

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Resolution authorizing entering into a Mooring Agreement with South Pier Family Investments Inc.

REPORT PREPARED BY: David H. Biebel, Director of Public Works

REPORT DATE: October 10, 2019

MEETING DATE: October 15, 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: South Pier Family Investments entered into a Ground Lease with the Redevelopment Authority of the City of Sheboygan to lease certain land in Sheboygan. The Ground Lease describes the development as a “four-story building with 21 dwelling units with an enclosed on-grade parking structure”; together with certain expansion rights allowing for up to 18 additional units.

South Pier Family Investments Inc. desires to have the opportunity for owners of units at the Development to be able to lease the dock spaces and mooring facilities on the Sheboygan River that immediately adjacent to the Development. The Dock Space is currently assigned Slip Numbers 97,99,101,103,105,107,109, 111, 113, and 115.

STAFF COMMENTS: The Department reviewed the usage of the dock spaces and has determined this request can be accommodated.

ACTION REQUESTED: Motion to recommend the Common Council adopt Res. No. 98-19-20 authorizing entering into a Mooring Agreement with South Pier Family Investments Inc.

ATTACHMENTS:

- I. Res. No. 98-19-20
- II. Mooring Agreement

III

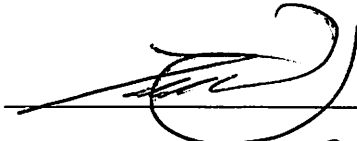
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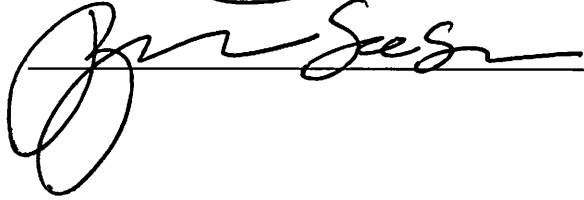
Res. No. 98 - 19 - 20. By Alderpersons Wolf and Sorenson.
October 7, 2019.

A RESOLUTION authorizing entering into a Mooring Agreement with South Pier Family Investments Inc.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Mooring Agreement between the City of Sheboygan and South Pier Family Investments Inc., a copy of which is attached hereto and incorporated herein.

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

MOORING AGREEMENT

This Mooring Agreement (“Agreement”) is made, executed, and delivered as of the _____ day of _____, 2019 (the “Effective Date”), by and between the City of Sheboygan, Wisconsin, a municipal corporation, and South Pier Family Investments Inc. (“South Pier Family Investments”).

BACKGROUND

On October 2, 2019 South Pier Family Investments entered into a Ground Lease with the Redevelopment Authority of the City of Sheboygan, Wisconsin (“Redevelopment Authority”) to lease certain land in Sheboygan, Wisconsin for development. The area leased by South Pier Family Investments is depicted in Exhibit A, which is attached to this Agreement and incorporated as though fully set forth here.

Section 3.01 of the Ground Lease describes the development as “a four-story building with 21 dwelling units with an enclosed on-grade parking structure”, together with certain expansion rights allowing for up to 18 additional units (the “Development”).

South Pier Family Investments Inc. desires to have the opportunity for owners of units at the Development (each a “Resident” and collectively the “Residents”) to be able to lease the dock spaces and mooring facilities on the Sheboygan River that are immediately adjacent to the Development (the “Dock Space”). The Dock Space is currently assigned Slip Numbers 97, 99, 101, 103, 105, 107, 109, 111, 113, and 115. The area that the parties consider to be “immediately adjacent” to the Development is depicted in Exhibit B.

Based on this background, the City of Sheboygan, Wisconsin and South Pier Family Investments agree to the following:

1. Commercial Vessels

The City agrees that during the term of this Mooring Agreement, the City shall not knowingly lease any Dock Space to a *fishing vessel* as that term is defined in the Code of Federal Regulations, as may be amended throughout the term of this Agreement. The current definition of *fishing vessel* is a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish (46 C.F.R. § 28.50).

2. South Pier Family Investments Inc.'s Usage of the Dock Space

The City agrees to provide South Pier Family Investments with the opportunity to make the Dock Space available to its Residents. Beginning February 1, 2020, and on or before each February 1 that this Agreement is effective, any of the Residents that wish to use any of the dock space shall provide the City with an Intent to Use Dock Space (each an "Intent to Use" and collectively "Intents to Use"). Each Intent to Use shall identify which, if any, of the Slip Numbers within the Dock Space the Resident intends to use for the upcoming boating season. The Intent to Use for a given boating season shall not be filed before January 1 of that boating season.

