

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Resolution authorizing executing a storm sewer easement.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: October 24, 2019

MEETING DATE: October 29, 2019

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS: City Hall located at 828 Center Avenue has a roof downspout on the east side of the building which needs to be connected to a storm sewer. The most strategic and economical location to make this roof downspout connection is to the existing storm sewer located in the parking lot at 604 North 8th Street. The Department of Public Works has been working with the owner of this property to draft an easement which would allow the construction of a pipe from the storm sewer in the parking lot to the downspout on the east side of City Hall. The owner has agreed to this storm sewer easement.

STAFF COMMENTS: This roof downspout and storm sewer connection will be constructed this fall in 2019.

ACTION REQUESTED: Motion to recommend Common Council adopt Res. No. 104-19-20 authorizing executing a storm sewer easement.

ATTACHMENTS:

- I. Res. No. 104-19-20

III

5.4

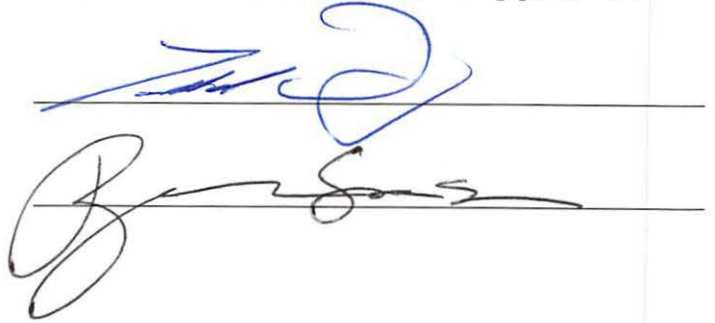
Res. No. 104 19 - 20. By Alderpersons Wolf and Sorenson. October 21, 2019.

A RESOLUTION authorizing executing a storm sewer easement.

RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to execute the attached Storm Sewer Easement for the City to construct a storm sewer at the following location:

Eighth Street Investments, LLC, 604 North 8th Street, Sheboygan, WI

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

Document Number

Document Title

STORM SEWER EASEMENT

THIS INDENTURE, made this ____ day of _____, 2019, by Eighth Street Investments, LLC, a Wisconsin limited liability company, "**GRANTOR**", and the City of Sheboygan, a municipal corporation of the State of Wisconsin, "**GRANTEE**";

Name and Return Address
City of Sheboygan
City Attorney's Office
828 Center Ave, Suite 210
Sheboygan, WI 53081

Part of 59281108041
Parcel Identification Number (PIN)

WITNESSETH:

KNOW ALL MEN BY THESE PRESENTS, that the said **GRANTOR**, in consideration of the sum of one (\$1.00) dollar and other valuable consideration in hand paid by said **GRANTEE**, receipt whereof is hereby confessed and acknowledged, and the covenants hereinafter contained agree as follows:

1. **GRANTOR** does hereby give and grant to said **GRANTEE**, its successors and assigns, a permanent non-exclusive easement to construct, operate, use, maintain, and repair a storm sewer in, under, and along the following described property, to-wit:

A part of Lots 9 and 10 in Block 151 of the Original Plat of the City of Sheboygan located in the Northeast ¼ of the Southwest ¼ of Section 23, Town 15 North, Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin, and being more particularly described as follows:

Commencing at the Southwest corner of said Lot 10, thence North 00°10'20" East along the West line of said Lot 10, a distance of 71.62 feet to the Point of Beginning for this description; thence North 83°26'34" West a distance of 5.04 feet; thence North 00°10'20" East a distance of 10.06 feet; thence South 83°26'34" East a distance of 5.04 feet to the West line of said Lot 10; thence continuing South 83°26'34" East a distance of 29.01 feet; thence South 06°33'26" West a distance of 10.00 feet; thence North 83°26'34" West a distance of 27.89 feet to the West line of said Lot 10 and the Point of Beginning. Containing 0.00769 acres (335 square feet) of land.

