

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

**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

---

**ITEM DESCRIPTION:** Res. No. 165-18-19 by Alderperson Wolf authorizing the Engineering Division of the Department of Public Works to advertise certain specified projects for bid.

---

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

---

**REPORT DATE:** January 24, 2019

**MEETING DATE:** January 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 is in the process of developing plans and specifications for the projects listed below:

- 2019 Sidewalk Program
- 2019 Resurfacing
  - Geele Avenue (Calumet Drive to North 23rd Street)
  - North 10th Street (Erie Avenue to Superior Avenue)
  - North 10th Street (North Avenue to Pershing Avenue)
- Badger Loft Road Reconstruction
  - Illinois Avenue (South Commerce Street to South 12th Street)
  - Maryland Avenue (South 11th Street to South Commerce Street)
  - South 11th Street (Maryland Avenue to Indiana Avenue)
  - South 10th Street (Illinois Avenue to Indiana Avenue)
- North 15th Street (Wisconsin Avenue to Niagara Avenue)
- 2019 Sanitary Sewer Televising
- SouthPointe Tree Planting
- Vollrath Park Tennis Court
- Deland Park Maintenance Building
- South 7th Street Sidewalk Ramp Reconstruction
- Sanitary Sewer Interceptor Televising
- 2019 Mini-Storm Sewer Program

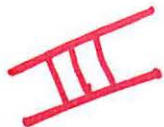
**STAFF COMMENTS:** This resolution is requesting approval from the City of Sheboygan Common Council to have the Department of Public Works solicit bids from potential contractors for the projects listed above. Once bids are received they will be submitted to the Public Works Committee for their review.

**ACTION REQUESTED:** Motion to recommend the Common Council approve Res. No. 165-18-19 authorizing the Engineering Division of the Department of Public Works to advertise certain specified projects for bid.

**ATTACHMENTS:**

- I. Res. No. 165-18-19

A.3



Res. No. 165- 18 - 19. By Alderpersons Wolf and Sorenson.  
January 21, 2019.

A RESOLUTION authorizing the Engineering Division of the Department of Public Works to advertise certain specified projects for bid.

WHEREAS, the Engineering Division of the Department of Public Works ("Engineering Division") has prepared or caused to be prepared the necessary plans and specifications ("Plans") so that certain projects identified in the Department of Public Works' 2019 Program Budget, which was previously submitted and approved by the Common Council of the City of Sheboygan ("Common Council"), are now ready to be advertised for bids.

NOW, THEREFORE, BE IT RESOLVED: That the Engineering Division is hereby authorized and directed on behalf of the Board of Public Works to advertise for bids on the following projects:

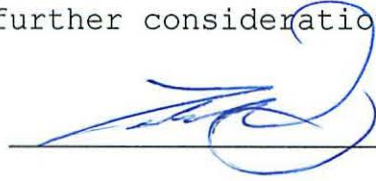
1. 2019 Sidewalk Program
2. 2019 Resurfacing
  - a. Geele Avenue (Calumet Drive to N. 23<sup>rd</sup> Street)
  - b. N. 10<sup>th</sup> Street (Erie Avenue to Superior Avenue)
  - c. N. 10<sup>th</sup> Street (North Avenue to Pershing Avenue)
3. Badger Loft Road Reconstruction
  - a. Illinois Avenue (S. Commerce Street to S. 12<sup>th</sup> Street)
  - b. Maryland Avenue (S. 11<sup>th</sup> Street to S. Commerce Street)
  - c. S. 11<sup>th</sup> Street (Maryland Avenue to Indiana Avenue)
  - d. S. 10<sup>th</sup> Street (Illinois Avenue to Indiana Avenue)
4. N. 15<sup>th</sup> Street (Wisconsin Avenue to Niagara Avenue)
5. 2019 Sanitary Sewer Televising
6. SouthPointe Tree Planting
7. Vollrath Park Tennis Court
8. Deland Park Maintenance Building
9. S. 7<sup>th</sup> Street Sidewalk Ramp Reconstruction
10. Sanitary Sewer Interceptor Televising
11. 2019 Mini-Storm Sewer Program.

BE IT FURTHER RESOLVED: That the Engineering Division shall comply with all requirements imposed on an Advertisement for Bids, including the requirements set forth in Wis. Stat. § 62.15(3). For the avoidance of doubt, the Engineering Division shall publish a Class 2 Notice for each project set forth above, pursuant to Wis. Stat. 985, and by any other means as the Engineering Division deems desirable and in the best interests of the City. No bid shall be received unless accompanied by a certified check or a bid bond equal to at least 5 percent but not more than 10 percent of the bid payable to the city as a guaranty that if the bid is accepted the bidder will execute and file the proper contract and bond within the time limited by the city. If the successful bidder so

Public Works

files the contract and bond, upon the execution of the contract by the City the check shall be returned. In case the successful bidder fails to file such contract and bond, the amount of the check or bid bond shall be forfeited to the city as liquidated damages. The notice published shall inform bidders of this requirement.

BE IT FURTHER RESOLVED: That upon receipt of bids for each project set forth above, the City Engineer shall submit a resume of bids received and accepted to the Common Council for further consideration.



---

---

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

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

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

**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

---

**ITEM DESCRIPTION:** Res. No. 166-18-19 by Alderperson Wolf authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (dated January 3, 2019), I.D. 4640-01-01\_72, to update nine signalized intersections along the 2.4 mile STH 28/14<sup>th</sup> Street corridor from North Avenue to Indiana Avenue.

---

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

---

**REPORT DATE:** January 24, 2019

**MEETING DATE:** January 29, 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:** The State Municipal Agreement reflects the cost for all entities participating in the project. The estimated cost for updating nine signalized intersections along the STH28/14<sup>th</sup> Street corridor from North Avenue to Indiana Avenue for the proposed sum of \$758,800.00 of which the Federal Share is \$607,040.00 and of which the City of Sheboygan's share is \$151,760.00. The proposed project includes adding radio communication infrastructure, installing video detection, remove outdated loop detectors, conduct 13-hour intersection turning movement counts, preparation of traffic signal coordination timing plans, and retiming and coordinating traffic signals.

**STAFF COMMENTS:** The analysis and design for updating nine signalized intersections along the STH28/14<sup>th</sup> Street corridor from North Avenue to Indiana Avenue will start in 2019. These nine roadways are scheduled for signalized updating construction in the Spring of 2021 with the work being completed in the Fall of 2021.

**ACTION REQUESTED:** Motion to recommend the Common Council approve Res. No. 166-18-19 authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (dated January 3, 2019), I.D. 4640-01-01\_72, to update nine signalized intersections along the 2.4 mile STH 28/14<sup>th</sup> Street corridor from North Avenue to Indiana Avenue.

**ATTACHMENTS:**

- I. Res. No. 166-18-19
- II. State Municipal Agreement dated January 3, 2019.

III

A.4

Res. No. 166 - 18 - 19. By Alderpersons Wolf and Sorenson.  
January 21, 2019.

A RESOLUTION authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (dated January 3, 2019), I.D. 4640-01-01\_72, to update nine signalized intersections along the 2.4 mile STH 28/14th Street corridor from North Avenue to Indiana Avenue.

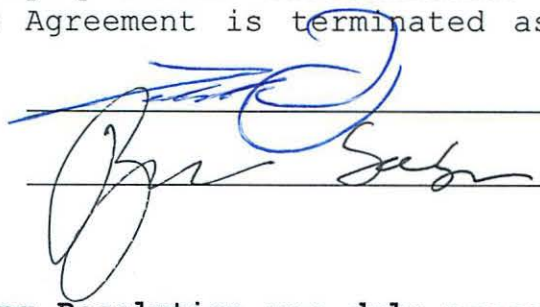
WHEREAS, the proposed improvements to this corridor includes adding radio communication infrastructure, installing video detection, removing outdated loop detectors, conducting 13-hour intersection turning movement counts, preparing traffic signal coordination timing plans, and retiming and coordinating traffic signals.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to enter into the State/Municipal Agreement with the Wisconsin Department of Transportation, a copy of which is attached hereto and incorporated herein, to update nine signalized intersections along the STH 28/14th Street corridor from North Avenue to Indiana Avenue for the proposed sum of \$758,800.00, of which the Federal Share is \$607,040.00 and of which the City of Sheboygan's share is \$151,760.00.

BE IT FURTHER RESOLVED: That the appropriate City Officials are hereby authorized to draw orders on the future capital improvements program for street improvements.

BE IT FURTHER RESOLVED: That any previous authorization to draw orders on a previous version of this Agreement is terminated as of the effective date of this Resolution.

Public Works

  
\_\_\_\_\_  
\_\_\_\_\_  
John Sorenson

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

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

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



**STATE/MUNICIPAL AGREEMENT  
FOR A LOCALLY LET CMAQ  
PROJECT**

Program Name: Congestion Mitigation and  
Air Quality Improvement (CMAQ)  
Sub-program #: 211

Date: **January 3, 2019**

I.D.: **4640-01-01\_72**

Project Title: **STH 28 / 14<sup>th</sup> Street Traffic Flow  
Improvement**

Location/Limits (as applicable): **North Avenue –  
Indiana Avenue**

County: **Sheboygan**

Project Length (if applicable): **2.40 miles**

Counties Served: **Sheboygan**

Project Sponsor: **City of Sheboygan**

Sponsor County: **Sheboygan**

MPO Area: **Sheboygan**

The signatory, City of Sheboygan, hereinafter called the Project Sponsor, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the transportation project hereinafter described.

23 U.S.C. 149 and Wis. Stat. 85.245 authorize the State to administer a program for the distribution of federal funds for congestion mitigation and air quality improvement projects.

The authority for the Project Sponsor to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

**NEEDS AND ESTIMATE SUMMARY:**

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Project Sponsor agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

**Proposed Project - Nature of work:** The proposed project adds radio communication to the nine signalized intersections along the 2.4 mile STH 28 / 14<sup>th</sup> Street corridor from North Avenue to Indiana Avenue. The proposed project includes adding radio communication infrastructure, installing video detection, remove outdated loop detectors, conduct 13-hour intersection turning movement counts, preparation of traffic signal coordination timing plans and retiming and coordinating traffic signals.

**Need for or Benefits of Project – summarize reasons for request:** The proposed project will reduce noxious emissions such as nitrous oxide (NO), carbon monoxide (CO), and hydro carbons by reducing vehicle delays through non-invasive, cost-effective technologies. Signal coordination and retiming with comprehensive use of video detection will maximize the efficiency of the existing roadway network.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Project Sponsor. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal and state requirements: **NONE**

The Project Sponsor agrees to the following FY 2018-2022 CMAQ Program project funding conditions:

The subject project is funded with 80% federal funding up to a maximum of \$607,040 for all federal funded project phases when the Project Sponsor agrees to provide the remaining 20% and all funds in excess of the \$607,040 federal funding maximum, in accordance with CMAQ program guidelines. Non-participating costs are 100% the responsibility of the Project Sponsor. Any work performed by the Project Sponsor prior to federal authorization is not eligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging.