If the Residents request more than the available number of Slips within the Dock Space, the City may allocate the available slips among the Residents on a first-come first-served basis or on such other reasonable basis as the City may select.

In the event that the Intents to Use for any given boating season express a desire to use fewer than the total number of Slips within the Dock Space, the City may rent any Slip not used by the Residents to other boats for the boating season. In the event that the Intents to Use express an intent to use fewer than the total number of Slips within the Dock Space, the City does not guarantee that those Slips will be available for the Residents' usage in future years. If requested by one or more Residents, the City will make reasonable efforts to relocate any boat unaffiliated with South Pier Family Investments that used the Dock Space in a previous year.

If a Slip which had previously not been available is made available for the Residents usage in a future year, and a Resident includes that Slip on its timely filed Intent to Use, the City will guarantee that Slip will be available for the Residents' usage in future years, unless and until none of the Residents include that Slip on a future annual Intent to Use submission.

Example: On January 31, 2020, the Residents provide the City with Intents to Use Slip Numbers 97, 99, 101, 103, 105, 107, 109, 111, and 113. No Intent to Use includes Slip Number 115. The City may rent Slip Number 115 to a boat unaffiliated with the Residents for the 2020 boating season. In this example, for the 2021 boating season, the Residents will have the first opportunity to use Slip Numbers 97, 99, 101, 103, 105, 107, 109, 111, and 113. If a Resident requests to use Slip Number 115 for the 2021 boating season, the City will make reasonable efforts to relocate the boat which used Slip Number 115 for the 2020 boating season. If such efforts are successful, the Residents shall have the opportunity to use Slip Number 115 for the 2021 boating season and for future boating seasons, unless and

until the Residents do not include Slip Number 115 on a future annual Intent to Use submission.

3. Payment to the City

Each Resident shall make payment to the City of Sheboygan for the usage of each Slip for which it indicates a desire to use on its annual Intent to Use. Payment for each Slip shall be pursuant to the then-existing cost structure for slips of the type indicated on the Intent to Use. Payment shall be made when the Resident provides the City with its Intent to Use. If payment is not provided when the Intent to Use is submitted, the Intent to Use will not be considered submitted until payment is provided. If payment is provided after February 1 of a given boating season, the Intent to Use shall be considered untimely filed. If the Intent to Use is untimely filed, the City may make the Dock Space available to non-Resident users.

4. Term

The term of this Agreement shall be for eighty-five (85) years. The term shall commence on the Effective Date of this Agreement and shall expire at 11:59 p.m. on December 31, 2104 (the "Expiration Date") unless renewed or unless otherwise terminated.

This Agreement shall automatically renew for a single additional eighty-five (85) year term unless South Pier Family Investments (or, pursuant to Section 10 of this Agreement, an appropriate condo association consisting of the Residents) provides the City with written notice of its intention not to renew this Agreement before December 31, 2103.

5. Termination

In the event that the Ground Lease with the Redevelopment Authority is terminated for any reason, the City shall have the right to terminate this Agreement.

In the event that all of the Residents fail to file an Intent to Use for a given boating season, this Agreement shall terminate.

6. Amendment

This Agreement may only be amended through a signed agreement of the parties.

7. Suitability for Use

Subject to force majeure, the City agrees to make docking facilities available at the Dock Space throughout the Term of this Agreement. These docking facilities will be of the same type as those in place on the Effective Date of this Agreement. The City does not represent or warrant that these docking facilities are suitable for any particular boat that a Resident of the Development may wish to dock at the Dock Space. Nevertheless, City Staff and City Contractors shall endeavor to answer questions about the suitability of any particular Slip for use by a particular boat.

8. Notice

Notices shall be sent or personally delivered as follows:

City of Sheboygan

City Clerk
City of Sheboygan, Wisconsin
828 Center Ave.
Sheboygan, WI 53081

with a copy to:

City Attorney
City of Sheboygan, Wisconsin
828 Center Ave.
Sheboygan, WI 53081

South Pier Family Investments, Inc.

South Pier Family Investments Inc.
2808 Kohler Memorial Drive, Suite 1
Sheboygan, WI 53081

Notices shall be deemed given when deposited with the U.S. Postal Service, postage prepaid and correctly addressed, registered or certified mail, return receipt requested, to the respective parties or when personally delivered. Any party may change its respective above-stated address by written notice to the other party.