Physical Site Address:

604 N 8th Street
Sheboygan, WI 53081

2. Said storm sewer facilities shall be maintained and kept in good order and condition by **GRANTEE**.
3. That in, and during, whatever construction, reconstruction, or repair work it is, or becomes, necessary in constructing and/or maintaining said facilities, so much of the surface or subsurface of the property as may be disturbed will, at the expense of **GRANTEE**, be replaced in substantially the same condition as it was prior to such disturbances. **GRANTEE** shall save harmless **GRANTOR** from any loss, damage, injury or liability resulting from negligence on the part of **GRANTEE** in connection with said work involved in constructing and/or maintaining of said facilities provided that if loss, damage, injury, or liability results from joint negligence of the parties hereto, then the liability therefore, shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses which under law **GRANTEE** is entitled to raise.
4. **GRANTOR** agrees not to construct, install, and/or erect structures, buildings, fences, pools, landscaping, etc. that would impede, restrict, prohibit, and/or limit ingress and egress over, across, through, and upon said easement.
5. That in connection with the construction by **GRANTOR** of any structure or building abutting said permanent easement defined limits, **GRANTOR** will assume all liability for any damage to the facilities in the above described easement. **GRANTOR** will indemnify and hold **GRANTEE** harmless from any claims for personal injuries or property damage caused by any negligence of **GRANTOR** arising out of the construction by **GRANTOR** of any structure or building abutting the said permanent utility easement defined limits.
6. Both parties mutually agree that this easement and covenants herein shall run with the land.

IN WITNESS THEREOF, the **GRANTOR**, has caused this instrument to be signed and sealed this _____ day of _____, 2019.

EIGHTH STREET INVESTMENTS, LLC

Paul Weaver
Member

STATE OF WISCONSIN)
) SS
COUNTY OF SHEBOYGAN)

Personally came before me this ____ day of _____, 2019, the above named Paul Weaver to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public

My Commission expires _____

Accepted By: **CITY OF SHEBOYGAN**

Michael Vandersteen
City of Sheboygan - Mayor

Meredith DeBruin
City of Sheboygan – City Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF SHEBOYGAN)

Personally came before me this ____ day of _____, 2019, the above named Michael Vandersteen, Mayor and Meredith DeBruin, City Clerk to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public
My Commission expires _____

Acceptance is authorized by and in accordance with Resolution Number _____

This Instrument Drafted By:
Michael P. Born, PLS
Assistant City Engineer / Surveyor

IX

7.5

Gen. Ord. No. 28 - 19 - 20. By Alderpersons Wolf and Sorenson.
October 21, 2019.

AN ORDINANCE creating a no parking zone on the west side of N. 5th Street north of New York Avenue.

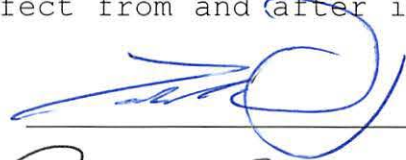
THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

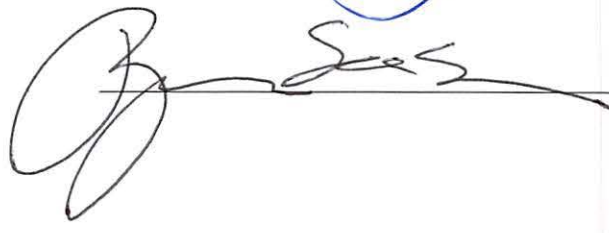
Section 1. Pursuant to Section 118-126 of the Municipal Code entitled "Prohibitions and Restrictions Authorized," the west side of N. 5th Street from the north curb line of New York Avenue to 30 feet north of the north curb line of New York Avenue is hereby added to the list of locations where parking is not permitted.

Section 2. The Department of Public Works and the Police Department are hereby authorized and directed to install the signs to give notification of the aforementioned parking restriction.

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Public Works





I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Ordinance creating no parking zone on the west side of N. 5th street north of New York Avenue.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: October 24, 2019

MEETING DATE: October 29, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS: The Department of Public Works has had requests to improve the sight distance for vehicles heading eastbound on New York Avenue at the New York Avenue and North 5th Street intersection. To improve the sight distance when vehicles are exiting this intersection heading eastbound parking will be removed 30 feet at the corner to the north and south of this intersection on the west side of this intersection only.

STAFF COMMENTS: The removal of these two parking spots will increase the intersection sight distance for vehicles traveling eastbound at this intersection. Staff realizes on street parking in this area is a premium due to all the activity with the county courthouse, county administration building and many of the homes in the area do not have off street parking which is why staff feels the elimination of only two on street parking spots is a good solution to the issue

ACTION REQUESTED: Motion to recommend the Common Council adopt G. O. No. 28-19-20 creating no parking zone on the west side of N. 5th street north of New York Avenue.