The project is subject to a discretionary DBE goal assessment. A completion deadline of June 30, 2025. The Catalogue of Federal Domestic Assistance (CFDA) number for this project is 20.205 – Highway Planning and Construction.

| PHASE                               | SUMMARY OF COSTS |                  |            |                       |            |
|-------------------------------------|------------------|------------------|------------|-----------------------|------------|
|                                     | Total Est. Cost  | Federal Funds    | %          | Project Sponsor Funds | %          |
| <b>ID 4640-01-01</b>                |                  |                  |            |                       |            |
| Design                              | \$93,500         | \$74,800         | 80%*       | \$18,700              | 20%*       |
| Design Review #                     | \$62,400         | \$49,920         | 80%*       | \$12,480              | 20%*       |
| <b>ID 4640-01-72</b>                |                  |                  |            |                       |            |
| Participating Construction          | \$519,700        | \$415,760        | 80%*       | \$103,940             | 20%*       |
| Participating Construction Review # | \$83,200         | \$66,560         | 80%*       | \$16,640              | 20%*       |
| Non-Participating Construction      | \$0              | \$0              | 0%         | \$0                   | 100%       |
| <b>Total Est. Cost Distribution</b> | <b>\$758,800</b> | <b>\$607,040</b> | <b>MAX</b> | <b>\$151,760</b>      | <b>N/A</b> |

\*This project has a CMAQ federal/earmark funding maximum of \$607,040. This maximum is cumulative for all federally funded project phases.

# Review costs are administered and paid for by WisDOT. The Project Sponsor will be billed for any required local match and for costs beyond the cumulative federal or state funding.

This request is subject to the terms and conditions that follow (pages 3 – 9) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon signature by the State shall constitute agreement between the Project Sponsor and the State. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing duly executed by both parties to this State/Municipal Agreement.

Signed for and in behalf of City of Sheboygan: \_\_\_\_\_ (please sign in blue ink)

\_\_\_\_\_  
 Name (print) Title (print) Date

Signed for and in behalf of the State \_\_\_\_\_ (please sign in blue ink)

Brian Brock NE Region SPO Chief  
 Name Title Date

## **GENERAL TERMS AND CONDITIONS:**

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging. Authorization is required for each separate project phase or ID.
3. The initiation and accomplishment of the project will be subject to the applicable federal and state regulations, as referenced in the document *A Sponsor's Guide to Non-Traditional Project Implementation*. The Project Sponsor, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
  - a. Environmental requirements, including but not limited to those set forth in 23 U.S.C. 139 and the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
  - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The Project Sponsor agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Project Sponsor agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Project Sponsor agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
  - c. All DBE requirements that the State specifies.
  - d. Federal and state statutes that govern the CMAQ Program, including but not limited to 23 U.S.C. 149 and Wis. Stat. 85.245.
4. Additional applicable state and federal requirements may include, but are not limited to, the following:
  - a. Prevailing wage requirements, including but not limited to 23 U.S.C. 113 and Wis. Stat. 103.50.
  - b. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
  - c. Competitive bidding requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06.

## **STATE RESPONSIBILITIES AND REQUIREMENTS:**

5. Funding of the project is subject to inclusion in Wisconsin's approved CMAQ program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
  - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
  - b. Storm sewer mains necessary for the surface water drainage.
  - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.

- d. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
- e. Signing and pavement marking, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
- f. New installations or alteration of street lighting and traffic signals or devices.
- g. Landscaping.
- h. Preliminary Engineering.
- i. State Review Services.

6. State Disbursements:

- a. Payment by the State to the Project Sponsor shall be made on a regular basis upon presentation of vouchers for expenditures incurred during prior periods of the project duration subject to the allowable maximum payment. Exceptions to this schedule will be made as appropriate. In general, State reimbursements will be made after sufficient proof of payment is sent to the State.
- b. A final adjustment of state payments will be made upon completion of the State's audit of the project. If the State's audit establishes that the State paid more than its share of the eligible project costs, the Project Sponsor shall refund to the State upon demand a sum equal to the overpayment.

**PROJECT SPONSOR RESPONSIBILITIES AND REQUIREMENTS:**

- 7. Work necessary to complete the subject CMAQ project to be financed entirely by the Project Sponsor or other utility or facility owner includes the items listed below, when applicable to the project.
  - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
  - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
  - c. Detour routes and haul roads. The Project Sponsor is responsible for determining the detour route.
  - d. Conditioning, if required and maintenance of detour routes.
  - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
  - f. All work related to underground storage tanks and contaminated soils.
  - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
  - h. Real estate for the improvement
- 8. The work eligible for Federal and State participation will be administered by the Project Sponsor.
- 9. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder in accordance with the requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06. Where applicable, all contracts for design related services shall be awarded and administered in accordance with the requirements

of 23 CFR 172 and procedures published in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.

10. The Project Sponsor must receive, read, and agree to meet the requirements outlined in the *Sponsor's Guide to Non-Traditional Transportation Project Implementation*. The Project Sponsor must indicate this understanding and agreement by submitting the *Sponsor's Guide Acknowledgement Form*, which must be accepted by the State before approval of this State/Municipal Agreement shall be granted.
11. The Project Sponsor must complete and submit *Certification for Non-Traditional Project Administration and Delivery* documentation, and this documentation must be accepted by the State, before approval of this State/Municipal Agreement shall be granted. The Project Sponsor, and all consultants and other entities working on behalf of the Project Sponsor, are required to comply with the federal and state rules and requirements for projects being administered through a local letting process.
12. The project, in accordance with its scope, must employ the services of a registered professional engineer, architect or landscape architect, to be responsible for design and construction engineering and related activities.
13. A copy of the plans, specifications, and estimates containing the engineer's, architect's, or landscape architect's seal as prepared for bidding purposes (in accordance with project scope) must be provided to the State for approval prior to advertising the project for bids.
14. The improvement will take place in accordance with the appropriate standards unless an exception to standards is granted by the State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the project sponsor unless such exception is granted.
15. Work to be performed by the Project Sponsor without federal funding participation, necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Project Sponsor but must be coordinated with all other work undertaken during construction.
16. The Project Sponsor is responsible for financing administrative expenses related to Project Sponsor responsibilities.
17. The project is subject to a discretionary DBE goal assessment.
18. The Project Sponsor will not proceed with any contract revisions without first receiving prior approval from the State. A contract change order must be executed for revisions to the contract prior to the Project Sponsor's request for reimbursement for the revisions.
19. If reviews or audits show any of the work to be ineligible for Federal funding, the Project Sponsor will be responsible for any withdrawn costs associated with the ineligible work.
20. If the Project Sponsor should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
21. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all local and State submittals and approvals contained in these instructions, and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and the State and will furnish copies thereof when requested.
22. Federal Single Audits of the Project Sponsor:

- a. The Project Sponsor shall have a single organization audit performed by a qualified independent auditor if required to do so under Federal law and regulations. (See Federal Office of Management and Budget (OMB) Circular No. 2 CFR 200).
  - b. This audit shall be performed in accordance with federal OMB Circular No 2 CFR 200 and State single audit guidelines issued by the Wisconsin Department of Administration (DOA).
  - c. The Project Sponsor will keep records of costs of construction, inspection tests, and maintenance done by it to enable the Federal Government and the State to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be retained for three years from the date of final payment. If any litigation, claim, or audits are started before the expiration of the three year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved.
23. In connection with the performance of work under this State/Municipal Agreement, the Project Sponsor 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 S. 51.01(5), sexual orientation 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. Except with respect to sexual orientation, the Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the nondiscrimination clause.
24. The Project Sponsor will include in all contracts executed by them a provision obligating the contractor 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 s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin.
25. When applicable to the project, the Project Sponsor will at its own cost and expense:
- a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, parking lanes, bicycle lanes, trails, and other facilities, sidewalks and other pedestrian facilities, and other project infrastructure for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.
  - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
  - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
  - d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the projects.
  - e. Provide relocation orders and real estate plats and easements, as required by the project.
  - f. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
  - g. Provide maintenance and energy for lighting.

- h. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

26. It is further agreed by the Project Sponsor that:

- a. The Project Sponsor assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the State and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this State/Municipal Agreement.
- b. The Project Sponsor assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Project Sponsor. The Project Sponsor is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Project Sponsor will reimburse the State if the State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Project Sponsor will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Project Sponsor or by others, will be in conformity with such "Manual on Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.

27. The subject project must be completed by June 30, 2025 and the Project Sponsor must submit a project completion certificate to WisDOT central office on or before this date. WisDOT may consider a written request to extend the completion deadline from the Project Sponsor and may approve such a request in the presence of extenuating circumstances. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

#### **LEGAL RELATIONSHIPS:**

28. Responsibility for Damage and Tort Claims: The Project Sponsor and the Project Sponsor's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Project Sponsor; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Project Sponsor; or because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance, order or decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by virtue of the contract as shall be considered necessary by the State for such purposes, may be retained for the use of the State; or, in case no money or insufficient money is retained, the Project Sponsor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the State; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, or municipality in which the improvement is made and each of them separately or jointly and officers and employees.

The State shall not be liable to the Project Sponsor for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Project Sponsor for damages or delays resulting from injunctions or other restraining orders obtained by third parties except where the damage or delay is a direct

result of an injunction or restraining order obtained by a citizen's action alleging violations of 42 U.S.C. 4331 - 4332, 23 U.S.C. 138 or Public Law 91-646.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations. This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

It is the express intent of this provision that a Project Sponsor that is a county, town or municipality may and should contractually pass on this entire Responsibility for Damage and Tort Claims provision to any public and private entities with which it may subcontract any of the work covered by this agreement.

- a. The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats. (1997 - 98).
  - b. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.
29. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
  - b. Have not, within a three year period preceding this State/Municipal Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;
  - d. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default; and
  - e. That all grantees, contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 -- Covered Transactions, have certified in writing that neither they or their principals are presently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have voluntarily been excluded from participating in this or any other Federal, state or local transaction by any Federal, State or local department, agency or official.
30. Contract Modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally.
31. Binding Effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third- party beneficiary rights to be held by any person or entity who is not a party to this State/Municipal Agreement. Nor does it accord on any non-party the right of enforcement.

32. Choice of Law and Forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

33. Nothing in this State/Municipal Agreement shall be construed as a waiver of the State's sovereign immunity.

#### **PROJECT FUNDING CONDITIONS**

34. Non-Appropriation of Fund: With respect to any payment required to be made by the Department under this State/Municipal Agreement, the parties acknowledge the Department's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Project Sponsor or the Department may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.

35. Maintenance of Records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Project Sponsor, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the Department. The Department reserves the right to audit and inspect such records and accounts at any time. The Project Sponsor shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

Records pertaining to the performance of the State/Municipal Agreement are subject to disclosure pursuant to Wis. Stats. Sec. 19.31 et seq., and shall be preserved by the Project Sponsor.

36. The Project Sponsor agrees to the following FY 2018-2022 CMAQ program project funding conditions:

- a. ID 4640-01-01: Design and any related review costs are funded with 80% federal funding when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. This includes Plan Development and State Review. The work includes project review, approval of required reports and documents and processing the final PS&E document for award of the contract.
- b. ID 4640-01-72: Construction:
  - i. Costs for traffic signal radio communication and video detection installation and any related review costs are funded with 80% federal funding, when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap.
- c. The maximum participation of federal funding will be limited to 80% of the actual eligible project cost or the total cost distribution of CMAQ program funds shown on page 2 of this State/Municipal Agreement, whichever is less. The project federal funding maximum of \$607,040 is cumulative for all federal funded project phases.

