- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.
- 25.0 TERMINATION**
- 25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, a failure to cooperate, or in the event that the underlying project is cancelled. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall, within thirty (30) days, compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.
- 26.0 TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.
- 27.0 ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.
- 28.0 SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.
- 29.0 SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.
- 30.0 TITLES; ENTIRE AGREEMENT**
- 30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.
- 30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendices, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.
- 30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 30.5 CLIENT'S execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the

attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by

CLIENT.

**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** A resolution authorizing entering into an Authorization for Professional Services with ECS Midwest, LLC regarding soil borings in the vicinity of the Badger State Lofts Apartments.

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**REPORT PREPARED BY:** Ryan Sazama, City Engineer

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**REPORT DATE:** January 23, 2020

**MEETING DATE:** January 28, 2020

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**FISCAL SUMMARY:**

Budget Line Item: 42761100-631100  
Budget Summary: TID 17 – Capital  
Improvements  
Budget Expenditure: \$7,120.00  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

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

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**BACKGROUND / ANALYSIS:** Due to the ongoing rehabilitation of the former Coakley building into residential apartments, the roadways surrounding the property require improvement. The roadways, related utilities, storm sewer, and sanitary sewers are in need of improvements and this development project coincides with the necessity of infrastructure improvements. The testing and soil borings provided by ECS Midwest, LLC will verify all construction activity will meet the specifications for this project.

**STAFF COMMENTS:** Department of Public Works staff recommends approval of the resolution.

**ACTION REQUESTED:** Motion to recommend the Common Council adopt Res. No. 155-19-20 authorizing entering into an Authorization for Professional Services with ECS Midwest, LLC regarding soil borings in the vicinity of the Badger State Lofts Apartments.

**ATTACHMENTS:**

- I. Res. No. 155-19-20
- II. Cost Worksheet

III

5.7

Res. No. 156 - 19 - 20. By Alderpersons Wolf and Sorenson.  
January 20, 2020.

A RESOLUTION authorizing the appropriate City officials to enter into a contract for the 2020 Concrete Pavement Projects (Superior Avenue and Niagara Avenue Bid #2442-19).

WHEREAS, two bids were received in response to the advertisement for bids:

Buteyn- Peterson Construction Company	\$2,686,347.63
Vinton Construction Company, Inc.	\$2,701,207.40

and

WHEREAS, the City Engineer has reviewed the bids and determined that the low bid, from Buteyn- Peterson Construction Company, met all of the specifications.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into the attached contract with Buteyn-Peterson Construction Company for the 2020 Concrete Pavement Projects in the amount of \$2,686,347.63 and are authorized to draw funds from the following accounts:

2020 Capital-Street Improvements	47933140-631200	\$1,233,274.05
2020 Capital-Street Improvements	40033140-631200	\$1,000,000.00
Wastewater Fund - Sanitary Sewer	60134110-649200	\$ 97,743.00
TID 19- Street Improvements	42933140-621200	\$ 355,330.58

Public Works

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

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Sheboygan ("Owner") and  
Buteyn – Peterson Construction Company ("Contractor").

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: 2020 Concrete Pavement Projects (Superior Avenue and Niagara Avenue).

**ARTICLE 2 – THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Excavation, Concrete Paving, Concrete Curb and Gutter, Storm Sewer, Sanitary Sewer, Concrete Sidewalk and Lawn Restoration.

2.02 City of Sheboygan Resolution: \_\_\_\_\_

2.03 City of Sheboygan Account Number: \_\_\_\_\_

**ARTICLE 3 – ENGINEER**

3.01 The part of the Project that pertains to the Work has been designed by the Engineering Division, Department of Public Works, City of Sheboygan.

3.02 The Engineering Division, Department of Public Works, City of Sheboygan, Sheboygan, WI will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

If ENGINEER is undesignated, OWNER shall assume the duties and responsibilities of ENGINEER through OWNER's Director of Public Works (DPW), or the DPW's designee.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The work will be substantially complete no later than August 14, 2020, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the 14<sup>th</sup> day following substantial completion.

**4.03 Liquidated Damages**

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
  4. Milestones: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved.

**4.04 Special Damages**

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

**ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## **ARTICLE 6 – PAYMENT PROCEDURES**

### **6.01 *Submittal and Processing of Payments***

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### **6.02 *Progress Payments; Retainage***

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1<sup>st</sup> day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
  - a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
  - b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### **6.03 *Final Payment***

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

## **ARTICLE 7 – INTEREST**

- 7.01 All amounts not paid when due shall bear interest at the rate of 0 percent per annum.

**ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS**

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

**ARTICLE 9 – CONTRACT DOCUMENTS**

**9.01 Contents**

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 00 52 00-1 to -7, inclusive).
  - 2. Performance bond (pages 00 61 13-1 to 00 61 13 - \_\_\_\_, inclusive).
  - 3. Payment bond (pages 00 61 14-1 to 00 61 14- \_\_\_\_, inclusive).
  - 4. General Conditions (EJCDC C-700, 2013 Edition) Supplementary Conditions, Specifications, and Drawings, not attached but incorporated by reference, as listed in the attached table of contents of the Project Manual and Plan Title Sheets.
  - 5. Addenda (not attached but incorporated by reference) (numbers 1 to 3, inclusive).
  - 6. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor’s Bid (pages 1 to 7, inclusive).
  - 7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed,
    - b. Work Change Directives,
    - c. Change Orders,
    - d. Field Order,
    - e. Task Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

**ARTICLE 10 – MISCELLANEOUS**

**10.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

**10.02 Assignment of Contract**

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

**10.03 Successors and Assigns**

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

**10.04 Severability**

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**10.05 Contractor's Certifications**

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

**10.06 Other Provisions**

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

*(Continued on next page)*

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

City of Sheboygan

By: \_\_\_\_\_  
(signature)

Name,  
Title: Darrell Hofland , City Administrator

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

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_  
(signature)

Name,  
Title: \_\_\_\_\_  
(printed)

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

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Address for giving notices:

City of Sheboygan - Engineering  
2026 New Jersey Avenue  
Sheboygan, WI 53081

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

Signed by:

By: \_\_\_\_\_  
(signature)

Name,  
Title: Michael Vandersteen, Mayor

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

Approved as to form and Execution:

By: \_\_\_\_\_  
(signature)

Name,  
Title: Charles C. Adams, City Attorney

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

Countersigned by:

By: \_\_\_\_\_  
(signature)

Name,  
Title: Meredith DeBruin, City Clerk

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

2020 Concrete Paving Projects

SECTION	TITLE	PAGES
<b>00 00 00</b>	<b>PROCUREMENT AND CONTRACTING REQUIREMENTS</b>	
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00 01 10	Table of Contents	00 01 10-1 to 00 01 10-2
00 11 13	Advertisements for Bids	00 11 13-1 to 00 11 13-2
00 21 13	Instructions for Bidders	00 21 13-1 to 00 21 13-10
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00 41 44	Unit Price Worksheet	00 41 44-1
00 41 44.1	Quest Unit Price Worksheet	3 Pages
00 42 13	Bid Bond	00 42 13-1 to 00 42 13-2
00 45 13	Bidder's Proof of Responsibility	00 45 13-1 to 00 45-13-5
00 45 19	Non-Collusion Affidavit of Bidder	00 45 19-1
00 45 20	Non-Collusion Affidavit of Subcontractor	00 45 20-1
00 45 50	List of Subcontractors	00 45 50-1
00 52 00	Agreement	00 52 00-1 to 00 52 00-7
00 55 00	Notice to Proceed	00 55 00-1
00 61 13	Performance Bond	00 61 13-1 to 00 61 13-3
00 61 14	Payment Bond	00 61 14-1 to 00 61 14-3
00 62 11	Submittal Cover	00 62 11-1
00 62 76	Application for Payment	00 62 76-1 to 00 62 76-2
00 63 13	Request for Information	00 63 13-1
00 63 49	Work Change Directive	00 63 49-1
00 63 63	Change Order Form	00 63 63-1 to 00 63 63-2
00 65 16	Certificate of Substantial Completion	00 65 16-1
00 65 18	Certificate of Compliance	00 65 13-1
00 65 19	Consent of Surety to Final Payment	00 65 19-1
00 72 00	General Conditions	00 72 00 -1 to 00 72 00-72
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<b>01 00 00</b>	<b>GENERAL REQUIREMENTS</b>	
01 11 00	Summary of Work	01 11 00-1 to 01 11 00-7
01 14 00	Work Restrictions	01 14 00-1 to 01 14 00-5
01 22 00	Unit Prices	01 22 00-1
01 55 26	Traffic Control	01 55 26-1 to 01 55 26-2
01 64 00	City Furnished Products	01 64 00-1
01 57 19	Temporary Environmental Controls	01 57 19-1 to 01 57 19-2
01 71 23	Construction Staking	01 71 23-1 to 01 71 23-2
<b>26 00 00</b>	<b>ELECTRICAL</b>	
26 56 00	Street Lighting	26 56 00-1 to 26 56 00-6
26 57 00	Traffic Signals	26 57 00-1 to 26 57 00-34