ATTACHMENTS:

- I. G.O. No. 28-19-20

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: An ordinance creating no parking zone on the west side of N. 5th street south of New York Avenue.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: October 24, 2019

MEETING DATE: October 29, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS: The Department of Public Works has had requests to improve the sight distance for vehicles heading eastbound on New York Avenue at the New York Avenue and North 5th Street intersection. To improve the sight distance when vehicles are exiting this intersection heading eastbound parking will be removed 30 feet at the corner to the north and south of this intersection on the west side of this intersection only.

STAFF COMMENTS: The removal of these two parking spots will increase the intersection sight distance for vehicles traveling eastbound at this intersection. Staff realizes on street parking in this area is a premium due to all the activity with the county courthouse, county administration building and many of the homes in the area do not have off street parking which is why staff feels the elimination of only two on street parking spots is a good solution to the issue

ACTION REQUESTED: Motion to recommend the Common Council adopt G.O. No. 29-19-20 creating no parking zone on the west side of N. 5th street south of New York Avenue.

ATTACHMENTS:

- I. G.O. No. 29-19-20

X

7.6

Gen. Ord. No. 29 - 19 - 20. By Alderpersons Wolf and Sorenson.
October 21, 2019.

AN ORDINANCE creating a no parking zone on the west side of N. 5th Street south of New York Avenue.

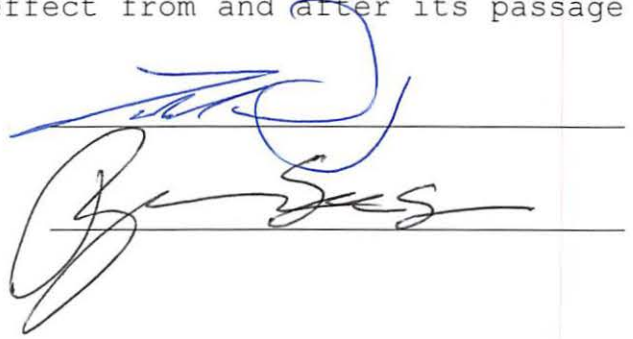
THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Pursuant to Section 118-126 of the Municipal Code entitled "Prohibitions and Restrictions Authorized," the west side of N. 5th Street from the south curb line of New York Avenue to 30 feet south of the south curb line of New York Avenue is hereby added to the list of locations where parking is not permitted.

Section 2. The Department of Public Works and the Police Department are hereby authorized and directed to install the signs to give notification of the aforementioned parking restriction.

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Public works



I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Ordinance amending Sections 122-403, 122-404, and 122-405 of the Municipal Code relating to sewers and sewerage disposal so as to make changes to service charges.

REPORT PREPARED BY: Steve Jossart, WWTP Superintendent

REPORT DATE: October 16, 2019

MEETING DATE: October 29, 2019

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: 122-403,122-404,122-405

BACKGROUND / ANALYSIS: The referenced ordinance amendments include the 2020 User Charge Rates for users of the City of Sheboygan’s sanitary sewers and wastewater treatment plant, as well as, charges to the satellite communities. The amended sections also define the concentration of normal domestic strength wastewater. Included in the recently adopted 2020 budget, the proposed 2020 User Charge Rates include a minor reduction due to the use of a new rate calculating tool of approximately 2% over the 2019 budget.

STAFF COMMENTS: The present rates are adequate to support the operation of the plant. Due to the use of the new rate tool, the fixed charge increased approximately 2% while the volume charge decreased approximately 9%.

ACTION REQUESTED: Motion to recommend the Common Council adopt G.O. No. 30-19-20 amending Sections 122-403, 122-404, and 122-405 of the Municipal Code relating to sewers and sewerage disposal so as to make changes to service charges.

ATTACHMENTS:

- I. G.O. No. 30-19-20

X

Gen. Ord. No. 30 - 19 - 20. By Alderpersons Wolf and Sorenson.
October 21, 2019.

AN ORDINANCE amending Sections 122-403, 122-404, and 122-405 of the Municipal Code relating to sewers and sewerage disposal so as to make changes to service charges.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Section 122-403 of the Municipal Code entitled, "Categories of Users; Amounts; Reassignment - City of Sheboygan," is hereby amended to read as follows:

"Sec. 122-403. *Categories of Users; Amounts; Reassignment - City of Sheboygan.*

(a) *Category A.* Category A users of the City Wastewater treatment system shall be subject to the following:

(1) *Definition:* The term "category A" is defined as normal domestic strength wastewater, that is, wastewater having concentrations of biochemical oxygen demand (BOD) no greater than 184 mg/l, suspended solids no greater than 398 mg/l, and total phosphorus no greater than 6.67 mg/l.