9. Compliance with Other Provisions

The submission of the Intent to Use provides the opportunity for Residents to utilize a portion of the Dock Space. Such usage shall require compliance with all federal, state, and local laws, and compliance with all rules generally applicable to use of City-owned dock space, including the execution of any agreements generally

required to be signed in order to use City-owned dock space and the disclosure of any information generally required to be disclosed in order to use City-owned dock space. In the event of a violation of federal, state, or local law, or any rule generally applicable to the use of City-owned dock space, the City may address the violation in the same way that it may address any other violation on City-owned dock space.

10. Assignment

South Pier Family Investments may assign and transfer this Agreement to a condominium association consisting of the Residents, such as SP-Riverfront Condominium Owners Association, U.A.

CITY OF SHEBOYGAN, WISCONSIN

SOUTH PIER FAMILY INVESTMENTS, INC.

By: _____
Michael J. Vandersteen, Mayor

By: _____
Toby Watson, President

ATTEST: _____
Meredith DeBruin, City Clerk

DATE: _____

DATE: _____

Exhibit A

LEASE AREA EXHIBIT

REAR PART OF LOT 2 SOUTH PIER PLAT AND
 PART OF VACATED EAST WATER STREET RIGHT-OF-WAY AND
 VACATED SOUTH PIER PLAT RIGHT-OF-WAY
 LOCATED IN THE NEARBY OF THE NEWA FEDERAL TRADING HOME
 CITY OF CHESTER, CHESTER COUNTY, PENNSYLVANIA

REAR PART OF LOT 2 SOUTH PIER PLAT AND
 PART OF VACATED EAST WATER STREET RIGHT-OF-WAY AND
 VACATED SOUTH PIER PLAT RIGHT-OF-WAY
 LOCATED IN THE NEARBY OF THE NEWA FEDERAL TRADING HOME
 CITY OF CHESTER, CHESTER COUNTY, PENNSYLVANIA

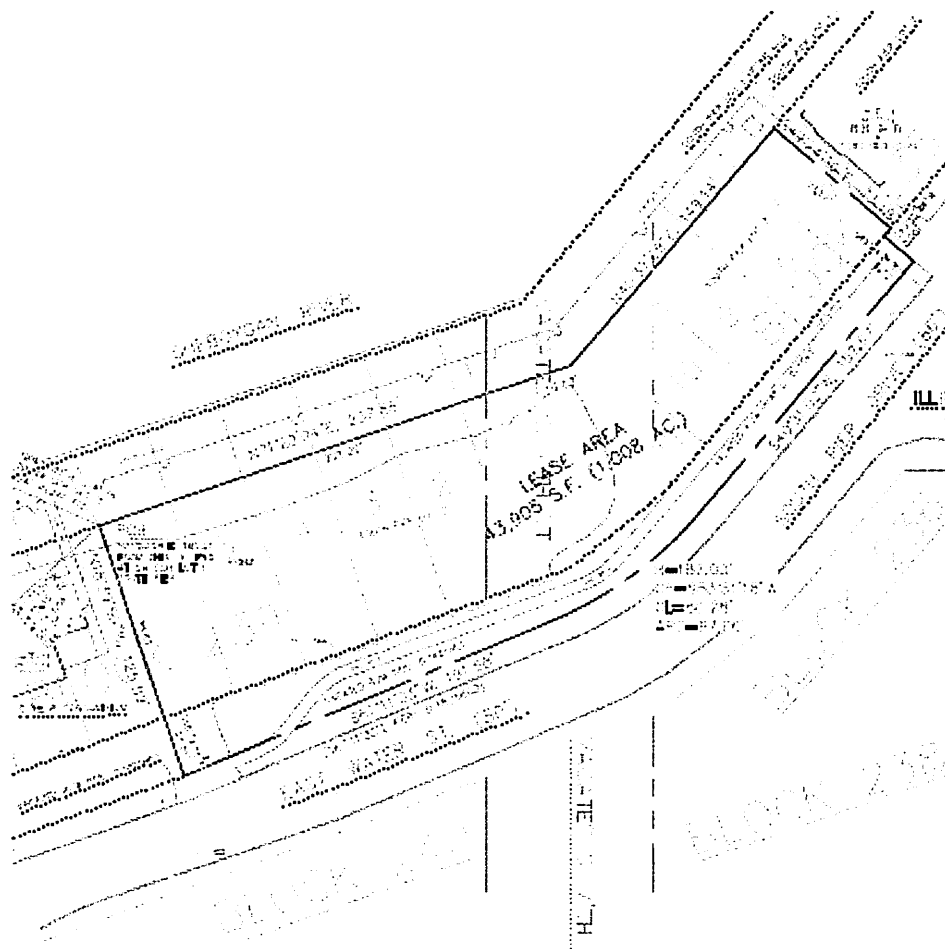


Exhibit B

The Area Adjacent to the Development:



Included for Context:



CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Ordinance amending Section 42-104 of the Sheboygan Municipal Code to change the time period in which parking on emergency routes, boulevards, cul-de-sacs, and dead ends is prohibited during a snow emergency.

REPORT PREPARED BY: Jason Blasiola, Superintendent of Streets & Sanitation

REPORT DATE: October 10, 2019

MEETING DATE: October 15, 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: The Department of Public Works worked with the Sheboygan Police Department and the City Attorney's Office to update the City's Snow Emergency Ordinance last snow season. The current ordinance language states that: Parking of vehicles on designated snow emergency routes, boulevards, cul-de-sacs, and dead-end streets is completely prohibited during the period of a snow emergency until plowing of both sides of the snow emergency routes, boulevards, cul-de-sacs and dead-end streets has been completed. The DPW, SPD and City Attorney's Office are requesting the language be changed to read: Parking of vehicles on designated snow emergency routes, boulevards, cul-de-sacs, and dead-end streets is completely prohibited during the period of a snow emergency.

STAFF COMMENTS: The DPW, SPD and City Attorney's Office believe that the change is needed to clarify when citizens can start parking on snow emergency routes, boulevards, cul-de-sacs and dead-end.

ACTION REQUESTED: Motion to recommend the Common Council adopt G.O. No. 22-19-20 amending Section 42-104 of the Sheboygan Municipal Code to change the time period in which parking on emergency routes, boulevards, cul-de-sacs, and dead ends is prohibited during a snow emergency.

ATTACHMENTS:

- I. G.O. No. 22-19-20

I

DIRECT REFERRAL TO PUBLIC WORKS COMMITTEE

Gen. Ord. No. 22-19 - 20. By Alderpersons Wolf and Sorenson.
October 15, 2019.

AN ORDINANCE amending Section 42-104 of the Sheboygan Municipal Code to change the time period in which parking on emergency routes, boulevards, cul-de-sacs, and dead ends is prohibited during a snow emergency.

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

Section 1. Section 42-104 entitled "Emergency powers; parking restrictions during snow emergency" is hereby repealed and recreated in subsection (b)(2) thereof to read as follows:

"Sec. 42-104. Emergency powers; parking restrictions during snow emergency.

. . .

(b) Whenever the powers conferred in this article are exercised because of a heavy snowstorm or blizzard, the following parking restrictions shall be in effect:

. . .

(2) Parking of vehicles on designated snow emergency routes, boulevards, cul-de-sacs, and dead ends is completely prohibited during the period of a snow emergency.

. . . "

Public Works

Section 2. 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.

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 replacing certain No Parking signs throughout the City of Sheboygan to align with current winter parking regulations.

REPORT PREPARED BY: Jason Blasiola, Superintendent of Streets & Sanitation

REPORT DATE: October 10, 2019

MEETING DATE: October 15, 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: The Department of Public Works worked with the Sheboygan Police Department and the City Attorney's Office to update the City's winter parking rules last snow season. Winter parking was extended from December 1 through April 1 to December 1 through April 30. There are multiple signs throughout the City that limit parking on side of the street from December 1 to April 1. The DPW is requesting that those signs be changed to April 30 to align with current winter parking regulations.

STAFF COMMENTS: The DPW, SPD and City Attorney's Office believe that the change is needed to clarify the winter parking rules for these specific streets.

ACTION REQUESTED: Motion to recommend the Common Council adopt G.O. No. 23-19-20 replacing certain No Parking signs throughout the City of Sheboygan to align with current winter parking regulations.

ATTACHMENTS:

- I. G.O. No. 23-19-20

~~X~~

DIRECT REFERRAL TO PUBLIC WORKS COMMITTEE

Gen. Ord. No. 23- 19 - 20. By Alderpersons Wolf and Sorenson.
October 15, 2019.

AN ORDINANCE replacing certain No Parking signs throughout the City of Sheboygan to align with the current winter parking regulations.