[End of Document]



**STATE/MUNICIPAL AGREEMENT  
FOR A LOCALLY LET CMAQ  
PROJECT**

Program Name: Congestion Mitigation and  
Air Quality Improvement (CMAQ)  
Sub-program #: 211

Date: **January 3, 2019**

I.D.: **4640-01-01\_72**

Project Title: **STH 28 / 14<sup>th</sup> Street Traffic Flow  
Improvement**

Location/Limits (as applicable): **North Avenue –  
Indiana Avenue**

County: **Sheboygan**

Project Length (if applicable): **2.40 miles**

Counties Served: **Sheboygan**

Project Sponsor: **City of Sheboygan**

Sponsor County: **Sheboygan**

MPO Area: **Sheboygan**

The signatory, City of Sheboygan, hereinafter called the Project Sponsor, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the transportation project hereinafter described.

23 U.S.C. 149 and Wis. Stat. 85.245 authorize the State to administer a program for the distribution of federal funds for congestion mitigation and air quality improvement projects.

The authority for the Project Sponsor to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

**NEEDS AND ESTIMATE SUMMARY:**

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Project Sponsor agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Proposed Project - Nature of work: The proposed project adds radio communication to the nine signalized intersections along the 2.4 mile STH 28 / 14<sup>th</sup> Street corridor from North Avenue to Indiana Avenue. The proposed project includes adding radio communication infrastructure, installing video detection, remove outdated loop detectors, conduct 13-hour intersection turning movement counts, preparation of traffic signal coordination timing plans and retiming and coordinating traffic signals.

Need for or Benefits of Project – summarize reasons for request: The proposed project will reduce noxious emissions such as nitrous oxide (NO), carbon monoxide (CO), and hydro carbons by reducing vehicle delays through non-invasive, cost-effective technologies. Signal coordination and retiming with comprehensive use of video detection will maximize the efficiency of the existing roadway network.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Project Sponsor. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal and state requirements: **NONE**

The Project Sponsor agrees to the following FY 2018-2022 CMAQ Program project funding conditions:

The subject project is funded with 80% federal funding up to a maximum of \$607,040 for all federal funded project phases when the Project Sponsor agrees to provide the remaining 20% and all funds in excess of the \$607,040 federal funding maximum, in accordance with CMAQ program guidelines. Non-participating costs are 100% the responsibility of the Project Sponsor. Any work performed by the Project Sponsor prior to federal authorization is not eligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging.

The project is subject to a discretionary DBE goal assessment. A completion deadline of June 30, 2025. The Catalogue of Federal Domestic Assistance (CDFA) number for this project is 20.205 – Highway Planning and Construction.

| PHASE                               | SUMMARY OF COSTS |                  |            |                       |            |
|-------------------------------------|------------------|------------------|------------|-----------------------|------------|
|                                     | Total Est. Cost  | Federal Funds    | %          | Project Sponsor Funds | %          |
| <b>ID 4640-01-01</b>                |                  |                  |            |                       |            |
| Design                              | \$93,500         | \$74,800         | 80%*       | \$18,700              | 20%*       |
| Design Review #                     | \$62,400         | \$49,920         | 80%*       | \$12,480              | 20%*       |
| <b>ID 4640-01-72</b>                |                  |                  |            |                       |            |
| Participating Construction          | \$519,700        | \$415,760        | 80%*       | \$103,940             | 20%*       |
| Participating Construction Review # | \$83,200         | \$66,560         | 80%*       | \$16,640              | 20%*       |
| Non-Participating Construction      | \$0              | \$0              | 0%         | \$0                   | 100%       |
| <b>Total Est. Cost Distribution</b> | <b>\$758,800</b> | <b>\$607,040</b> | <b>MAX</b> | <b>\$151,760</b>      | <b>N/A</b> |

\*This project has a CMAQ federal/earmark funding maximum of \$607,040. This maximum is cumulative for all federally funded project phases.

# Review costs are administered and paid for by WisDOT. The Project Sponsor will be billed for any required local match and for costs beyond the cumulative federal or state funding.

This request is subject to the terms and conditions that follow (pages 3 – 9) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon signature by the State shall constitute agreement between the Project Sponsor and the State. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing duly executed by both parties to this State/Municipal Agreement.

Signed for and in behalf of City of Sheboygan: \_\_\_\_\_ (please sign in blue ink)

\_\_\_\_\_  
 Name (print) Title (print) Date

Signed for and in behalf of the State \_\_\_\_\_ (please sign in blue ink)

Brian Brock NE Region SPO Chief  
 Name Title Date

## **GENERAL TERMS AND CONDITIONS:**

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging. Authorization is required for each separate project phase or ID.
3. The initiation and accomplishment of the project will be subject to the applicable federal and state regulations, as referenced in the document *A Sponsor's Guide to Non-Traditional Project Implementation*. The Project Sponsor, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
  - a. Environmental requirements, including but not limited to those set forth in 23 U.S.C. 139 and the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
  - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The Project Sponsor agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Project Sponsor agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Project Sponsor agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
  - c. All DBE requirements that the State specifies.
  - d. Federal and state statutes that govern the CMAQ Program, including but not limited to 23 U.S.C. 149 and Wis. Stat. 85.245.
4. Additional applicable state and federal requirements may include, but are not limited to, the following:
  - a. Prevailing wage requirements, including but not limited to 23 U.S.C. 113 and Wis. Stat. 103.50.
  - b. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
  - c. Competitive bidding requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06.

## **STATE RESPONSIBILITIES AND REQUIREMENTS:**

5. Funding of the project is subject to inclusion in Wisconsin's approved CMAQ program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
  - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
  - b. Storm sewer mains necessary for the surface water drainage.
  - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.

- d. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
- e. Signing and pavement marking, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
- f. New installations or alteration of street lighting and traffic signals or devices.
- g. Landscaping.
- h. Preliminary Engineering.
- i. State Review Services.

6. State Disbursements:

- a. Payment by the State to the Project Sponsor shall be made on a regular basis upon presentation of vouchers for expenditures incurred during prior periods of the project duration subject to the allowable maximum payment. Exceptions to this schedule will be made as appropriate. In general, State reimbursements will be made after sufficient proof of payment is sent to the State.
- b. A final adjustment of state payments will be made upon completion of the State's audit of the project. If the State's audit establishes that the State paid more than its share of the eligible project costs, the Project Sponsor shall refund to the State upon demand a sum equal to the overpayment.

**PROJECT SPONSOR RESPONSIBILITIES AND REQUIREMENTS:**

- 7. Work necessary to complete the subject CMAQ project to be financed entirely by the Project Sponsor or other utility or facility owner includes the items listed below, when applicable to the project.
  - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
  - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
  - c. Detour routes and haul roads. The Project Sponsor is responsible for determining the detour route.
  - d. Conditioning, if required and maintenance of detour routes.
  - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
  - f. All work related to underground storage tanks and contaminated soils.
  - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
  - h. Real estate for the improvement
- 8. The work eligible for Federal and State participation will be administered by the Project Sponsor.
- 9. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder in accordance with the requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06. Where applicable, all contracts for design related services shall be awarded and administered in accordance with the requirements

of 23 CFR 172 and procedures published in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.

10. The Project Sponsor must receive, read, and agree to meet the requirements outlined in the *Sponsor's Guide to Non-Traditional Transportation Project Implementation*. The Project Sponsor must indicate this understanding and agreement by submitting the *Sponsor's Guide Acknowledgement Form*, which must be accepted by the State before approval of this State/Municipal Agreement shall be granted.
11. The Project Sponsor must complete and submit *Certification for Non-Traditional Project Administration and Delivery* documentation, and this documentation must be accepted by the State, before approval of this State/Municipal Agreement shall be granted. The Project Sponsor, and all consultants and other entities working on behalf of the Project Sponsor, are required to comply with the federal and state rules and requirements for projects being administered through a local letting process.
12. The project, in accordance with its scope, must employ the services of a registered professional engineer, architect or landscape architect, to be responsible for design and construction engineering and related activities.
13. A copy of the plans, specifications, and estimates containing the engineer's, architect's, or landscape architect's seal as prepared for bidding purposes (in accordance with project scope) must be provided to the State for approval prior to advertising the project for bids.
14. The improvement will take place in accordance with the appropriate standards unless an exception to standards is granted by the State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the project sponsor unless such exception is granted.
15. Work to be performed by the Project Sponsor without federal funding participation, necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Project Sponsor but must be coordinated with all other work undertaken during construction.
16. The Project Sponsor is responsible for financing administrative expenses related to Project Sponsor responsibilities.
17. The project is subject to a discretionary DBE goal assessment.
18. The Project Sponsor will not proceed with any contract revisions without first receiving prior approval from the State. A contract change order must be executed for revisions to the contract prior to the Project Sponsor's request for reimbursement for the revisions.
19. If reviews or audits show any of the work to be ineligible for Federal funding, the Project Sponsor will be responsible for any withdrawn costs associated with the ineligible work.
20. If the Project Sponsor should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
21. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all local and State submittals and approvals contained in these instructions, and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and the State and will furnish copies thereof when requested.
22. Federal Single Audits of the Project Sponsor:

- a. The Project Sponsor shall have a single organization audit performed by a qualified independent auditor if required to do so under Federal law and regulations. (See Federal Office of Management and Budget (OMB) Circular No. 2 CFR 200).
  - b. This audit shall be performed in accordance with federal OMB Circular No 2 CFR 200 and State single audit guidelines issued by the Wisconsin Department of Administration (DOA).
  - c. The Project Sponsor will keep records of costs of construction, inspection tests, and maintenance done by it to enable the Federal Government and the State to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be retained for three years from the date of final payment. If any litigation, claim, or audits are started before the expiration of the three year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved.
23. In connection with the performance of work under this State/Municipal Agreement, the Project Sponsor 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 S. 51.01(5), sexual orientation 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. Except with respect to sexual orientation, the Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the nondiscrimination clause.
24. The Project Sponsor will include in all contracts executed by them a provision obligating the contractor 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 s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin.
25. When applicable to the project, the Project Sponsor will at its own cost and expense:
- a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, parking lanes, bicycle lanes, trails, and other facilities, sidewalks and other pedestrian facilities, and other project infrastructure for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.
  - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
  - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
  - d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the projects.
  - e. Provide relocation orders and real estate plats and easements, as required by the project.
  - f. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
  - g. Provide maintenance and energy for lighting.

- h. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

26. It is further agreed by the Project Sponsor that:

- a. The Project Sponsor assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the State and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this State/Municipal Agreement.
- b. The Project Sponsor assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Project Sponsor. The Project Sponsor is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Project Sponsor will reimburse the State if the State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Project Sponsor will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Project Sponsor or by others, will be in conformity with such "Manual on Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.