(2) *Amount:* The sewer service charge for category A wastewater is as follows:

- a. Fixed charge, \$49.00 per quarter.
- b. Volume charge, \$1.70 total charge per 100 cubic feet.

(b) *Category B.* Category B users of the City Wastewater treatment system shall be subject to the following:

(1) *Definition:* The term "category B" is defined as wastewater having concentrations of biochemical oxygen demand greater than 184 mg/l, suspended solids greater than 398 mg/l, and phosphorous greater than 6.67 mg/l. Users whose wastewater exceeds the concentrations for any one of these parameters shall be in category B. The minimum category B charge will be based on a concentration of not less than 184 mg/l for BOD, 398 mg/l for suspended solids, and 6.67 mg/l for phosphorous.

(2) *Amount:* The sewer service charge for category B wastewater is as follows:

Public Works

- a. Fixed Charge - \$49.00 per quarter;
- b. If billing is on a monthly basis, \$16.33 per month.
- c. Volume Charge, \$1.70 per 100 cubic feet.
- d. Surcharge, total (per pound):
 1. BOD greater than 184 mg/L, \$0.2641.
 2. Suspended Solids greater than 398 mg/l, \$0.2053.
 3. Phosphorus greater than 6.67 mg/l, \$5.4847.

(3) *Computation.* The category B sewer service charges for volume, BOD, suspended solids and phosphorus shall be computed in accordance with the following formula:

$$C = F + (V \times C^V) + .00624V[(B - B^R \times C^B) + (S - S^R \times C^S) + (P - P^R \times C^P)]$$

Where:

Table 1

C	= Charge to sewer user for collection and treatment of wastewater
F	= Fixed charge per billing period
B	= Concentration of BOD in mg/l in the wastewater
B ^R	= Concentration of BOD in mg/l as defined for Category A users
S	= Concentration of suspended solids in mg/l in the wastewater
S ^R	= Concentration of suspended solids in mg/l as defined for Category A users
P	= Concentration of phosphorus in mg/l in the wastewater
P ^R	= Concentration of phosphorus in mg/l as defined for Category A users
V	= Wastewater volume (per 100 cubic feet for Category B users; per 1000 gallons for Category C users)
C ^V	= Cost per volume of wastewater (per 100 cubic feet for Category B users; per 1000 gallons for Category C users)
C ^B	= Cost per pound of BOD
C ^S	= Cost per pound of suspended solids
C ^P	= Cost per pound of phosphorus

.00624	=	Conversion factor
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(c) *Reassignment of users.* The city approving authority will reassign sewer users into appropriate sewer service charge categories if wastewater sampling programs and other related information indicate a change of categories is necessary.

(d) *Sampling requirement.* Sampling frequency for category B users to determine concentrations of BOD, suspended solids, total phosphorus and pH shall be determined by the wastewater discharge loading by the industry. Results of all analyses shall be submitted to the wastewater treatment plant superintendent. Sampling shall be conducted as follows:

(1) Samples collected shall be flow-proportional 24-hour composite samples.

(2) Sampling periods shall be two consecutive days during normal operation.

(3) Flow-weighted average may be used if data is presented.

(4) Samples shall be analyzed for BOD, suspended solids, and total phosphorus.

(5) Sampling frequency shall be quarterly or more frequently as determined by the superintendent of the wastewater treatment plant. The quarterly sampling periods shall be during the months of January through March, April through June, July through September, and October through December.

(6) All data shall be submitted to the superintendent of the wastewater treatment plant."

Section 2. Section 122-404 of the Sheboygan Municipal Code entitled "Categories of users; amounts; reassignment for other municipalities" is hereby amended to read as follows:

"Sec. 122-404. *Categories of users; amounts; reassignment for other municipalities.*

Other municipal users shall be charged pursuant to the guidelines established under this section.