WHEREAS, in Gen. Ord. No. 25-17-18, the Common Council of the City of Sheboygan provided that the City's winter parking regulations set forth in Sheboygan Municipal Code § 118-241 and § 118-242 extended from December 1 through April 30; and

WHEREAS, there are certain areas of the City which were previously designated as "No Parking" areas from December 1 through April 1; and

WHEREAS, this designation aligned with the application of the winter parking regulations as they existed prior to Gen. Ord. No. 25-17-18; and

WHEREAS, specifically, these areas include:

- East side of S. 8th Street from Union Avenue to Whitcomb Avenue
- East side of S. 9th Street from Union Avenue to Humboldt Avenue
- East Side of S. 12th Street from Spruce Court to Union Avenue
- East side of S. 13th Street from Georgia Avenue to Union Avenue
- East side of S. 15th Street from Union Avenue to Oakland Avenue
- West side of S. 17th Street from New Jersey Avenue to Maryland Avenue
- North side of Alexander Court from Calumet Drive to Wiemann Avenue
- South side of Annie Court from N. 13th Street to N. 15th Street
- North side of Ashland Avenue from Lakeshore Drive to S. 12th Street
- South side of Bell Avenue from N. 15th Street to N. 17th Street
- South side of Cambridge Avenue from N. 17th Street to N. 18th Street
- North side of Carl Avenue from N. 13th Street to N. 15th Street
- South side of Cooper Avenue from Kohl's Court to N. 23rd Street
- North side of N. Franklin Street from N. 4th Street to Washington Court
- East side of Henry Street from Union Avenue to Mead Avenue
- East side of Kroos Court from Geele Avenue to Bell Avenue
- North side of Lenz Court from N. 13th street to N. 15th Street
- South side of Logan Avenue from N. 13th street to N. 15th Street
- South side of Main Avenue from Luedke Ct. to the terminus of Luedke Ct.
- North side of Mead Avenue from S. 18th Street to S. Business Drive
- North side of Mehrtens Avenue from N. 15th Street to N. 16th Street
- North side of Sibley Court from Calumet Drive to Wiemann Avenue
- West side of Spruce Court from S. 12th Street to Broadway Avenue
- South side of Union Avenue from S. 17th Street to Sauk Trail Road
- North side of Washington Court from Broughton Drive to N. 4th Street
- East side of Wedemeyer Street from Ashland Avenue to Mead Avenue

Public Works

South side of Wisconsin Avenue from Broughton Dr. to N. Franklin Street
South side New York Avenue from N. 5th street to N. 6th Street
South side of Union Avenue from S. 17th Street to S. 19th Street; and

WHEREAS, it is desirable for the no parking regulations in these locations to align with the current application of the winter parking rules.

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Pursuant to Section 118-51 of the Municipal Code entitled "Erection of Official Signs," signs indicating No Parking from December 1 to April 30 shall be placed at the following locations:

East side of S. 8th Street from Union Avenue to Whitcomb Avenue
East side of S. 9th Street from Union Avenue to Humboldt Avenue
East Side of S. 12th Street from Spruce Court to Union Avenue
East side of S. 13th Street from Georgia Avenue to Union Avenue
East side of S. 15th Street from Union Avenue to Oakland Avenue
West side of S. 17th Street from New Jersey Avenue to Maryland Avenue
North side of Alexander Court from Calumet Drive to Wiemann Avenue
South side of Annie Court from N. 13th Street to N. 15th Street
North side of Ashland Avenue from Lakeshore Drive to S. 12th Street
South side of Bell Avenue from N. 15th Street to N. 17th Street
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South side of Cooper Avenue from Kohl's Court to N. 23rd Street
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North side of Mehrtens Avenue from N. 15th Street to N. 16th Street
North side of Sibley Court from Calumet Drive to Wiemann Avenue
West side of Spruce Court from S. 12th Street to Broadway Avenue
South side of Union Avenue from S. 17th Street to Sauk Trail Road
North side of Washington Court from Broughton Drive to N. 4th Street
East side of Wedemeyer Street from Ashland Avenue to Mead Avenue
South side of Wisconsin Avenue from Broughton Dr. to N. Franklin Street
South side New York Avenue from N. 5th street to N. 6th Street
South side of Union Avenue from S. 17th Street to S. 19th Street.

Section 2. The Department of Public Works and the Police Department are hereby authorized and directed to remove signs conflicting with this

ordinance and to add appropriate signs to give notification of the
aforementioned change.

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.