SECTION	TITLE	PAGES
<b>31 00 00</b>	<b>EARTHWORK</b>	
31 25 00	Erosion Control and Site Maintenance	31 25 00-1 to 31 25 00-3
<b>32 00 00</b>	<b>EXTERIOR IMPROVEMENT</b>	
32 10 00	Grading, Pavement, Curb and Cutter, and Sidewalk	32 10 00-1 to 32 10 00-6
32 20 00	Bus Shelter and Temporary Curb Ramp	32 20 00-1 to 32 20 00-2
<b>33 00 00</b>	<b>UTILITIES</b>	
33 00 00	Utilities	33 00 00-1 to 33 00 00-20



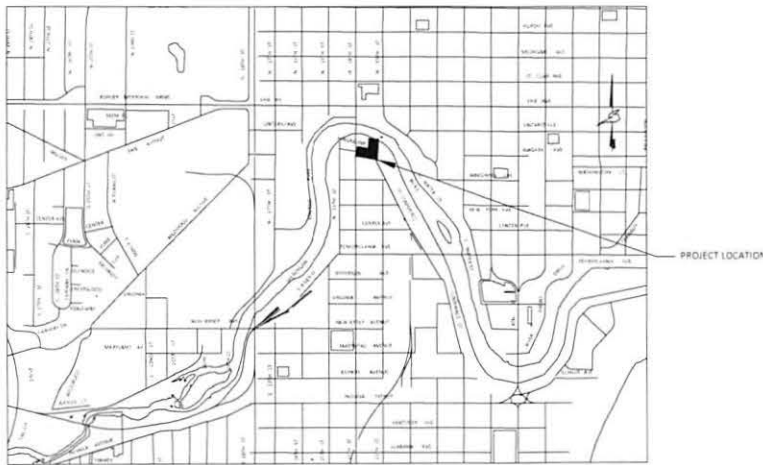


# CITY OF SHEBOYGAN DEPARTMENT OF PUBLIC WORKS

NIAGARA AVENUE  
N. 14TH STREET TO N. COMMERCE STREET

DECEMBER 2019

BID NUMBER: 2434-19  
DPW NUMBER: 2019.00.004



NOT TO SCALE

PROJECT PLS LOCATION:  
NORTHEAST 1/4 OF SECTIONS 22,  
TOWNSHIP 15 NORTH, RANGE 23 EAST,  
CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

Drawing Index	
Sheet Number	Drawing Description
1	TITLE SHEET
2	GENERAL NOTES
3	TYPICAL SECTIONS
4	SURVEY CONTROL
5	PROJECT DETAILS
6	PROJECT DETAILS
7	DEMOLITION
8	EROSION CONTROL
9	STORM SEWER
10	STORM SEWER
11	PLAN AND PROFILE
12	PLAN AND PROFILE
13	LIGHTING & LANDSCAPE
14	SANITARY

NIAGARA AVENUE  
N. 14TH STREET TO N. COMMERCE STREET  
SHEBOYGAN, WI 53081



City of Sheboygan  
Department of Public Works  
Engineering Division  
225 Newberry Avenue  
Sheboygan, WI 53081

Plan Number: 19 - City Street 004

Weight: 0.000000

Volume: 0.000000

Plot Type: 00000000

Plot No: 00000000

DPW No: 2019.00.004

Project Code: 00000000

Sheet No: 1

Drawing No: 000CV-1

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 11/15/2019 1:30:00 PM C:\Users\jgallagher\OneDrive\Documents\2019\2019.00.004\2019.00.004.dwg

2442-19 2020 Concrete Pavement Projects (#6603221)