27. The subject project must be completed by June 30, 2025 and the Project Sponsor must submit a project completion certificate to WisDOT central office on or before this date. WisDOT may consider a written request to extend the completion deadline from the Project Sponsor and may approve such a request in the presence of extenuating circumstances. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

#### **LEGAL RELATIONSHIPS:**

28. Responsibility for Damage and Tort Claims: The Project Sponsor and the Project Sponsor's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Project Sponsor; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Project Sponsor; or because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance, order or decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by virtue of the contract as shall be considered necessary by the State for such purposes, may be retained for the use of the State; or, in case no money or insufficient money is retained, the Project Sponsor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the State; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, or municipality in which the improvement is made and each of them separately or jointly and officers and employees.

The State shall not be liable to the Project Sponsor for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Project Sponsor for damages or delays resulting from injunctions or other restraining orders obtained by third parties except where the damage or delay is a direct

result of an injunction or restraining order obtained by a citizen's action alleging violations of 42 U.S.C. 4331 - 4332, 23 U.S.C. 138 or Public Law 91-646.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations. This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

It is the express intent of this provision that a Project Sponsor that is a county, town or municipality may and should contractually pass on this entire Responsibility for Damage and Tort Claims provision to any public and private entities with which it may subcontract any of the work covered by this agreement.

- a. The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats. (1997 - 98).
- b. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.

29. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
- b. Have not, within a three year period preceding this State/Municipal Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;
- d. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default; and
- e. That all grantees, contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 -- Covered Transactions, have certified in writing that neither they or their principals are presently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have voluntarily been excluded from participating in this or any other Federal, state or local transaction by any Federal, State or local department, agency or official.

30. Contract Modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally.

31. Binding Effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third- party beneficiary rights to be held by any person or entity who is not a party to this State/Municipal Agreement. Nor does it accord on any non-party the right of enforcement.

32. Choice of Law and Forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.
33. Nothing in this State/Municipal Agreement shall be construed as a waiver of the State's sovereign immunity.

### **PROJECT FUNDING CONDITIONS**

34. Non-Appropriation of Fund: With respect to any payment required to be made by the Department under this State/Municipal Agreement, the parties acknowledge the Department's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Project Sponsor or the Department may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.
35. Maintenance of Records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Project Sponsor, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the Department. The Department reserves the right to audit and inspect such records and accounts at any time. The Project Sponsor shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

Records pertaining to the performance of the State/Municipal Agreement are subject to disclosure pursuant to Wis. Stats. Sec. 19.31 et seq., and shall be preserved by the Project Sponsor.

36. The Project Sponsor agrees to the following FY 2018-2022 CMAQ program project funding conditions:
- a. ID 4640-01-01: Design and any related review costs are funded with 80% federal funding when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. This includes Plan Development and State Review. The work includes project review, approval of required reports and documents and processing the final PS&E document for award of the contract.
  - b. ID 4640-01-72: Construction:
    - i. Costs for traffic signal radio communication and video detection installation and any related review costs are funded with 80% federal funding, when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap.
  - c. The maximum participation of federal funding will be limited to 80% of the actual eligible project cost or the total cost distribution of CMAQ program funds shown on page 2 of this State/Municipal Agreement, whichever is less. The project federal funding maximum of \$607,040 is cumulative for all federal funded project phases.

[End of Document]



**STATE/MUNICIPAL AGREEMENT  
FOR A LOCALLY LET CMAQ  
PROJECT**

Program Name: Congestion Mitigation and  
Air Quality Improvement (CMAQ)  
Sub-program #: 211

Date: **January 3, 2019**

I.D.: **4650-02-00\_71**

Project Title: **STH 23 / Kohler Memorial Drive /  
Erie Avenue Traffic Flow Improvement**

Location/Limits (as applicable): **S. Taylor Drive –  
N. 9<sup>th</sup> Street**

County: **Sheboygan**

Project Length (if applicable): **1.87 miles**

Counties Served: **Sheboygan**

Project Sponsor: **City of Sheboygan**

Sponsor County: **Sheboygan**

MPO Area: **Sheboygan**

The signatory, City of Sheboygan, hereinafter called the Project Sponsor, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the transportation project hereinafter described.

23 U.S.C. 149 and Wis. Stat. 85.245 authorize the State to administer a program for the distribution of federal funds for congestion mitigation and air quality improvement projects.

The authority for the Project Sponsor to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

**NEEDS AND ESTIMATE SUMMARY:**

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Project Sponsor agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Proposed Project - Nature of work: The proposed project adds radio communication to the seven signalized intersections along the 1.87 mile STH 23 / Kohler Memorial Drive / Erie Avenue corridor from Taylor Drive to 9<sup>th</sup> Street. The proposed project includes adding radio communication infrastructure, installing video detection, remove outdated loop detectors, conduct 13-hour intersection turning movement counts, preparation of traffic signal coordination timing plans and retiming and coordinating traffic signals.

Need for or Benefits of Project – summarize reasons for request: The proposed project will reduce noxious emissions such as nitrous oxide (NO), carbon monoxide (CO), and hydro carbons by reducing vehicle delays through non-invasive, cost-effective technologies. Signal coordination and retiming with comprehensive use of video detection will maximize the efficiency of the existing roadway network.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Project Sponsor. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal and state requirements: **NONE**

The Project Sponsor agrees to the following FY 2018-2022 CMAQ Program project funding conditions:

The subject project is funded with 80% federal funding up to a maximum of \$414,480 for all federal funded project phases when the Project Sponsor agrees to provide the remaining 20% and all funds in excess of the \$414,480 federal funding maximum, in accordance with CMAQ program guidelines. Non-participating costs are 100% the responsibility of the Project Sponsor. Any work performed by the Project Sponsor prior to federal authorization is not eligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging.

The project is subject to a discretionary DBE goal assessment. A completion deadline of June 30, 2025. The Catalogue of Federal Domestic Assistance (CDFA) number for this project is 20.205 – Highway Planning and Construction.

| PHASE                               | SUMMARY OF COSTS |                  |            |                       |            |
|-------------------------------------|------------------|------------------|------------|-----------------------|------------|
|                                     | Total Est. Cost  | Federal Funds    | %          | Project Sponsor Funds | %          |
| <b>ID 4650-02-00</b>                |                  |                  |            |                       |            |
| Design                              | \$63,900         | \$51,120         | 80%*       | \$12,780              | 20%*       |
| Design Review #                     | \$42,600         | \$34,080         | 80%*       | \$8,520               | 20%*       |
| <b>ID 4650-02-71</b>                |                  |                  |            |                       |            |
| Participating Construction          | \$354,800        | \$283,840        | 80%*       | \$70,960              | 20%*       |
| Participating Construction Review # | \$56,800         | \$45,440         | 80%*       | \$11,360              | 20%*       |
| Non-Participating Construction      | \$0              | \$0              | 0%         | \$0                   | 100%       |
| <b>Total Est. Cost Distribution</b> | <b>\$518,100</b> | <b>\$414,480</b> | <b>MAX</b> | <b>\$103,620</b>      | <b>N/A</b> |

\*This project has a CMAQ federal/earmark funding maximum of \$414,480. This maximum is cumulative for all federally funded project phases.

# Review costs are administered and paid for by WisDOT. The Project Sponsor will be billed for any required local match and for costs beyond the cumulative federal or state funding.

This request is subject to the terms and conditions that follow (pages 3 – 9) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon signature by the State shall constitute agreement between the Project Sponsor and the State. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing duly executed by both parties to this State/Municipal Agreement.

Signed for and in behalf of City of Sheboygan: \_\_\_\_\_ (please sign in blue ink)

\_\_\_\_\_  
Name (print) Title (print) Date

Signed for and in behalf of the State \_\_\_\_\_ (please sign in blue ink)

Brian Brock NE Region SPO Chief  
Name Title Date

## **GENERAL TERMS AND CONDITIONS:**

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging. Authorization is required for each separate project phase or ID.
3. The initiation and accomplishment of the project will be subject to the applicable federal and state regulations, as referenced in the document *A Sponsor's Guide to Non-Traditional Project Implementation*. The Project Sponsor, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
  - a. Environmental requirements, including but not limited to those set forth in 23 U.S.C. 139 and the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
  - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The Project Sponsor agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Project Sponsor agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Project Sponsor agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
  - c. All DBE requirements that the State specifies.
  - d. Federal and state statutes that govern the CMAQ Program, including but not limited to 23 U.S.C. 149 and Wis. Stat. 85.245.
4. Additional applicable state and federal requirements may include, but are not limited to, the following:
  - a. Prevailing wage requirements, including but not limited to 23 U.S.C. 113 and Wis. Stat. 103.50.
  - b. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
  - c. Competitive bidding requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06.

## **STATE RESPONSIBILITIES AND REQUIREMENTS:**

5. Funding of the project is subject to inclusion in Wisconsin's approved CMAQ program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
  - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
  - b. Storm sewer mains necessary for the surface water drainage.
  - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.

- d. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
- e. Signing and pavement marking, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
- f. New installations or alteration of street lighting and traffic signals or devices.
- g. Landscaping.
- h. Preliminary Engineering.
- i. State Review Services.

6. State Disbursements:

- a. Payment by the State to the Project Sponsor shall be made on a regular basis upon presentation of vouchers for expenditures incurred during prior periods of the project duration subject to the allowable maximum payment. Exceptions to this schedule will be made as appropriate. In general, State reimbursements will be made after sufficient proof of payment is sent to the State.
- b. A final adjustment of state payments will be made upon completion of the State's audit of the project. If the State's audit establishes that the State paid more than its share of the eligible project costs, the Project Sponsor shall refund to the State upon demand a sum equal to the overpayment.

**PROJECT SPONSOR RESPONSIBILITIES AND REQUIREMENTS:**

- 7. Work necessary to complete the subject CMAQ project to be financed entirely by the Project Sponsor or other utility or facility owner includes the items listed below, when applicable to the project.
  - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
  - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
  - c. Detour routes and haul roads. The Project Sponsor is responsible for determining the detour route.
  - d. Conditioning, if required and maintenance of detour routes.
  - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
  - f. All work related to underground storage tanks and contaminated soils.
  - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
  - h. Real estate for the improvement
- 8. The work eligible for Federal and State participation will be administered by the Project Sponsor.
- 9. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder in accordance with the requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06. Where applicable, all contracts for design related services shall be awarded and administered in accordance with the requirements

of 23 CFR 172 and procedures published in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.