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

	2016 3rd Quarter	2017 3rd Quarter	2018 3rd Quarter	2019 3rd Quarter
Wildwood Cemetery				
Full Burials	10	5	11	14
Cremains	14	9	15	14
Baby	1	0	0	1
Graves Sold	5	12	11	12

	2016 3rd Quarter	2017 3rd Quarter	2018 3rd Quarter	2019 3rd Quarter
Street Repair & Maintenance				
Crack and joint filling footages (LF)	4,273	15,100	2,350	2,500
Yards of concrete installed	640.25	472	511.4	896.8
Tons of asphalt installed	4,842	11,133.71	5,444.00	2,196.22
Potholes - cold mix tons	N/A	N/A	0	0
Potholes - hot mix tons	71.6	133.71	103	93
Asphalt Overlay (Tons)	4,771	11,100	5,341	2,103
Street Cleaning				
Debris removed (tons)	260	182.62	238	256
Curb miles streets swept	N/A	1,234	1,309	1,301
Sanitary Sewer				
Number of manholes replaced	N/A	15	12	13
Sanitary sewer jetting footages (LF)	163,147.10	167,595.00	118,670.00	125,850.00
Sanitary sewer televising footages (LF)	19,802.90	15,954.00	5,464.00	15,049.00
Total Backwater Calls	14	10.00	11.00	9.00
Sewer backup calls - lateral plugged	8	9.00	9.00	9.00
Sewer backup calls - main plugged	6	1.00	2.00	0.00
Storm Sewer				
Catch basins debris removed (tons)	59.00	76.88	166.00	51.00
Storm sewer jetting footages (LF)	13,217.00	31,385.00	2,670.00	11,684.00
Storm sewer televising footages (LF)	6,749.90	11,140.00	2,670.00	11,684.00
Number of catch basins replaced	7	29	15	24
Number of storm manholes replaced	6	3	9	5
Storm Sewer Pipe Replaced (LF)	193	225	575	201

	2016 3rd Quarter	2017 3rd Quarter	2018 3rd Quarter	2019 3rd Quarter
Sanitation & Recycling Curbside Collection				
Garbage collected (tons)	2,975.00	2,935.00	2,900.34	3,024.22
Recycling collected (tons)	827	814.83	895.85	822.07
Material recovery rate %	21.8%	21.7%	23.6%	21.4%
Nuisance notices issues (weeds notice)	128	175	96	101
Number of lots cut by city contractor	17	8	12	11
Recycling Center				
Yard waste hauled (tons)	783	922.96	792.3	847.9
Tire disposal	38	45	44	33
Scrap metals collected (tons)	28.3	58	78.33	78.69
Oil collected (gallons)	3,675	3,050	3,150	3,645
Branch grinding (dollars)	\$5,700	\$3,000	\$6,200	\$7,440
Leaf Collection Tons	N/A	N/A	N/A	0
Snow				
	16/17'	17/18'	18/19'	19'/20'
Events	N/A	N/A	0	0
Duration (hours)	N/A	N/A	0	0
Precipitation (inches)	N/A	N/A	0	0
Hours	N/A	N/A	0	0
Salt Usage (tons)	N/A	N/A	0	0
Motor Vehicle				
Completed work orders	N/A	336	337	351
Preventative maintenance completion %	N/A	69.0%	66.0%	90.0%
Vehicle maintenance budget used %	N/A	14.0%	26.0%	35.0%
Contracted services budget used %	N/A	12.0%	32.0%	50.0%

	2016 3rd Quarter	2017 3rd Quarter	2018 3rd Quarter	2019 3rd Quarter
City Forestry				
Trees Planted	23	0	0	3
Trees Trimmed	600	743	421	251
Trees Removed	121	92	94	249
Stump Removals	287	377	275	22
Treated Ash Trees	0	486	806	657
Citizen Tree Concern		146	226	255
Park Maintenance Repairs/Painting				
Grills	0	0	3	0
Combo Picnic Tables	0	0	4	146
Straight Tables	0	0	0	42
Garbage Receptacles	0	0	1	13
Park Signs	0	3	1	0
New Combo Picnic Tables	0	0	0	0
Garbage Collected (Tons)	0	74.45	77.14	74.56
Beach Refuse (Tons)	0	6.3	9.96	27.42
Straight Benches				12
4' Benches	0	0	0	0
Park Rentals				
Events	30	33	34	37
Combo Picnic Tables	460	488	410	524
Straight Tables 10'	302	291	175	115
Straight Benches 10'	114	128	46	76
Bench 4'	108	111	76	50
Trash Receptacles	325	330	261	356
Stage	11	11	8	9
Grills	27	18	17	21
Chair Trailer, 320	5	3	3	4
Dance Floor	3	2	8	2
Bleachers	N/A	N/A	N/A	2