Owner: Sheboygan WI, City of

Solicitor: Sheboygan WI, City of

12/18/2019 12:00 PM CST

						Buteyn-Peterson Construction Company	
Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Unit Price	Extension
<b>Superior Avenue</b>							
	1	201.0105	Clearing	STA	3	\$585.00	\$1,755.00
	2	201.012	Clearing	ID	12	\$101.00	\$1,212.00
	3	201.0205	Grubbing	STA	3	\$585.00	\$1,755.00
	4	201.022	Grubbing	ID	12	\$101.00	\$1,212.00
	5	204.01	Removing Pavement	SY	8866	\$1.50	\$13,299.00
	6	204.015	Removing Curb and Gutter	LF	900	\$8.00	\$7,200.00
	7	204.0155	Removing Concrete Sidewalk	SY	2000	\$5.00	\$10,000.00
	8	204.0195	Removing Concrete Bases	Each	11	\$200.00	\$2,200.00
	9	204.021	Removing Manholes	Each	5	\$700.00	\$3,500.00
	10	204.0215	Removing Catch Basins	Each	19	\$462.00	\$8,778.00
	11	204.0245	Removing Storm Sewer 8-Inch	LF	18	\$10.00	\$180.00
	12	204.0245	Removing Storm Sewer 12-Inch	LF	162	\$21.00	\$3,402.00
	13	204.0245	Removing Storm Sewer 15-Inch	LF	42	\$15.00	\$630.00
	14	204.0245	Removing Storm sewer 18-Inch	LF	64	\$18.00	\$1,152.00
	15	204.0245	Removing Storm Sewer 30-Inch	LF	59	\$25.00	\$1,475.00
	16	204.0245	Removing Storm Sewer 36-Inch	LF	624	\$62.00	\$38,688.00
	17	204.0245	Removing Storm Sewer 42-Inch	LF	59	\$65.00	\$3,835.00
	18	204.0245	Removing Storm Sewer 38-Inch x 60-Inch Elliptical	LF	69	\$70.00	\$4,830.00
	19	204.0291.5	Abandoning Sewer	CY	10	\$200.00	\$2,000.00
	20	205.01	Excavation Common	CY	11796	\$15.00	\$176,940.00
	21	305.011	Base Aggregate Dense 3/4-Inch	TON	433	\$18.22	\$7,889.26
	22	305.012	Base Aggregate Dense 1 1/4-Inch	TON	3610	\$15.22	\$54,944.20
	23	312	Select Crushed Material or Breaker Run	TON	6668	\$14.73	\$98,219.64
	24	405.01	Stamped Colored Concrete Full Depth, 5-inch	SY	50	\$100.00	\$5,000.00
	25	415.008	Concrete Pavement 8-Inch	SY	9468	\$49.50	\$468,666.00
	26	415.021	Concrete Pavement Gaps	Each	1	\$1,500.00	\$1,500.00
	27	415.108	Concrete Pavement HES 8-Inch	SY	525	\$53.50	\$28,087.50
	28	415.5110.5	Concrete Pavement Joint Layout	LS	1	\$2,000.00	\$2,000.00
	29	416.061	Concrete Driveway 6-Inch	SY	469	\$51.00	\$23,919.00
	30	416.061	Drilled Tie Bars	Each	68	\$8.00	\$544.00
	31	416.062	Drilled Dowel Bars	Each	198	\$14.00	\$2,772.00
	32	465.0105	Asphaltic Surface	TON	66	\$140.75	\$9,289.50
	33	465.012	Asphaltic Surface Driveways and Field Entrances	TON	11	\$168.60	\$1,854.60

2442-19 2020 Concrete Pavement Projects (#6603221)