Table 2

	Village of Kohler	City of Sheboygan Falls	Town of Sheboygan Sanitary District No. 2	Town of Wilson Sanitary District	
				No. 1	No. 2
Fixed Charge	None	None	None	None	None
Volume Charge:					
Volume	\$0.4456	\$0.4456	\$0.4456	\$0.4456	\$0.4456
Debt retirement	<u>0.0503</u>	<u>0.0503</u>	<u>0.0503</u>	<u>0.0503</u>	<u>0.0503</u>
Total volume charge, per 1,000 gallons:	0.4959	0.4959	0.4959	0.4959	0.4959
Surcharges (per pound):					
BOD	0.2641	0.2641	0.2641	0.2641	0.2641
Suspended Solids	0.2053	0.2053	0.2053	0.2053	0.2053
Phosphorus	5.4847	5.4847	5.4847	5.4847	5.4847 "

Section 3. Section 122-405 of the Sheboygan Municipal Code entitled "Charges for disposal of septic tank sludge, holding tank sewerage, or hauled wastewater" is hereby amended to read as follows:

"Sec. 122-405. *Charges for disposal of septic tank sludge, holding tank sewerage, or hauled wastewater.*

Category C. Category C users are persons with a permit for disposing of hauled wastewater into the wastewater collection and treatment facilities and shall be subject to the following charges and requirements:

- (a) Septic tank sludge, \$48.00 per 1,000 gallons.
- (b) Holding tank sewage, \$10.00 per 1,000 gallons.
- (c) "Other" hauled wastewater:

(1) Hauled wastewater shall be sampled and characterized on the basis of suspended solids, BOD, total phosphorous, and pH. Frequency of sampling shall be based on experience and under the direction of the superintendent of the wastewater treatment plant.

(2) *Amount:* The sewer service charge for "Other" hauled wastewater is as follows:

- a. Volume Charge, \$0.4959 per 1000 gallons.
- b. Surcharge, total (per pound):
 - 1. \$0.2641 per pound of BOD
 - 2. \$0.2053 per pound of suspended solids
 - 3. \$5.4847 per pound of phosphorus

(3) *Computation.* The "Other" hauled wastewater service charges for volume, BOD, suspended solids, and phosphorus shall be computed in accordance with the following formula and paragraphs a and b of this subsection or in accordance with section c of this subsection.

$$C = (V \times C^V) + (B \times C^B) + (S \times C^S) + (P \times C^P)$$

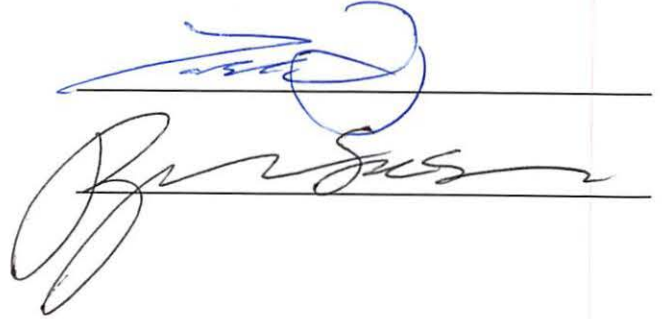
See Table 1 Section 122-403(b)(3) for definitions.

a. "Other" hauled wastewater analysis data shall be applied to the formula set forth above.

b. The discharge fee per 1,000 gallons shall be determined on the result of subsection (c)(3)a. of this section, multiplied by 1.25.

c. Charges for high strength waste will be determined by the superintendent of the wastewater treatment plant based on the frequency of the hauled wastewater and the needs of the wastewater treatment plant."

Section 4. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.



Two handwritten signatures in blue ink are positioned above two horizontal lines. The top signature is more stylized and appears to be in blue ink, while the bottom signature is in black ink and is more legible.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

III

DIRECT REFERRAL TO PUBLIC WORKS COMMITTEE

Res. No. 92 - 19 - 20. By Alderpersons Wolf and Sorenson.
September 24, 2019.

A RESOLUTION authorizing the emergency slope repair along the Sheboygan River near S. Water Street and Jefferson Avenue.

WHEREAS, the slope has eroded along the Sheboygan River near S. Water Street and Jefferson Avenue; and

WHEREAS, one local impact from this slope failure was significant erosion along the Sheboygan River bank near S. Water Street and Jefferson Avenue, which requires immediate action to repair.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into a contract with Buteyn-Peterson Construction Co., Inc. in substantially similar form to that attached, for repair of the slope as a result of the erosion.

BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw funds in the total amount of \$221,900.00 as follows: \$73,966.67 from Account No. 10133140-530290 (Streets-Construction Materials), \$73,966.67 from Account No. 10133150-530290 (Storm Water Management), and \$73,966.66 from Account No. 60134110-530290 (Wastewater-Sanitary Maintenance-Construction Materials) pursuant to the contract.