	2016 3rd Quarter	2017 3rd Quarter	2018 3rd Quarter	2019 3rd Quarter
Wastewater Treatment Plant				
Total Precipitation (in)		10.13	14.9	13.57
Total Wastewater Treated (MG)		866	987	988.2
Total Influent CBOD5 Loading (lbs)		1,215,312	1,120,050	1,071,968
Total Influent TSS Loading (lbs)		1,538,235	1,711,414	2,079,632
Total Influent Ammonia Loading (lbs)		131,721	141,730	152,084
Total Influent Phosphorus Loading (lbs)		29,926	31,942	37,867
Average CBOD5 Removal Efficiency (%)		98.7%	98.2%	98.7%
Average TSS Removal Efficiency (%)		98.9%	98.6%	98.8%
Average Ammonia Removal Efficiency (%)		98.0%	97.4%	96.0%
Average Phosphorus Removal Efficiency (%)		86.2%	87.9%	91.6%
Average CBOD5 Discharged (mg/L)		2.096	2.173	2.173
Average TSS Discharged (mg/L)		2.378	2.654	2.776
Average Phosphorus Discharged (mg/L)		0.568	0.471	0.374
Average Ammonia Discharged (mg/L)		0.244	0.577	0.535
Average Effluent Mercury Concentration (ng/L)		0.663	0.86	0.847
Biogas Produced (cu ft)		28,781,399	11,172,323	11,589,088
Biogas Utilized (%)				97.36%
Total Plant Electrical Power Generated (kWh)		1,583,237	83,634	28,000
Electricity Purchased (kWh)		1,611,581	1,643,794	1,820,139
Natural Gas Consumed (therms)		4,070	22,331	35,665
Total Dried Biosolids Produced (lbs)		671,480	1,018,620	1,231,200
Pretreatment & Laboratory				
Significant Industrial Users Semi-Annual Monitoring Complete (%)		60%	50%	71%
Significant Industrial Users issued Notice of Non-Compliance (NON)		5	2	1
Significant Industrial Users Annual Site Inspection Completed (%)		67%	33%	57%
Number of SIU Permits Issued or Renewed		0	0	3
Community Annual Monitoring Inspections (%)		100.0%	0.0%	40.0%
Sewer Surcharge Facilities Quarterly Monitoring Completed (%)		100.0%	100.0%	100.0%
Number of Samples Analyzed by Sheboygan WWTF Laboratory		15	5	20
Waste Water Treatment Plant Maintenance				
Number of Closed Work Orders		160	372	405

	2016 3rd Quarter	2017 3rd Quarter	2018 3rd Quarter	2019 3rd Quarter
Street Light Knockdowns				
Street Lights Damaged	3	5	4	6
Material Used	\$9,108.43	\$10,750.72	\$3,853.97	\$16,576.65
Labor	\$6,545.00	\$2,640.00	\$1,470.00	\$4,555.00
Equipment Rental	\$7,265.00	\$2,875.00	\$1,760.00	\$4,405.00
Traffic Signal Knockdowns				
Traffic Signals Damaged	4	6	4	3
Material Used	\$13,033.43	\$32,714.09	\$8,987.99	\$5,193.88
Labor	\$7,177.50	\$10,695.00	\$5,895.00	\$4,750.00
Equipment Rental	\$8,232.50	\$12,040.00	\$6,845.00	\$5,090.00
Traffic Signage				
Traffic Signs Installed/Removed	189	125	285	205
Traffic Signs Constructed	257	171	164	157
Specialized Sign Project	4	100	861	63
Painted Street Markings				
Centerline Painting (miles)	N/A	68.8	74.6	1.2
Crosswalks Painted	909	933	690	924
Traffic Arrows/Stop Bars Painted	324	446	323	411
Snow Removal Damage				
Damaged Mailbox Repaired/Replaced	0	0	0	0