Owner: Sheboygan WI, City of

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12/18/2019 12:00 PM CST

Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Buteyn-Peterson Construction Company	
						Unit Price	Extension
	34	520.8	Concrete Collars for Pipe	Each	9	\$935.00	\$8,415.00
	35	601.06	Concrete Pedestrian Curb	LF	235	\$25.00	\$5,875.00
	36	602.041	Concrete Sidewalk 5-Inch	SF	20600	\$5.45	\$112,270.00
	37	602.0415	Concrete Sidewalk 6-Inch	SF	132	\$5.80	\$765.60
	38	602.0515	Curb Ramp Detectable Warning Field Natural Patina	SF	294	\$30.00	\$8,820.00
	39	608.0312	Storm Sewer Pipe Reinforced Concrete Class III 12-Inch	LF	461	\$82.00	\$37,802.00
	40	608.0315	Storm Sewer Pipe Reinforced Concrete Class III 15-Inch	LF	118	\$94.00	\$11,092.00
	41	608.0318	Storm Sewer Pipe Reinforced Concrete Class III 18-Inch	LF	58	\$93.00	\$5,394.00
	42	608.0324	Storm Sewer Pipe Reinforced Concrete Class III 24-Inch	LF	570	\$99.00	\$56,430.00
	43	608.0336	Storm Sewer Pipe Reinforced Concrete Class III 36-Inch	LF	173	\$151.00	\$26,123.00
	44	608.0342	Storm Sewer Pipe Reinforced Concrete Class III 42-Inch	LF	508	\$153.00	\$77,724.00
	45	608.2338	Storm Sewer Pipe Reinforced Concrete Horizontal Elliptical HE-III 38x60-Inch	LF	65	\$208.00	\$13,520.00
	46	611.0624	Inlet Covers Type H	Each	28	\$582.00	\$16,296.00
	47	611.123	Catch basins 2x3-FT	Each	28	\$1,548.00	\$43,344.00
	48	611.2004	Manholes 4-FT Diameter	Each	5	\$2,150.00	\$10,750.00
	49	611.2005	Manholes 5-FT Diameter	Each	1	\$2,740.00	\$2,740.00
	50	611.2006	Manholes 6-FT Diameter	Each	6	\$4,327.00	\$25,962.00
	51	611.2008	Manholes 8-FT Diameter	Each	1	\$7,569.00	\$7,569.00
	52	619.1	Mobilization	Each	1	\$248,270.00	\$248,270.00
	53	620.03	Concrete Median Sloped Nose	SF	149	\$10.00	\$1,490.00
	54	621.01	Landmark Reference Monuments	Each	24	\$134.83	\$3,235.92
	55	623.02	Dust Control Surface Treatment	SY	11525	\$0.10	\$1,152.50
	56	628.1504	Silt Fence	LF	45	\$5.00	\$225.00
	57	628.152	Silt Fence Maintenance	LF	45	\$3.00	\$135.00
	58	628	4-inch Topsoil, Seed, Fertilizer, & Hydromulch	SY	4270	\$6.80	\$29,036.00
	59	628.7005	Inlet Protection Type A	Each	28	\$130.00	\$3,640.00
	60	628.7015	Inlet Protection Type C	Each	34	\$64.00	\$2,176.00
	61	628.757	Rock Bags	Each	20	\$16.00	\$320.00
	62	634.0614	Posts Wood 4x6-inch 14-FT	Each	26	\$72.00	\$1,872.00
	63	634.0616	Posts Wood 4x6-Inch 16-FT	Each	3	\$74.00	\$222.00
	64	637.221	Signs Type II Reflective H	SF	163.03	\$23.75	\$3,871.96
	65	637.223	Signs Type II Reflective F	SF	37.5	\$24.75	\$928.13
	66	638.2602	Removing Signs Type II	Each	37	\$35.00	\$1,295.00

2442-19 2020 Concrete Pavement Projects (#6603221)

Owner: Sheboygan WI, City of

Solicitor: Sheboygan WI, City of

12/18/2019 12:00 PM CST

Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Buteyn-Peterson Construction Company	
						Unit Price	Extension
	67	638.3	Removing Small Sign Supports	Each	27	\$35.00	\$945.00
	68	643.105	Traffic Control Signs PCMS	Day	20	\$100.00	\$2,000.00
	69	643	Traffic Control Project	Each	1	\$22,346.00	\$22,346.00
	70	644.1601.5	Temporary Curb Ramp	Each	8	\$650.00	\$5,200.00
	71	646.1005	Marking Line Paint 4-Inch	LF	4327	\$1.35	\$5,841.45
	72	646.3005	Marking Line Paint 8-Inch	LF	528	\$3.95	\$2,085.60
	73	646.5005	Marking Arrow Paint	Each	20	\$75.00	\$1,500.00
	74	646.5105	Marking Word Paint	Each	3	\$99.00	\$297.00
	75	646.5205	Marking Symbol Paint	Each	11	\$75.00	\$825.00
	76	646.6105	Marking Stop Line Paint 18-Inch	LF	190	\$8.95	\$1,700.50
	77	646.7105	Marking Diagonal Paint 12-Inch	LF	45	\$5.95	\$267.75
	78	646.7405	Marking Crosswalk Paint 6-Inch	LF	1460	\$2.95	\$4,307.00
	79	646.015	Temporary Marking Line Removable Tape 4-Inch	LF	2322	\$0.87	\$2,020.14
	80	650	Construction Staking	LS	1	\$15,267.10	\$15,267.10
	81	652.0225	Conduit Rigid Nonmetallic Schedule 40 2-Inch	LF	1688	\$5.00	\$8,440.00
	82	652.0235	Conduit Rigid Nonmetallic Schedule 40 3-Inch	LF	520	\$6.50	\$3,380.00
	83	652.0615	Conduit Special 3-Inch	LF	470	\$18.00	\$8,460.00
	84	653.0115	Pull Boxes Steel 12x36-Inch	Each	5	\$450.00	\$2,250.00
	85	653.014	Pull Boxes Steel 24x42-Inch	Each	11	\$700.00	\$7,700.00
	86	653.0905	Removing Pull Boxes	Each	25	\$50.00	\$1,250.00
	87	654.0101	Concrete Bases Type 1	Each	7	\$675.00	\$4,725.00
	88	654.0105	Concrete Bases Type 5	Each	10	\$725.00	\$7,250.00
	89	655.023	Cable Traffic Signal 5-14 AWG	LF	760	\$1.20	\$912.00
	90	655.024	Cable Traffic Signal 7-14 AWG	LF	765	\$1.40	\$1,071.00
	91	655.026	Cable Traffic Signal 12-14 AWG	LF	1565	\$2.75	\$4,303.75
	92	655.032	Cable Type UF 2-10 SWG Grounded	LF	830	\$1.00	\$830.00
	93	655.0515	Electrical Wire Traffic Signals 10 AWG	LF	1205	\$0.60	\$723.00
	94	655.061	Electrical Wire Lighting 12 AWG	LF	3456	\$0.55	\$1,900.80
	95	655.0615	Electrical Wire Lighting 10 AWG	LF	580	\$0.60	\$348.00
	96	655.0625	Electrical Wire Lighting 6 AWG	LF	1995	\$0.85	\$1,695.75
	97	656.02	Electrical Service Meter Breaker Pedestal Sta. 11+35, 38' LT	LS	1	\$1,200.00	\$1,200.00