10. The Project Sponsor must receive, read, and agree to meet the requirements outlined in the *Sponsor's Guide to Non-Traditional Transportation Project Implementation*. The Project Sponsor must indicate this understanding and agreement by submitting the *Sponsor's Guide Acknowledgement Form*, which must be accepted by the State before approval of this State/Municipal Agreement shall be granted.
11. The Project Sponsor must complete and submit *Certification for Non-Traditional Project Administration and Delivery* documentation, and this documentation must be accepted by the State, before approval of this State/Municipal Agreement shall be granted. The Project Sponsor, and all consultants and other entities working on behalf of the Project Sponsor, are required to comply with the federal and state rules and requirements for projects being administered through a local letting process.
12. The project, in accordance with its scope, must employ the services of a registered professional engineer, architect or landscape architect, to be responsible for design and construction engineering and related activities.
13. A copy of the plans, specifications, and estimates containing the engineer's, architect's, or landscape architect's seal as prepared for bidding purposes (in accordance with project scope) must be provided to the State for approval prior to advertising the project for bids.
14. The improvement will take place in accordance with the appropriate standards unless an exception to standards is granted by the State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the project sponsor unless such exception is granted.
15. Work to be performed by the Project Sponsor without federal funding participation, necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Project Sponsor but must be coordinated with all other work undertaken during construction.
16. The Project Sponsor is responsible for financing administrative expenses related to Project Sponsor responsibilities.
17. The project is subject to a discretionary DBE goal assessment.
18. The Project Sponsor will not proceed with any contract revisions without first receiving prior approval from the State. A contract change order must be executed for revisions to the contract prior to the Project Sponsor's request for reimbursement for the revisions.
19. If reviews or audits show any of the work to be ineligible for Federal funding, the Project Sponsor will be responsible for any withdrawn costs associated with the ineligible work.
20. If the Project Sponsor should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
21. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all local and State submittals and approvals contained in these instructions, and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and the State and will furnish copies thereof when requested.
22. Federal Single Audits of the Project Sponsor:

- a. The Project Sponsor shall have a single organization audit performed by a qualified independent auditor if required to do so under Federal law and regulations. (See Federal Office of Management and Budget (OMB) Circular No. 2 CFR 200).
  - b. This audit shall be performed in accordance with federal OMB Circular No 2 CFR 200 and State single audit guidelines issued by the Wisconsin Department of Administration (DOA).
  - c. The Project Sponsor will keep records of costs of construction, inspection tests, and maintenance done by it to enable the Federal Government and the State to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be retained for three years from the date of final payment. If any litigation, claim, or audits are started before the expiration of the three year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved.
23. In connection with the performance of work under this State/Municipal Agreement, the Project Sponsor 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 S. 51.01(5), sexual orientation 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. Except with respect to sexual orientation, the Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the nondiscrimination clause.
24. The Project Sponsor will include in all contracts executed by them a provision obligating the contractor 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 s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin.
25. When applicable to the project, the Project Sponsor will at its own cost and expense:
- a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, parking lanes, bicycle lanes, trails, and other facilities, sidewalks and other pedestrian facilities, and other project infrastructure for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.
  - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
  - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
  - d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the projects.
  - e. Provide relocation orders and real estate plats and easements, as required by the project.
  - f. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
  - g. Provide maintenance and energy for lighting.

- h. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

26. It is further agreed by the Project Sponsor that:

- a. The Project Sponsor assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the State and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this State/Municipal Agreement.
- b. The Project Sponsor assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Project Sponsor. The Project Sponsor is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Project Sponsor will reimburse the State if the State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Project Sponsor will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Project Sponsor or by others, will be in conformity with such "Manual on Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.

27. The subject project must be completed by June 30, 2025 and the Project Sponsor must submit a project completion certificate to WisDOT central office on or before this date. WisDOT may consider a written request to extend the completion deadline from the Project Sponsor and may approve such a request in the presence of extenuating circumstances. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

#### **LEGAL RELATIONSHIPS:**

28. Responsibility for Damage and Tort Claims: The Project Sponsor and the Project Sponsor's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Project Sponsor; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Project Sponsor; or because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance, order or decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by virtue of the contract as shall be considered necessary by the State for such purposes, may be retained for the use of the State; or, in case no money or insufficient money is retained, the Project Sponsor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the State; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, or municipality in which the improvement is made and each of them separately or jointly and officers and employees.

The State shall not be liable to the Project Sponsor for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Project Sponsor for damages or delays resulting from injunctions or other restraining orders obtained by third parties except where the damage or delay is a direct

result of an injunction or restraining order obtained by a citizen's action alleging violations of 42 U.S.C. 4331 - 4332, 23 U.S.C. 138 or Public Law 91-646.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations. This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

It is the express intent of this provision that a Project Sponsor that is a county, town or municipality may and should contractually pass on this entire Responsibility for Damage and Tort Claims provision to any public and private entities with which it may subcontract any of the work covered by this agreement.

- a. The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats. (1997 - 98).
- b. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.

29. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
- b. Have not, within a three year period preceding this State/Municipal Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;
- d. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default; and
- e. That all grantees, contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 -- Covered Transactions, have certified in writing that neither they or their principals are presently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have voluntarily been excluded from participating in this or any other Federal, state or local transaction by any Federal, State or local department, agency or official.

30. Contract Modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally.

31. Binding Effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third- party beneficiary rights to be held by any person or entity who is not a party to this State/Municipal Agreement. Nor does it accord on any non-party the right of enforcement.

32. Choice of Law and Forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

33. Nothing in this State/Municipal Agreement shall be construed as a waiver of the State's sovereign immunity.

### **PROJECT FUNDING CONDITIONS**

34. Non-Appropriation of Fund: With respect to any payment required to be made by the Department under this State/Municipal Agreement, the parties acknowledge the Department's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Project Sponsor or the Department may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.

35. Maintenance of Records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Project Sponsor, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the Department. The Department reserves the right to audit and inspect such records and accounts at any time. The Project Sponsor shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

Records pertaining to the performance of the State/Municipal Agreement are subject to disclosure pursuant to Wis. Stats. Sec. 19.31 et seq., and shall be preserved by the Project Sponsor.

36. The Project Sponsor agrees to the following FY 2018-2022 CMAQ program project funding conditions:

- a. ID 4650-02-00: Design and any related review costs are funded with 80% federal funding when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. This includes Plan Development and State Review. The work includes project review, approval of required reports and documents and processing the final PS&E document for award of the contract.
- b. ID 4650-02-71: Construction:
  - i. Costs for traffic signal radio communication and video detection installation and any related review costs are funded with 80% federal funding, when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap.
- c. The maximum participation of federal funding will be limited to 80% of the actual eligible project cost or the total cost distribution of CMAQ program funds shown on page 2 of this State/Municipal Agreement, whichever is less. The project federal funding maximum of \$414,480 is cumulative for all federal funded project phases.

[End of Document]

III

4.5

Res. No. 167 - 18 - 19. By Alderpersons Wolf and Sorenson.  
January 21, 2019.

A RESOLUTION authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (dated January 3, 2019), I.D. 4650-02-00\_71, to update seven signalized intersections along the 1.87 mile STH 23/Kohler Memorial Drive/Erie Avenue corridor from Taylor Drive to 9th Street.

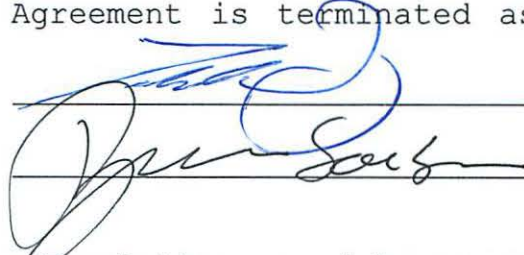
WHEREAS, the proposed improvements to this corridor include adding radio communication infrastructure, installing video detection, removing outdated loop detectors, conducting 13-hour intersection turning movement counts, preparing traffic signal coordination timing plans, and retiming and coordinating traffic signals.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to enter into the State/Municipal Agreement with the Wisconsin Department of Transportation, a copy of which is attached hereto and incorporated herein, to update seven signalized intersections along the STH 23/Kohler Memorial Drive/Erie Avenue corridor from Taylor Drive to 9th Street for the proposed sum of \$518,100.00, of which the Federal Share is \$414,480.00 and of which the City of Sheboygan's share is \$103,620.00.

BE IT FURTHER RESOLVED: That the appropriate City Officials are hereby authorized to draw orders on the future capital improvements program for street improvements.

BE IT FURTHER RESOLVED: That any previous authorization to draw orders on a previous version of this Agreement is terminated as of the effective date of this Resolution.

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



**STATE/MUNICIPAL AGREEMENT  
FOR A LOCALLY LET CMAQ  
PROJECT**

Program Name: Congestion Mitigation and  
Air Quality Improvement (CMAQ)  
Sub-program #: 211

Date: **January 3, 2019**

I.D.: **4650-02-00\_71**

Project Title: **STH 23 / Kohler Memorial Drive /  
Erie Avenue Traffic Flow Improvement**

Location/Limits (as applicable): **S. Taylor Drive –  
N. 9<sup>th</sup> Street**

County: **Sheboygan**

Project Length (if applicable): **1.87 miles**

Counties Served: **Sheboygan**

Project Sponsor: **City of Sheboygan**

Sponsor County: **Sheboygan**

MPO Area: **Sheboygan**

The signatory, City of Sheboygan, hereinafter called the Project Sponsor, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the transportation project hereinafter described.

23 U.S.C. 149 and Wis. Stat. 85.245 authorize the State to administer a program for the distribution of federal funds for congestion mitigation and air quality improvement projects.

The authority for the Project Sponsor to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

**NEEDS AND ESTIMATE SUMMARY:**

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Project Sponsor agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Proposed Project - Nature of work: The proposed project adds radio communication to the seven signalized intersections along the 1.87 mile STH 23 / Kohler Memorial Drive / Erie Avenue corridor from Taylor Drive to 9<sup>th</sup> Street. The proposed project includes adding radio communication infrastructure, installing video detection, remove outdated loop detectors, conduct 13-hour intersection turning movement counts, preparation of traffic signal coordination timing plans and retiming and coordinating traffic signals.

Need for or Benefits of Project – summarize reasons for request: The proposed project will reduce noxious emissions such as nitrous oxide (NO), carbon monoxide (CO), and hydro carbons by reducing vehicle delays through non-invasive, cost-effective technologies. Signal coordination and retiming with comprehensive use of video detection will maximize the efficiency of the existing roadway network.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Project Sponsor. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal and state requirements: **NONE**

The Project Sponsor agrees to the following FY 2018-2022 CMAQ Program project funding conditions:

The subject project is funded with 80% federal funding up to a maximum of \$414,480 for all federal funded project phases when the Project Sponsor agrees to provide the remaining 20% and all funds in excess of the \$414,480 federal funding maximum, in accordance with CMAQ program guidelines. Non-participating costs are 100% the responsibility of the Project Sponsor. Any work performed by the Project Sponsor prior to federal authorization is not eligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging.

The project is subject to a discretionary DBE goal assessment. A completion deadline of June 30, 2025. The Catalogue of Federal Domestic Assistance (CFDA) number for this project is 20.205 – Highway Planning and Construction.

| PHASE                               | SUMMARY OF COSTS |                  |            |                       |            |
|-------------------------------------|------------------|------------------|------------|-----------------------|------------|
|                                     | Total Est. Cost  | Federal Funds    | %          | Project Sponsor Funds | %          |
| <b>ID 4650-02-00</b>                |                  |                  |            |                       |            |
| Design                              | \$63,900         | \$51,120         | 80%*       | \$12,780              | 20%*       |
| Design Review #                     | \$42,600         | \$34,080         | 80%*       | \$8,520               | 20%*       |
| <b>ID 4650-02-71</b>                |                  |                  |            |                       |            |
| Participating Construction          | \$354,800        | \$283,840        | 80%*       | \$70,960              | 20%*       |
| Participating Construction Review # | \$56,800         | \$45,440         | 80%*       | \$11,360              | 20%*       |
| Non-Participating Construction      | \$0              | \$0              | 0%         | \$0                   | 100%       |
| <b>Total Est. Cost Distribution</b> | <b>\$518,100</b> | <b>\$414,480</b> | <b>MAX</b> | <b>\$103,620</b>      | <b>N/A</b> |

\*This project has a CMAQ federal/earmark funding maximum of \$414,480. This maximum is cumulative for all federally funded project phases.