2019 Capital Improvement Projects	Contract Amount	Contract Approved	Construction Start Date	Construction Comp. Date
Badger State Lofts Roadways and Utilities	TBD	TBD	TBD	Fall 2020
WisDOT North Avenue Reconstruction	\$ 4,846,811.88	4/8/2019	5/20/2019	Fall 2019
Vollrath Park Tennis Court Reconstruction	\$ 179,890.00	6/17/2019	7/22/2019	Fall 2019
Mead Public Library Plaza Reconstruction	\$ 637,310.39	3/20/2019	4/10/2019	9/6/2019
WisDOT Penn Avenue Bridge Reconstruction	\$ 2,982,230.52	3/20/2019	4/26/2019	Fall 2019
N. 15th Street Reconstruction	\$ 486,496.00	6/17/2019	7/8/2019	Fall 2019
2019 Sidewalk Program	\$ 82,050.00	3/18/2019	6/1/2019	Fall 2019
2019 Mini-Sewers	\$ 50,000.00	6/1/2019	8/1/2019	Fall 2019
South Pointe Tree Planting	\$ 15,370.00	9/10/2019	Spring 2020	Spring 2020
South Pointe Signage	\$ 255,400.00	4/3/2019	Spring 2019	Fall 2019
Deland Maintenance Garage	\$ 74,508.00		Spring 2019	Summer 2019

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Quarterly benchmarks

REPORT PREPARED BY: David H. Biebel, Director of Public Works

REPORT DATE: October 10, 2019

MEETING DATE: October 15, 2019

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

BACKGROUND / ANALYSIS: As part of the annual budgeting process, the Department of Public Works has developed performance benchmarks to track progress of the department's activities.

STAFF COMMENTS: Due to the seasonal nature of many of the services provided by the Department of Public Works, many items that are benchmarked are currently not available for this report. The benchmark report encompasses information from Streets & Sanitation, Motor Vehicle, Parks & Forestry, Facilities & Traffic, Engineering, and Wastewater.

ACTION REQUESTED: For informational purposes only

ATTACHMENTS:

- I. Report of benchmark measurements

Streets, Alleys, and Sidewalks

	2017 Actual	2018 Actual	YTD 9/30/19	2019 Goals
Measurements				
<u>Workload</u>				
Crack and Joint Filling Footages (LF)	36,534	33,084	38,051	22,000
Yards of Concrete Installed	1,230	1,348.4	1,277.8	101.5
Tons of Asphalt Installed	13,510	11,269	5,197	9,000
Potholes – Cold Mix (Tons)	124	73	151	130
Potholes – Hot Mix (Tons)	525	232	205	170
<u>Effectiveness</u>				
Increase PASER rating	6.01	6.01	6.01	6.20
Increase linear footage of streets on regular crack and joint fill schedule	15,100	0	4,967	25,000
Respond to pothole repair requests within two days	1.6	2	2	1

Parks

	2017 Actual	2018 Actual	YTD 9/30/19	2019 Goals
Measurements				
<u>Workload</u>				
Number of Parks	36	36	36	36
Acres of Public Land	705	705	705	705
Miles of Paved Off-Road Trails	9.61	9.61	9.61	9.61

Forestry

	2017 Actual	2018 Actual	YTD 9/30/19	2019 Goals
Measurements				
<u>Workload</u>				
Trees Planted	448	21	530	500
Trees Removed	531	610	625	600
Trees Elevated	2,365	1,872	1,064	2,000
<u>Effectiveness</u>				
Tree City USA Designation	Yes	Yes	Yes	Yes

Traffic Control Signs

	2017 Actual	2018 Actual	YTD 9/30/19	2019 Goals
Measurements				
<u>Workload</u>				
Traffic Signs Installed/Removed	538	847	580	1,010
Traffic Signs Constructed	1008	689	843	1,300
Damaged Mailboxes Repaired/Replaced	37	46	20	
Traffic Arrow/Stop-Bars/Crosswalk Painted	1,565	1,618	1,678	1,700

Motor Vehicle

	2017 Actual	2018 Actual	YTD 9/30/19	2019 Goals
Measurements				
Workload				
Preventive Maintenance Completion Rate	65.6%	69.3%	62.3%	85%

Engineering

	2017 Actual	2018 Actual	YTD 9/30/19	2019 Goals
Measurements				
Workload				
Review of plans within two weeks of submission	96%	95%	95%	100%

Wastewater

	2017 Actual	2018 Actual	YTD 9/30/19	2019 Goals
Measurements				
Effectiveness				
Number of Violations of WPDES Permit Limits	0	1	0	0
CMAR Score	4	B	A	4
Percent Electrical Power Produced	60%	4.27%	3.35%	65%

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 15, 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.