2442-19 2020 Concrete Pavement Projects (#6603221)

Owner: Sheboygan WI, City of

Solicitor: Sheboygan WI, City of

12/18/2019 12:00 PM CST

						Buteyn-Peterson Construction Company	
Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Unit Price	Extension
	98	656.02	Electrical Service meter Breaker Pedestal Sta. 11+40, 38' LT	LS	1	\$1,200.00	\$1,200.00
	99	657.01	Pedestal Bases	Each	7	\$195.00	\$1,365.00
	100	657.042	Traffic Signal Standards Aluminum 13-FT	Each	2	\$370.00	\$740.00
	101	657.0425	Traffic Signal Standards Aluminum 15-FT	Each	2	\$395.00	\$790.00
	102	657.043	Traffic Signal Standards Aluminum 10-FT	Each	3	\$340.00	\$1,020.00
	103	658.0173	Traffic Signal Faces 3S 12-Inch	Each	16	\$600.00	\$9,600.00
	104	638.0174	Traffic Signal Faces 4S 12-Inch	Each	4	\$800.00	\$3,200.00
	105	658.0416	Pedestrian Signal Face 16-Inch	Each	8	\$525.00	\$4,200.00
	106	658.05	Pedestrian Push Buttons	Each	8	\$300.00	\$2,400.00
	107	658.5069	Signal Mounting Hardware Superior and Taylor	LS	1	\$3,595.00	\$3,595.00
	108	659.213	Lighting Control Cabinets 120/240 30-Inch	Each	1	\$6,000.00	\$6,000.00
	109	690.015	Sawing Asphalt	LF	293	\$1.55	\$454.15
	110	690.025	Sawing Concrete	LF	923	\$2.25	\$2,076.75
	111	SPV.0060.1	Concrete Bases Type 10, Contractor Supplied Anchor Bolts & Anchor Rod Template	Each	1	\$7,500.00	\$7,500.00
	112	SPV.0060.2	Concrete Bases Type 13, Contractor Supplied Anchor Bolts & Anchor Rod Template	Each	3	\$10,000.00	\$30,000.00
	113	SPV.0060.3	Poles Type 10	Each	1	\$7,725.00	\$7,725.00
	114	SPV.0060.4	Poles Type 13	Each	3	\$15,800.00	\$47,400.00
	115	SPV.0060.5	Monotube Arms 25-FT	Each	1	\$3,800.00	\$3,800.00
	116	SPV.0060.6	Monotube Arms 40-FT	Each	3	\$8,375.00	\$25,125.00
	117	SPV.0060.7	Luminaire Arms Steel 15-FT	Each	4	\$700.00	\$2,800.00
	118	SPV.0060.8	LED Luminaires	Each	4	\$2,225.00	\$8,900.00
	119	SPV.0060.9	Traffic Signal Controller and Cabinet Fully Actuated 8-Phase	Each	1	\$16,900.00	\$16,900.00
	120	SPV.0060.10	Lighting Assembly	Each	6	\$4,750.00	\$28,500.00
	121	SPV.0060.10.1	Lighting Assembly (City furnished pole and luminaire)	Each	3	\$500.00	\$1,500.00
	122	SPV.0060.11	Storm Sewer Manhole Cover Type J Special	Each	14	\$416.00	\$5,824.00
	123	SPV.0060.12	Sanitary Sewer Manhole Cover Type J Special	Each	14	\$446.00	\$6,244.00
	124	SPV.0060.13	Internal Chimney Seal	Each	14	\$523.00	\$7,322.00
	125	SPV.0060.14	Lateral Connection Sealing	Each	3	\$550.00	\$1,650.00
	126	SPV.0060.15	Adjusting Water Valve Boxes	Each	13	\$293.00	\$3,809.00