*Public Works
Committee*

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 THE CITY OF SHEBOYGAN, WISCONSIN AND
BUTEYN-PETERSON CONSTRUCTION CO., INC**

**REGARDING THE REPAIR OF THE SLOPE ALONG THE SHEBOYGAN RIVER NEAR
CENTRAL HIGH SCHOOL**

This Agreement ("Agreement") is made and entered into effective this ____ day of _____, 2019 (the "Effective Date"), by and between the City of Sheboygan (the "City"), a municipal corporation, and Buteyn-Peterson Construction Co., Inc. ("Contractor").

WITNESSETH:

WHEREAS, the City became aware of an erosion issue along the Sheboygan River near Central High School; and

WHEREAS, this issue requires immediate action repair; and

WHEREAS, Contractor is willing and able to repair the erosion along the Sheboygan River Bank under the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1. Scope of Services

Contractor shall provide all services and materials necessary to repair the slope along the Sheboygan River near Central High School (the "Services").

Contractor shall be responsible for obtaining any and all applicable City permits and paying any and all applicable permit fees prior to beginning work.

Contractor shall be responsible for furnishing, erecting, and maintaining suitable barricades, warning signs, flashers, fencing, and other protective equipment to properly protect and safeguard its personnel and the public during all phases of the Services.

Contractor shall give notice to the proper authorities in charge of streets, gas and water pipes, electric and other conduits, railroad, poles, catch basins, sewers, and all other property that may be affected by Contractor's operations, at least three (3) business days before beginning operations. Contractor shall not hinder or interfere with any persons in the protection of such property or with the operations of utilities at any time. Contractor shall protect such utilities from damage and unnecessary exposure. The cost of repairing any damage to utilities shall be the responsibility of Contractor.

Article 2. Standard of Care

Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances (“Standard of Care”). The City shall be the sole judge of the adequacy of Contractor’s work in meeting the Standard of Care; however, the City shall not unreasonably withhold its approval as to the adequacy of Contractor’s performance. Upon notice to Contractor, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

Article 3. Responsibilities of the City

The City designates Ryan Sazama as its designated project manager for purposes of this Agreement. The City’s project manager is explicitly authorized to make necessary decisions regarding materials to be used for the completion of the services, so long as the Not to Exceed Amount in Article 4 is not exceeded.

Article 4. Compensation

The City shall pay Contractor for all fees and expenses in an amount not to exceed Two Hundred Twenty One Thousand Nine Hundred Dollars (\$221,900).

Upon completion of the Services, Contractor shall submit an invoice to the City which shall not exceed the amounts specified in the Fee Schedule which is attached to this Agreement as Exhibit A for each aspect of the Services.

Unless additional services are added to the Services, pursuant to the process set forth in this Article, in no event shall the invoiced amount exceed the not to exceed amount.

The invoice shall be sent to:

Ryan Sazama
Department of Public Works
City of Sheboygan
2026 New Jersey Ave.
Sheboygan, Wisconsin 53081

Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice.

Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the City or its designated project manager prior to such work being performed, or expenses incurred. The City shall not make payment for any unauthorized work or expenses.

The City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

- Defective work.

- Evidence indicating the probable filing of claims by other parties against Contractor which may adversely affect the City.
- Failure of Contractor to make payments due to subcontractors, material suppliers, or employees.
- Damage to the City or a third party.

The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

Article 5. Appropriation of Funds

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty.

Article 6. Performance and Payment Bond

Contractor shall, within ten (10) days of the approval of this Agreement by the Common Council of the City of Sheboygan, provide the City with a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the contract amount.

Failure by Contractor to perform the work in a timely or satisfactory fashion may result in forfeiture of Contractor's Performance Bond.

If the Surety on any bond furnished by Contractor becomes a party to supervision or liquidation, or its right to do business in the State of Wisconsin is terminated, Contractor shall, within thirty (30) calendar days thereafter, substitute another bond or surety, both of which must be acceptable to the City.

Article 7. Schedule

Contractor shall begin the Services as soon as is practicable after this Agreement is approved by the Common Council of the City of Sheboygan and shall continue the prosecution of the Services as quickly as is practicable until the Services are completed. The Parties anticipate that approval to occur at the Council's meeting on October 7, 2019.

The Parties agree that no charges or claims for damages shall be made by Contractor for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the Parties, it being understood however, that permitting Contractor to proceed to complete any service, or any part of the services / project, after the date to which the time of completion may have been extended shall, in no way operate as a waiver on the part of the City of any of its rights herein.