# Review costs are administered and paid for by WisDOT. The Project Sponsor will be billed for any required local match and for costs beyond the cumulative federal or state funding.

This request is subject to the terms and conditions that follow (pages 3 – 9) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon signature by the State shall constitute agreement between the Project Sponsor and the State. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing duly executed by both parties to this State/Municipal Agreement.

Signed for and in behalf of City of Sheboygan: \_\_\_\_\_ (please sign in blue ink)

Name (print)

Title (print)

Date

Signed for and in behalf of the State \_\_\_\_\_ (please sign in blue ink)

Brian Brock  
Name

NE Region SPO Chief  
Title

Date

## **GENERAL TERMS AND CONDITIONS:**

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging. Authorization is required for each separate project phase or ID.
3. The initiation and accomplishment of the project will be subject to the applicable federal and state regulations, as referenced in the document *A Sponsor's Guide to Non-Traditional Project Implementation*. The Project Sponsor, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
  - a. Environmental requirements, including but not limited to those set forth in 23 U.S.C. 139 and the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
  - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The Project Sponsor agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Project Sponsor agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Project Sponsor agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
  - c. All DBE requirements that the State specifies.
  - d. Federal and state statutes that govern the CMAQ Program, including but not limited to 23 U.S.C. 149 and Wis. Stat. 85.245.
4. Additional applicable state and federal requirements may include, but are not limited to, the following:
  - a. Prevailing wage requirements, including but not limited to 23 U.S.C. 113 and Wis. Stat. 103.50.
  - b. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
  - c. Competitive bidding requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06.

## **STATE RESPONSIBILITIES AND REQUIREMENTS:**

5. Funding of the project is subject to inclusion in Wisconsin's approved CMAQ program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
  - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
  - b. Storm sewer mains necessary for the surface water drainage.
  - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.

- d. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
- e. Signing and pavement marking, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
- f. New installations or alteration of street lighting and traffic signals or devices.
- g. Landscaping.
- h. Preliminary Engineering.
- i. State Review Services.

6. State Disbursements:

- a. Payment by the State to the Project Sponsor shall be made on a regular basis upon presentation of vouchers for expenditures incurred during prior periods of the project duration subject to the allowable maximum payment. Exceptions to this schedule will be made as appropriate. In general, State reimbursements will be made after sufficient proof of payment is sent to the State.
- b. A final adjustment of state payments will be made upon completion of the State's audit of the project. If the State's audit establishes that the State paid more than its share of the eligible project costs, the Project Sponsor shall refund to the State upon demand a sum equal to the overpayment.

**PROJECT SPONSOR RESPONSIBILITIES AND REQUIREMENTS:**

- 7. Work necessary to complete the subject CMAQ project to be financed entirely by the Project Sponsor or other utility or facility owner includes the items listed below, when applicable to the project.
  - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
  - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
  - c. Detour routes and haul roads. The Project Sponsor is responsible for determining the detour route.
  - d. Conditioning, if required and maintenance of detour routes.
  - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
  - f. All work related to underground storage tanks and contaminated soils.
  - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
  - h. Real estate for the improvement
- 8. The work eligible for Federal and State participation will be administered by the Project Sponsor.
- 9. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder in accordance with the requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06. Where applicable, all contracts for design related services shall be awarded and administered in accordance with the requirements

of 23 CFR 172 and procedures published in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.

10. The Project Sponsor must receive, read, and agree to meet the requirements outlined in the *Sponsor's Guide to Non-Traditional Transportation Project Implementation*. The Project Sponsor must indicate this understanding and agreement by submitting the *Sponsor's Guide Acknowledgement Form*, which must be accepted by the State before approval of this State/Municipal Agreement shall be granted.
11. The Project Sponsor must complete and submit *Certification for Non-Traditional Project Administration and Delivery* documentation, and this documentation must be accepted by the State, before approval of this State/Municipal Agreement shall be granted. The Project Sponsor, and all consultants and other entities working on behalf of the Project Sponsor, are required to comply with the federal and state rules and requirements for projects being administered through a local letting process.
12. The project, in accordance with its scope, must employ the services of a registered professional engineer, architect or landscape architect, to be responsible for design and construction engineering and related activities.
13. A copy of the plans, specifications, and estimates containing the engineer's, architect's, or landscape architect's seal as prepared for bidding purposes (in accordance with project scope) must be provided to the State for approval prior to advertising the project for bids.
14. The improvement will take place in accordance with the appropriate standards unless an exception to standards is granted by the State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the project sponsor unless such exception is granted.
15. Work to be performed by the Project Sponsor without federal funding participation, necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Project Sponsor but must be coordinated with all other work undertaken during construction.
16. The Project Sponsor is responsible for financing administrative expenses related to Project Sponsor responsibilities.
17. The project is subject to a discretionary DBE goal assessment.
18. The Project Sponsor will not proceed with any contract revisions without first receiving prior approval from the State. A contract change order must be executed for revisions to the contract prior to the Project Sponsor's request for reimbursement for the revisions.
19. If reviews or audits show any of the work to be ineligible for Federal funding, the Project Sponsor will be responsible for any withdrawn costs associated with the ineligible work.
20. If the Project Sponsor should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
21. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all local and State submittals and approvals contained in these instructions, and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and the State and will furnish copies thereof when requested.
22. Federal Single Audits of the Project Sponsor:

- a. The Project Sponsor shall have a single organization audit performed by a qualified independent auditor if required to do so under Federal law and regulations. (See Federal Office of Management and Budget (OMB) Circular No. 2 CFR 200).
  - b. This audit shall be performed in accordance with federal OMB Circular No 2 CFR 200 and State single audit guidelines issued by the Wisconsin Department of Administration (DOA).
  - c. The Project Sponsor will keep records of costs of construction, inspection tests, and maintenance done by it to enable the Federal Government and the State to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be retained for three years from the date of final payment. If any litigation, claim, or audits are started before the expiration of the three year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved.
23. In connection with the performance of work under this State/Municipal Agreement, the Project Sponsor 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 S. 51.01(5), sexual orientation 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. Except with respect to sexual orientation, the Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the nondiscrimination clause.
24. The Project Sponsor will include in all contracts executed by them a provision obligating the contractor 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 s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin.
25. When applicable to the project, the Project Sponsor will at its own cost and expense:
- a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, parking lanes, bicycle lanes, trails, and other facilities, sidewalks and other pedestrian facilities, and other project infrastructure for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.
  - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
  - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
  - d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the projects.
  - e. Provide relocation orders and real estate plats and easements, as required by the project.
  - f. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
  - g. Provide maintenance and energy for lighting.

- h. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

26. It is further agreed by the Project Sponsor that:

- a. The Project Sponsor assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the State and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this State/Municipal Agreement.
- b. The Project Sponsor assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Project Sponsor. The Project Sponsor is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Project Sponsor will reimburse the State if the State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Project Sponsor will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Project Sponsor or by others, will be in conformity with such "Manual on Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.

27. The subject project must be completed by June 30, 2025 and the Project Sponsor must submit a project completion certificate to WisDOT central office on or before this date. WisDOT may consider a written request to extend the completion deadline from the Project Sponsor and may approve such a request in the presence of extenuating circumstances. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

#### **LEGAL RELATIONSHIPS:**

28. Responsibility for Damage and Tort Claims: The Project Sponsor and the Project Sponsor's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Project Sponsor; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Project Sponsor; or because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance, order or decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by virtue of the contract as shall be considered necessary by the State for such purposes, may be retained for the use of the State; or, in case no money or insufficient money is retained, the Project Sponsor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the State; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, or municipality in which the improvement is made and each of them separately or jointly and officers and employees.

The State shall not be liable to the Project Sponsor for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Project Sponsor for damages or delays resulting from injunctions or other restraining orders obtained by third parties except where the damage or delay is a direct

result of an injunction or restraining order obtained by a citizen's action alleging violations of 42 U.S.C. 4331 - 4332, 23 U.S.C. 138 or Public Law 91-646.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations. This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

It is the express intent of this provision that a Project Sponsor that is a county, town or municipality may and should contractually pass on this entire Responsibility for Damage and Tort Claims provision to any public and private entities with which it may subcontract any of the work covered by this agreement.

- a. The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats. (1997 - 98).
  - b. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.
29. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
  - b. Have not, within a three year period preceding this State/Municipal Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;
  - d. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default; and
  - e. That all grantees, contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 -- Covered Transactions, have certified in writing that neither they or their principals are presently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have voluntarily been excluded from participating in this or any other Federal, state or local transaction by any Federal, State or local department, agency or official.
30. Contract Modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally.
31. Binding Effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third- party beneficiary rights to be held by any person or entity who is not a party to this State/Municipal Agreement. Nor does it accord on any non-party the right of enforcement.

32. Choice of Law and Forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

33. Nothing in this State/Municipal Agreement shall be construed as a waiver of the State's sovereign immunity.

#### **PROJECT FUNDING CONDITIONS**

34. Non-Appropriation of Fund: With respect to any payment required to be made by the Department under this State/Municipal Agreement, the parties acknowledge the Department's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Project Sponsor or the Department may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.

35. Maintenance of Records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Project Sponsor, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the Department. The Department reserves the right to audit and inspect such records and accounts at any time. The Project Sponsor shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

Records pertaining to the performance of the State/Municipal Agreement are subject to disclosure pursuant to Wis. Stats. Sec. 19.31 et seq., and shall be preserved by the Project Sponsor.

36. The Project Sponsor agrees to the following FY 2018-2022 CMAQ program project funding conditions:

- a. ID 4650-02-00: Design and any related review costs are funded with 80% federal funding when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. This includes Plan Development and State Review. The work includes project review, approval of required reports and documents and processing the final PS&E document for award of the contract.
- b. ID 4650-02-71: Construction:
  - i. Costs for traffic signal radio communication and video detection installation and any related review costs are funded with 80% federal funding, when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap.
- c. The maximum participation of federal funding will be limited to 80% of the actual eligible project cost or the total cost distribution of CMAQ program funds shown on page 2 of this State/Municipal Agreement, whichever is less. The project federal funding maximum of \$414,480 is cumulative for all federal funded project phases.

[End of Document]

Res. No.       - 18 - 19      . By Alderpersons Wolf and Sorenson.  
January 21, 2019.

A RESOLUTION authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (dated January 3, 2019), I.D. 4291-00-01\_71, to update nine signalized intersections along the 1.63 mile Taylor Drive corridor from Superior Avenue to Indiana Avenue.