2442-19 2020 Concrete Pavement Projects (#6603221)

Owner: Sheboygan WI, City of

Solicitor: Sheboygan WI, City of

12/18/2019 12:00 PM CST

Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Buteyn-Peterson Construction Company	
						Unit Price	Extension
	152	N-6	Inlet Protection - Type A	EA	2	\$130.00	\$260.00
	153	N-7	Inlet Protection - Type B	EA	3	\$60.00	\$180.00
	154	N-8	Inlet Protection - Type C	EA	7	\$64.00	\$448.00
	155	N-9	Riprap Light	CY	36	\$80.00	\$2,880.00
	156	N-10	Stone Tracking Pad w/ Type R Fabric	EA	1	\$2,500.00	\$2,500.00
	157	N-11	Remove Concrete	SY	105	\$10.25	\$1,076.25
	158	N-12	Remove Railroad Tracks and Ties	LF	210	\$42.00	\$8,820.00
	159	N-13	Remove Chain Link Fence and Posts	LF	12	\$72.00	\$864.00
	160	N-14	Abandon Project Related Storm Infrastructure	LS	1	\$5,210.00	\$5,210.00
	161	N-15	Adjust Water Valve Box	EA	4	\$320.00	\$1,280.00
	162	N-16	Adjust Existing Sanitary Manhole Rings and Frame	EA	1	\$425.00	\$425.00
	163	N-17	Sanitary Sewer Lining of Existing 10" Pipe	LF	406	\$27.50	\$11,165.00
	164	N-18	Storm Sewer 8" PVC	LF	10	\$88.00	\$880.00
	165	N-19	Storm Sewer 12-inch Class III Reinforced Concrete	LF	48	\$76.00	\$3,648.00
	166	N-20	Storm Sewer 15-inch Class III Reinforced Concrete	LF	90	\$82.00	\$7,380.00
	167	N-21	Storm Sewer 24-inch Class III Reinforced Concrete	LF	195	\$87.00	\$16,965.00
	168	N-22	Storm Sewer Manhole 48-inch, including frame and lid	EA	2	\$2,354.00	\$4,708.00
	169	N-23	Storm Sewer Inlet, N-1	EA	2	\$2,148.00	\$4,296.00
	170	N-24	Connect Existing Storm Lateral	EA	1	\$450.00	\$450.00
	171	N-25	Storm Sewer 24-inch Reinforced Concrete Apron End Wall	EA	1	\$1,290.00	\$1,290.00
	172	N-26	Ornamental Street Light Concrete Base, Pole and Luminaire Installation	EA	4	\$4,100.00	\$16,400.00
	173	N-27	Conduit, PVC, 2-inch Diameter	LF	489	\$5.00	\$2,445.00
	174	N-28	Electrical Wire 6 AWG	LF	1204	\$0.85	\$1,023.40
	175	N-29	Electrical Wire 10 AWG	LF	617	\$0.60	\$370.20
	176	N-30	Electrical Pull Box	EA	2	\$350.00	\$700.00
	177	N-31	Common Excavation	CY	2050	\$25.00	\$51,250.00
	178	N-32	5-inch Concrete Sidewalk, with aggregate base	SY	182	\$7.00	\$1,274.00
	179	N-33	6-inch Concrete Drive Apron, Sidewalk, and Driveway, with aggregate base	SY	185	\$7.50	\$1,387.50
	180	N-34	8-inch Gravel Driveway	SY	59	\$10.25	\$604.75
	181	N-35	Concrete Steps and Railing	SF	120	\$163.00	\$19,560.00

2442-19 2020 Concrete Pavement Projects (#6603221)