Article 8. Quality of Materials

All materials used by Contractor shall be new, newest model year, and free from defects. Items which are used, demonstrators, obsolete, seconds, of which have been discontinued are unacceptable without prior written approval by the City.

Article 9. Safety Requirements

Contractor shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. Contractor shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state, or local. Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

Article 10. Open Records

Both parties understand that the City is bound by the Wisconsin Public Records Law and, as such, this contract is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under the Agreement.

Article 11. Termination

The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City shall pay Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services.

If Contractor defaults or fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement, the City may, seven (7) days after written notice has been delivered to Contractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to Contractor. In the alternative the City may, at its option, terminate this Agreement and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor, and may finish the project by whatever method it may deem expedient. In case the expenses incurred by the City (including payments previously made to Contractor) shall be less than the sum which would have been payable under the Agreement if it had been completed by Contractor, Contractor shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Agreement, Contractor will be liable and shall pay to the City the amount of said excess. By taking over prosecution of the work, the City does not forfeit the right to recover damages from Contractor or its surety for failure to complete the work in the time specified.

Article 12. Default

If Contractor breaches this Agreement or fails to perform the work in an acceptable manner, it shall be considered in default. Any one or more of the following will be considered a default:

- Failure to begin the work under this Agreement within the time specified.
- Failure to perform the work with sufficient supervision, workers, equipment and materials to insure prompt completion of said work within the time limits allowed.
- Unsuitable performance of the work as determined by City.
- Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
- Discontinuing the prosecution of the work or any part of it.
- Inability to finance the work adequately.
- If, for any other reason, Contractor breaches this Agreement or fails to carry on the work in an acceptable manner.

The City shall send Contractor a written notice of default. If Contractor, within a period of seven (7) days after such notice, fails to remedy the default, then the City shall have full power and authority, without violation of the Agreement, to take the prosecution of the work out of the hands of Contractor, as set forth in this Agreement.

Article 13. Identity of Contractor

Contractor acknowledges that one of the primary reasons for its selection by the City to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the City. The City's project manager shall have the ability to provide this written permission. The City reserves the right to reject any of the Contractor's personnel or proposed outside professional sub-consultants, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 14. Independent Contractor Status

During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the City. Contractor shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of its employees.

Article 15. Indemnification

Contractor shall indemnify, defend, and hold the City—including its Officials, Agents, and Employees—free and harmless from all liability, including, but not limited to, losses, damages, costs, attorney's fees, expenses, causes of action, claims, or judgments resulting from claimed injury, death, damage to property, or loss of use of property or any person or legal entity arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall reimburse the City for any costs, expenses, judgments, and attorney's fees paid or incurred, by or on behalf of the City, its Officials, Agents, or Employees, or paid for on behalf of the City, its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall further indemnify, defend, and hold harmless the City, its Officials, Agents, and Employees from liability or claims for any injuries to or death of Contractor's employees (or the employees of any authorized subcontractor) arising out of or in any way connected with the work or work to be performed under this Agreement, including protection against any claim of the contractor or subcontractor for any payments under any worker's compensation law or any expenses of or any payments made by any worker's compensation insurance carrier on behalf of said contractor or sub-contractor and the contractor shall indemnify the City for any costs, expenses, judgments, and attorney's fees with respect to any above referenced workers' compensation claims incurred or paid by the City or paid on its behalf or on behalf of its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City of Sheboygan.

Article 16. Insurance

Contractor shall not commence work under this Agreement until it has obtained all insurance required under this Article. Additionally, Contractor shall not allow any approved subcontractor to commence work on its subcontract until the subcontractor has obtained all insurance required under this Article.

During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect, and shall provide proof of insurance to the Purchasing Agent listing the City of Sheboygan as an additional insured:

- a. **Workers' Compensation Insurance** — Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements. In the event this Agreement authorizes any work to be sublet, Contractor shall require any subcontractor to similarly provide Workers' Compensation Insurance in accordance with all statutory requirements.
- b. **Commercial General Liability Insurance** — Contractor shall acquire and maintain, for the duration of the Agreement, Commercial General Liability Insurance with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

All insurance must be primary and non-contributory to any insurance or self-insurance carried by the City.

Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor's provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City the

required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

Article 17. Conflict of Interest

Contractor declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Contractor agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 18. Waiver

No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 19. Severability

The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 20. Assignment

Neither the City nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party.

Article 21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Contractor.