WHEREAS, the proposed improvements to this corridor include adding radio communication infrastructure, installing video detection, removing outdated loop detectors, conducting 13-hour intersection turning movement counts, preparing traffic signal coordination timing plans, and retiming and coordinating traffic signals.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to enter into the State/Municipal Agreement with the Wisconsin Department of Transportation, a copy of which is attached hereto and incorporated herein, to update nine signalized intersections along the Taylor Drive corridor from Superior Avenue to Indiana Avenue for the proposed sum of \$666,900.00, of which the Federal Share is \$533,520.00 and of which the City of Sheboygan's share is \$133,380.00.

BE IT FURTHER RESOLVED: That the appropriate City Officials are hereby authorized to draw orders on the future capital improvements program for street improvements.

BE IT FURTHER RESOLVED: That any previous authorization to draw orders on a previous version of this Agreement is terminated as of the effective date of this Resolution.

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

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

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

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

**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

---

**ITEM DESCRIPTION:** Res. No. 167-18-19 by Alderperson Wolf authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (dated January 3, 2019), I.D. 4650-02-00\_71, to update seven signalized intersections along the 1.87 mile STH 23/Kohler Memorial Drive/Erie Avenue corridor from Taylor Drive to 9<sup>th</sup> Street.

---

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

---

**REPORT DATE:** January 24, 2019

**MEETING DATE:** January 29, 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:** The State Municipal Agreement reflects the cost for all entities participating in the project. The estimated cost for the updating seven signalized intersections along the STH23/Kohler Memorial Drive/Erie Avenue corridor from Taylor Drive to N. 9<sup>th</sup> Street for the proposed sum of \$518,100.00 of which the Federal Share is \$414,480.00 and of which the City of Sheboygan's share is \$103,620.00. The proposed project includes adding radio communication infrastructure, installing video detection, remove outdated loop detectors, conduct 13-hour intersection turning movement counts, preparation of traffic signal coordination timing plans, and retiming and coordinating traffic signals.

**STAFF COMMENTS:** The analysis and design for the updating seven signalized intersections along the STH23/Kohler Memorial Drive/Erie Avenue corridor from Taylor Drive to N. 9<sup>th</sup> Street will start in 2019. These seven roadways are scheduled for signalized updating construction in the Spring of 2021 with the work being completed in the Fall of 2021.

**ACTION REQUESTED:** Motion to approve Res. No. 167-18-19. A resolution authorizing the appropriate City officials to enter into a State/Municipal Agreement, I.D. 4650-02-00/71 for the updating seven signalized intersections along the 1.87 mile STH23/Kohler Memorial Drive/Erie Avenue corridor from Taylor Drive to N. 9<sup>th</sup> Street.

**ATTACHMENTS:**

- I. Res. No. 167-18-19
- II. State Municipal Agreement dated January 3, 2019.



**STATE/MUNICIPAL AGREEMENT  
FOR A LOCALLY LET CMAQ  
PROJECT**

Program Name: Congestion Mitigation and  
Air Quality Improvement (CMAQ)  
Sub-program #: 211

Date: **January 3, 2019**

I.D.: **4291-00-01\_71**

Project Title: **Taylor Drive Traffic Flow  
Improvement**

Location/Limits (as applicable): **Superior Avenue  
– Indiana Avenue**

County: **Sheboygan**

Project Length (if applicable): **1.63 miles**

Counties Served: **Sheboygan**

Project Sponsor: **City of Sheboygan**

Sponsor County: **Sheboygan**

MPO Area: **Sheboygan**

The signatory, City of Sheboygan, hereinafter called the Project Sponsor, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the transportation project hereinafter described.

23 U.S.C. 149 and Wis. Stat. 85.245 authorize the State to administer a program for the distribution of federal funds for congestion mitigation and air quality improvement projects.

The authority for the Project Sponsor to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

**NEEDS AND ESTIMATE SUMMARY:**

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Project Sponsor agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Proposed Project - Nature of work: The proposed project adds radio communication to the nine signalized intersections along the 1.63 mile Taylor Drive corridor from Superior Avenue to Indiana Avenue. The proposed project includes adding radio communication infrastructure, installing video detection, remove outdated loop detectors, conduct 13-hour intersection turning movement counts, preparation of traffic signal coordination timing plans and retiming and coordinating traffic signals.

Need for or Benefits of Project – summarize reasons for request: The proposed project will reduce noxious emissions such as nitrous oxide (NO), carbon monoxide (CO), and hydro carbons by reducing vehicle delays through non-invasive, cost-effective technologies. Signal coordination and retiming with comprehensive use of video detection will maximize the efficiency of the existing roadway network.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Project Sponsor. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal and state requirements: **NONE**

The Project Sponsor agrees to the following FY 2018-2022 CMAQ Program project funding conditions:

The subject project is funded with 80% federal funding up to a maximum of \$533,520 for all federal funded project phases when the Project Sponsor agrees to provide the remaining 20% and all funds in excess of the \$533,520 federal funding maximum, in accordance with CMAQ program guidelines. Non-participating costs are 100% the responsibility of the Project Sponsor. Any work performed by the Project Sponsor prior to federal authorization is not eligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging.

The project is subject to a discretionary DBE goal assessment. A completion deadline of June 30, 2025. The Catalogue of Federal Domestic Assistance (CDFA) number for this project is 20.205 – Highway Planning and Construction.

| PHASE                               | SUMMARY OF COSTS |                  |            |                       |            |
|-------------------------------------|------------------|------------------|------------|-----------------------|------------|
|                                     | Total Est. Cost  | Federal Funds    | %          | Project Sponsor Funds | %          |
| <b>ID 4291-00-01</b>                |                  |                  |            |                       |            |
| Design                              | \$82,200         | \$65,760         | 80%*       | \$16,440              | 20%*       |
| Design Review #                     | \$54,800         | \$43,840         | 80%*       | \$10,960              | 20%*       |
| <b>ID 4291-00-71</b>                |                  |                  |            |                       |            |
| Participating Construction          | \$456,800        | \$365,440        | 80%*       | \$91,360              | 20%*       |
| Participating Construction Review # | \$73,100         | \$58,480         | 80%*       | \$14,620              | 20%*       |
| Non-Participating Construction      | \$0              | \$0              | 0%         | \$0                   | 100%       |
| <b>Total Est. Cost Distribution</b> | <b>\$666,900</b> | <b>\$533,520</b> | <b>MAX</b> | <b>\$133,380</b>      | <b>N/A</b> |

\*This project has a CMAQ federal/earmark funding maximum of \$533,520. This maximum is cumulative for all federally funded project phases.

# Review costs are administered and paid for by WisDOT. The Project Sponsor will be billed for any required local match and for costs beyond the cumulative federal or state funding.

This request is subject to the terms and conditions that follow (pages 3 – 9) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon signature by the State shall constitute agreement between the Project Sponsor and the State. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing duly executed by both parties to this State/Municipal Agreement.

Signed for and in behalf of City of Sheboygan: \_\_\_\_\_ (please sign in blue ink)

\_\_\_\_\_  
Name (print) Title (print) Date

Signed for and in behalf of the State \_\_\_\_\_ (please sign in blue ink)

Brian Brock NE Region SPO Chief  
Name Title Date

## **GENERAL TERMS AND CONDITIONS:**

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging. Authorization is required for each separate project phase or ID.
3. The initiation and accomplishment of the project will be subject to the applicable federal and state regulations, as referenced in the document *A Sponsor's Guide to Non-Traditional Project Implementation*. The Project Sponsor, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
  - a. Environmental requirements, including but not limited to those set forth in 23 U.S.C. 139 and the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
  - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The Project Sponsor agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Project Sponsor agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Project Sponsor agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
  - c. All DBE requirements that the State specifies.
  - d. Federal and state statutes that govern the CMAQ Program, including but not limited to 23 U.S.C. 149 and Wis. Stat. 85.245.
4. Additional applicable state and federal requirements may include, but are not limited to, the following:
  - a. Prevailing wage requirements, including but not limited to 23 U.S.C. 113 and Wis. Stat. 103.50.
  - b. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
  - c. Competitive bidding requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06.

## **STATE RESPONSIBILITIES AND REQUIREMENTS:**

5. Funding of the project is subject to inclusion in Wisconsin's approved CMAQ program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
  - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
  - b. Storm sewer mains necessary for the surface water drainage.
  - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.

- d. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
- e. Signing and pavement marking, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
- f. New installations or alteration of street lighting and traffic signals or devices.
- g. Landscaping.
- h. Preliminary Engineering.
- i. State Review Services.

6. State Disbursements:

- a. Payment by the State to the Project Sponsor shall be made on a regular basis upon presentation of vouchers for expenditures incurred during prior periods of the project duration subject to the allowable maximum payment. Exceptions to this schedule will be made as appropriate. In general, State reimbursements will be made after sufficient proof of payment is sent to the State.
- b. A final adjustment of state payments will be made upon completion of the State's audit of the project. If the State's audit establishes that the State paid more than its share of the eligible project costs, the Project Sponsor shall refund to the State upon demand a sum equal to the overpayment.

**PROJECT SPONSOR RESPONSIBILITIES AND REQUIREMENTS:**

- 7. Work necessary to complete the subject CMAQ project to be financed entirely by the Project Sponsor or other utility or facility owner includes the items listed below, when applicable to the project.
  - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
  - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
  - c. Detour routes and haul roads. The Project Sponsor is responsible for determining the detour route.
  - d. Conditioning, if required and maintenance of detour routes.
  - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
  - f. All work related to underground storage tanks and contaminated soils.
  - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
  - h. Real estate for the improvement
- 8. The work eligible for Federal and State participation will be administered by the Project Sponsor.
- 9. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder in accordance with the requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06. Where applicable, all contracts for design related services shall be awarded and administered in accordance with the requirements

of 23 CFR 172 and procedures published in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.