Owner: Sheboygan WI, City of

Solicitor: Sheboygan WI, City of

12/18/2019 12:00 PM CST

						Buteyn-Peterson Construction Company	
Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Unit Price	Extension
	182	N-36	26-inch Concrete Curb & Gutter, Type A	LF	651	\$17.50	\$11,392.50
	183	N-37	30-inch Concrete Flume	LF	61	\$28.00	\$1,708.00
	184	N-38	Geogrid, Type SR	SY	1668	\$5.00	\$8,340.00
	185	N-39	Crushed Aggregate Base Course, 12-inch	SY	1668	\$11.74	\$19,582.32
	186	N-40	Select Crushed Material or Breaker Run, 12-inch	SY	1668	\$11.00	\$18,348.00
	187	N-41	7-inch Concrete Pavement, Doweled	SY	1292	\$46.52	\$60,103.84
	188	N-42	Drilled Tie Bars (#6)	EA	6	\$8.00	\$48.00
	189	N-43	Drilled Dowel Bars (1" x 18")	EA	36	\$14.00	\$504.00
	190	N-44	Fence End Post, Connect to Existing Fencing	EA	2	\$1,000.00	\$2,000.00
	191	N-45	2-inch Dia. Tree Carpinus Caroliniana (Musclewood)	EA	4	\$800.00	\$3,200.00
	192	N-46	2-inch Dia. Tree Picea Abies (Norway Spruce)	EA	2	\$800.00	\$1,600.00
	193	N-47	4-inch Topsoil, Seed, Fertilizer, & Hydromulch	SY	1221	\$6.80	\$8,302.80
	194	N-48	Remove and Replace 10" Sanitary Sewer	LF	30	\$265.00	\$7,950.00
<b>Niagara Avenue Total:</b>							<b>\$355,330.58</b>
<b>Base Bid Total:</b>							<b>\$2,686,347.63</b>

**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** A resolution authorizing the appropriate City Officials to enter into a contract for the 2020 Concrete Pavement Projects (Superior Avenue and Niagara Avenue Bid #2442-19).

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**REPORT PREPARED BY:** Ryan Sazama, City Engineer

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**REPORT DATE:** January 23, 2020

**MEETING DATE:** January 28, 2020

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**FISCAL SUMMARY:**

**STATUTORY REFERENCE:**

Budget Line Item: 47933140-631200  
40033140-631200  
60134110-649200  
42933140-621200  
Budget Summary: 2020 Capital - Street  
Improvements  
2020 Capital - Street  
Improvements  
Wastewater Fund –  
Sanitary Sewer  
TID 19 – Street  
Improvements  
Budget Expenditure: \$1,233,274.05  
\$1,000,000.00  
\$97,743.00  
\$355,330.58  
Budgeted Revenue: N/A

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

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**BACKGROUND / ANALYSIS:** This resolution is for the approval of two road reconstruction projects.

One of the projects is the reconstruction of Superior Avenue from North Taylor Drive to North 29<sup>th</sup> Street. This project will consist of a new concrete road, sidewalk, utilities (storm sewer and sanitary sewer), street lighting and new traffic signals at the intersection of North Taylor Drive and Superior Avenue. This project is scheduled to start in early spring with a completion time frame of early fall.

The second project as part of this resolution is the reconstruction of Niagara Avenue from South 14<sup>th</sup> Street to its terminus at the Shoreland 400 bike/pedestrian Trail. This project will consist of a new concrete road, sidewalk, utilities (storm sewer and sanitary

sewer), street lighting and a pedestrian stair connection to the Shoreline 400 bike/pedestrian Trail. This project is scheduled to start in June with a completion time frame of late August.

Funding sources are listed below:

- 2020 Capital - Street Improvements 47933140-631200 \$1,233,274.05
- 2020 Capital - Street Improvements 40033140-631200 \$1,000,000.00
- Wastewater Fund – Sanitary Sewer 60134110-649200 \$97,743.00
- TID 19 – Street Improvements 42933140-621200 \$355,330.58

**STAFF COMMENTS:** Department of Public Works staff recommends approval of the resolution.

**ACTION REQUESTED:** Motion to recommend the Common Council adopt Res. No. 156-19-20 authorizing the appropriate City Officials to enter into a contract for the 2020 Concrete Pavement Projects (Superior Avenue and Niagara Avenue Bid #2442-19).

**ATTACHMENTS:**

- I. Res. No. 156-19-20
- II. Contract
- III. Cost Worksheet