Article 22. Governing Law and Venue

This Agreement shall be governed by the laws of the State of Wisconsin. Venue of any disputes arising under this Agreement shall be in the Sheboygan County Circuit Court, Wisconsin.

Article 23. Non-Discrimination

In connection with the performance of work under this Agreement, Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability (as defined in Wis. Stat. 51.01(5)), sexual orientation (as defined in Wis. Stat. 111.32(13m)), or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of

compensation, and selection for training, including apprenticeship. Contractor further agrees to take affirmative action to ensure equal employment opportunities.

Article 24. Compliance with Laws

In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans, and regulations.

The City reserves the right to cancel this Agreement if Contractor fails to follow the requirements of Wis. Stat. 77.66 and related statutes regarding certification for collection of sales and use tax. The City also reserves the right to cancel this Agreement with any state or federally debarred contractor.

Contractor shall have any and all licenses and permits required to perform the work specified, and shall furnish proof of such licensing authorization and permits upon request.

Article 25. Notices

Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

City:

Contractor:

City Clerk	Mike Kleist
City of Sheboygan	Buteyn-Peterson Construction
828 Center Ave.	N7337 Dairyland Drive
Sheboygan, Wisconsin 53083	Sheboygan, Wisconsin 53083

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and Contractor.

Article 26. Intent to be Bound

The City and Contractor each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 27. Force Majeure

Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, the failure to perform must be beyond the reasonable control and without the fault or negligence of the party.

Article 28. Integration and Modification

This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the City and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

Article 29. Non-Collusion

Contractor is certifying, under penalty of perjury, that to the best of its knowledge and belief:

- a. The prices in its quote, as incorporated into Article 4, were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition as to any other matter relating to such prices with any other bidder, or with any other competitor.
- b. No attempt was made to induce any other person, partnership, or corporation to submit or not submit a quote for the purpose of restricting competition.

Article 30. Other Provisions

- a. Material Safety Data Sheet. If any item(s) on an order(s) resulting from this Agreement is a hazardous chemical, as defined under 29 C.F.R. 1910.1200, Contractor shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
- b. Advertising and News Releases. Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City.
- c. Foreign Corporation. A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Wis. Stat. 180 relating to a foreign corporation, and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority.
- d. Neither Party the Drafter. Despite the possibility that one party or its representatives may have prepared the initial draft of this Agreement (or any provision thereof), or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them shall be deemed the drafter of this Agreement.
- e. Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power,

authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

CITY OF SHEBOYGAN, WISCONSIN

CONTRACTOR

BY: _____
Michael J. Vandersteen, Mayor

BY: _____

ATTEST: _____
Meredith DeBruin, City Clerk

ATTEST: _____

DATE: _____

DATE: _____

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A resolution authorizing the emergency slope repair along the Sheboygan River near S. Water Street and Jefferson Avenue.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: September 19, 2019

MEETING DATE: October 29, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: 10133140-530290
10133150-530290
60134110-530290

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

Budget Summary: N/A
Budget Expenditure: \$221,900.00
Budgeted Revenue: N/A

BACKGROUND / ANALYSIS: Several weeks ago the Department of Public Works became aware of the failing/eroding embankment/hill near the intersection of S. Water Street and Jefferson Avenue. If left unattended the condition will keep failing, eroding becoming less manageable to repair and the expense of the repair will increase.

STAFF COMMENTS: As soon as this was brought to city staff's attention we immediately sought contractor pricing to perform the long-term repair of this embankment. The Department of Public Works received a quote from the Buteyn-Peterson Construction Co. of Sheboygan. We have hired the Buteyn-Peterson Construction Co. to repair similar eroded embankments throughout the City over the years with much success. This repair is scheduled shortly after this resolution is approved at the October 21st Sheboygan Common Council meeting.

The cost of the repair will be \$221,900.00. The funds will be drawn from the following accounts.

- Account Number 10133140-530290 in the amount of \$73,966.66
- Account Number 10133150-530290 in the amount of \$73,966.66
- Account Number 60134110-530290 in the amount of \$73,966.66

ACTION REQUESTED: Motion to recommend the Common Council adopt Res. No. 92-19-20 authorizing the emergency slope repair along the Sheboygan River near S. Water Street and Jefferson Avenue.

ATTACHMENTS:

- I. Res. No. 92-19-20
- II. Buteyn-Peterson Construction Co., Inc. Agreement
- III. Buteyn-Peterson Construction Co., Inc. proposal Exhibit A.