10. The Project Sponsor must receive, read, and agree to meet the requirements outlined in the *Sponsor's Guide to Non-Traditional Transportation Project Implementation*. The Project Sponsor must indicate this understanding and agreement by submitting the *Sponsor's Guide Acknowledgement Form*, which must be accepted by the State before approval of this State/Municipal Agreement shall be granted.
11. The Project Sponsor must complete and submit *Certification for Non-Traditional Project Administration and Delivery* documentation, and this documentation must be accepted by the State, before approval of this State/Municipal Agreement shall be granted. The Project Sponsor, and all consultants and other entities working on behalf of the Project Sponsor, are required to comply with the federal and state rules and requirements for projects being administered through a local letting process.
12. The project, in accordance with its scope, must employ the services of a registered professional engineer, architect or landscape architect, to be responsible for design and construction engineering and related activities.
13. A copy of the plans, specifications, and estimates containing the engineer's, architect's, or landscape architect's seal as prepared for bidding purposes (in accordance with project scope) must be provided to the State for approval prior to advertising the project for bids.
14. The improvement will take place in accordance with the appropriate standards unless an exception to standards is granted by the State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the project sponsor unless such exception is granted.
15. Work to be performed by the Project Sponsor without federal funding participation, necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Project Sponsor but must be coordinated with all other work undertaken during construction.
16. The Project Sponsor is responsible for financing administrative expenses related to Project Sponsor responsibilities.
17. The project is subject to a discretionary DBE goal assessment.
18. The Project Sponsor will not proceed with any contract revisions without first receiving prior approval from the State. A contract change order must be executed for revisions to the contract prior to the Project Sponsor's request for reimbursement for the revisions.
19. If reviews or audits show any of the work to be ineligible for Federal funding, the Project Sponsor will be responsible for any withdrawn costs associated with the ineligible work.
20. If the Project Sponsor should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
21. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all local and State submittals and approvals contained in these instructions, and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and the State and will furnish copies thereof when requested.
22. Federal Single Audits of the Project Sponsor:

- a. The Project Sponsor shall have a single organization audit performed by a qualified independent auditor if required to do so under Federal law and regulations. (See Federal Office of Management and Budget (OMB) Circular No. 2 CFR 200).
  - b. This audit shall be performed in accordance with federal OMB Circular No 2 CFR 200 and State single audit guidelines issued by the Wisconsin Department of Administration (DOA).
  - c. The Project Sponsor will keep records of costs of construction, inspection tests, and maintenance done by it to enable the Federal Government and the State to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be retained for three years from the date of final payment. If any litigation, claim, or audits are started before the expiration of the three year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved.
23. In connection with the performance of work under this State/Municipal Agreement, the Project Sponsor 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 S. 51.01(5), sexual orientation 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. Except with respect to sexual orientation, the Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the nondiscrimination clause.
24. The Project Sponsor will include in all contracts executed by them a provision obligating the contractor 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 s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin.
25. When applicable to the project, the Project Sponsor will at its own cost and expense:
- a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, parking lanes, bicycle lanes, trails, and other facilities, sidewalks and other pedestrian facilities, and other project infrastructure for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.
  - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
  - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
  - d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the projects.
  - e. Provide relocation orders and real estate plats and easements, as required by the project.
  - f. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
  - g. Provide maintenance and energy for lighting.

- h. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.

26. It is further agreed by the Project Sponsor that:

- a. The Project Sponsor assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the State and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this State/Municipal Agreement.
- b. The Project Sponsor assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Project Sponsor. The Project Sponsor is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Project Sponsor will reimburse the State if the State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
- c. The Project Sponsor will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
- d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Project Sponsor or by others, will be in conformity with such "Manual on Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.

27. The subject project must be completed by June 30, 2025 and the Project Sponsor must submit a project completion certificate to WisDOT central office on or before this date. WisDOT may consider a written request to extend the completion deadline from the Project Sponsor and may approve such a request in the presence of extenuating circumstances. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

#### **LEGAL RELATIONSHIPS:**

28. Responsibility for Damage and Tort Claims: The Project Sponsor and the Project Sponsor's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Project Sponsor; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Project Sponsor; or because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance, order or decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by virtue of the contract as shall be considered necessary by the State for such purposes, may be retained for the use of the State; or, in case no money or insufficient money is retained, the Project Sponsor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the State; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, or municipality in which the improvement is made and each of them separately or jointly and officers and employees.

The State shall not be liable to the Project Sponsor for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Project Sponsor for damages or delays resulting from injunctions or other restraining orders obtained by third parties except where the damage or delay is a direct

result of an injunction or restraining order obtained by a citizen's action alleging violations of 42 U.S.C. 4331 - 4332, 23 U.S.C. 138 or Public Law 91-646.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations. This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

It is the express intent of this provision that a Project Sponsor that is a county, town or municipality may and should contractually pass on this entire Responsibility for Damage and Tort Claims provision to any public and private entities with which it may subcontract any of the work covered by this agreement.

- a. The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats. (1997 - 98).
- b. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.

29. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
- b. Have not, within a three year period preceding this State/Municipal Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;
- d. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default; and
- e. That all grantees, contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 -- Covered Transactions, have certified in writing that neither they or their principals are presently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have voluntarily been excluded from participating in this or any other Federal, state or local transaction by any Federal, State or local department, agency or official.

30. Contract Modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally.

31. Binding Effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third- party beneficiary rights to be held by any person or entity who is not a party to this State/Municipal Agreement. Nor does it accord on any non-party the right of enforcement.

32. Choice of Law and Forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

33. Nothing in this State/Municipal Agreement shall be construed as a waiver of the State's sovereign immunity.

### **PROJECT FUNDING CONDITIONS**

34. Non-Appropriation of Fund: With respect to any payment required to be made by the Department under this State/Municipal Agreement, the parties acknowledge the Department's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Project Sponsor or the Department may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.

35. Maintenance of Records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Project Sponsor, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the Department. The Department reserves the right to audit and inspect such records and accounts at any time. The Project Sponsor shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

Records pertaining to the performance of the State/Municipal Agreement are subject to disclosure pursuant to Wis. Stats. Sec. 19.31 et seq., and shall be preserved by the Project Sponsor.

36. The Project Sponsor agrees to the following FY 2018-2022 CMAQ program project funding conditions:

- a. ID 4291-00-01: Design and any related review costs are funded with 80% federal funding when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. This includes Plan Development and State Review. The work includes project review, approval of required reports and documents and processing the final PS&E document for award of the contract.
- b. ID 4291-00-71: Construction:
  - i. Costs for traffic signal radio communication and video detection installation and any related review costs are funded with 80% federal funding, when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap.
- c. The maximum participation of federal funding will be limited to 80% of the actual eligible project cost or the total cost distribution of CMAQ program funds shown on page 2 of this State/Municipal Agreement, whichever is less. The project federal funding maximum of \$533,520 is cumulative for all federal funded project phases.

[End of Document]

III

4.6

Res. No. 1608 - 18 - 19. By Alderpersons Wolf and Sorenson.  
January 21, 2019.

A RESOLUTION authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (dated January 3, 2019), I.D. 4291-00-01\_71, to update nine signalized intersections along the 1.63 mile Taylor Drive corridor from Superior Avenue to Indiana Avenue.

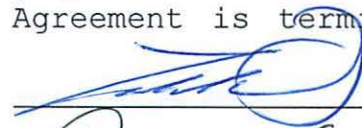
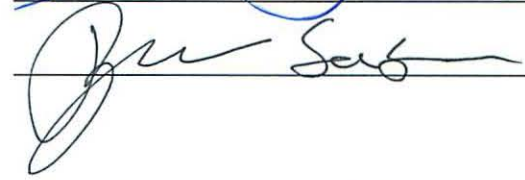
WHEREAS, the proposed improvements to this corridor include adding radio communication infrastructure, installing video detection, removing outdated loop detectors, conducting 13-hour intersection turning movement counts, preparing traffic signal coordination timing plans, and retiming and coordinating traffic signals.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to enter into the State/Municipal Agreement with the Wisconsin Department of Transportation, a copy of which is attached hereto and incorporated herein, to update nine signalized intersections along the Taylor Drive corridor from Superior Avenue to Indiana Avenue for the proposed sum of \$666,900.00, of which the Federal Share is \$533,520.00 and of which the City of Sheboygan's share is \$133,380.00.

BE IT FURTHER RESOLVED: That the appropriate City Officials are hereby authorized to draw orders on the future capital improvements program for street improvements.

BE IT FURTHER RESOLVED: That any previous authorization to draw orders on a previous version of this Agreement is terminated as of the effective date of this Resolution.

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



**STATE/MUNICIPAL AGREEMENT  
FOR A LOCALLY LET CMAQ  
PROJECT**

Program Name: Congestion Mitigation and  
Air Quality Improvement (CMAQ)  
Sub-program #: 211

Date: **January 3, 2019**

I.D.: **4291-00-01\_71**

Project Title: **Taylor Drive Traffic Flow  
Improvement**

Location/Limits (as applicable): **Superior Avenue  
– Indiana Avenue**

County: **Sheboygan**

Project Length (if applicable): **1.63 miles**

Counties Served: **Sheboygan**

Project Sponsor: **City of Sheboygan**

Sponsor County: **Sheboygan**

MPO Area: **Sheboygan**

The signatory, City of Sheboygan, hereinafter called the Project Sponsor, through its undersigned duly authorized officers or officials, hereby requests the State of Wisconsin Department of Transportation, hereinafter called the State, to initiate and effect the transportation project hereinafter described.

23 U.S.C. 149 and Wis. Stat. 85.245 authorize the State to administer a program for the distribution of federal funds for congestion mitigation and air quality improvement projects.

The authority for the Project Sponsor to enter into this agreement with the State is provided by Sections 86.25(1), (2), and (3) and Section 66.0301 of the Statutes.

**NEEDS AND ESTIMATE SUMMARY:**

All components of the project must be defined in the environmental document if any portion of the project is federally funded. The Project Sponsor agrees to complete all participating and any non-participating work included in this improvement consistent with the environmental document. No work on final engineering and design may occur prior to approval of the environmental document.

Proposed Project - Nature of work: The proposed project adds radio communication to the nine signalized intersections along the 1.63 mile Taylor Drive corridor from Superior Avenue to Indiana Avenue. The proposed project includes adding radio communication infrastructure, installing video detection, remove outdated loop detectors, conduct 13-hour intersection turning movement counts, preparation of traffic signal coordination timing plans and retiming and coordinating traffic signals.

Need for or Benefits of Project – summarize reasons for request: The proposed project will reduce noxious emissions such as nitrous oxide (NO), carbon monoxide (CO), and hydrocarbons by reducing vehicle delays through non-invasive, cost-effective technologies. Signal coordination and retiming with comprehensive use of video detection will maximize the efficiency of the existing roadway network.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Project Sponsor. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable federal and state requirements: **NONE**

The Project Sponsor agrees to the following FY 2018-2022 CMAQ Program project funding conditions:

The subject project is funded with 80% federal funding up to a maximum of \$533,520 for all federal funded project phases when the Project Sponsor agrees to provide the remaining 20% and all funds in excess of the \$533,520 federal funding maximum, in accordance with CMAQ program guidelines. Non-participating costs are 100% the responsibility of the Project Sponsor. Any work performed by the Project Sponsor prior to federal authorization is not eligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging.

The project is subject to a discretionary DBE goal assessment. A completion deadline of June 30, 2025. The Catalogue of Federal Domestic Assistance (CFDA) number for this project is 20.205 – Highway Planning and Construction.

| PHASE                               | SUMMARY OF COSTS |                  |            |                       |            |
|-------------------------------------|------------------|------------------|------------|-----------------------|------------|
|                                     | Total Est. Cost  | Federal Funds    | %          | Project Sponsor Funds | %          |
| <b>ID 4291-00-01</b>                |                  |                  |            |                       |            |
| Design                              | \$82,200         | \$65,760         | 80%*       | \$16,440              | 20%*       |
| Design Review #                     | \$54,800         | \$43,840         | 80%*       | \$10,960              | 20%*       |
| <b>ID 4291-00-71</b>                |                  |                  |            |                       |            |
| Participating Construction          | \$456,800        | \$365,440        | 80%*       | \$91,360              | 20%*       |
| Participating Construction Review # | \$73,100         | \$58,480         | 80%*       | \$14,620              | 20%*       |
| Non-Participating Construction      | \$0              | \$0              | 0%         | \$0                   | 100%       |
| <b>Total Est. Cost Distribution</b> | <b>\$666,900</b> | <b>\$533,520</b> | <b>MAX</b> | <b>\$133,380</b>      | <b>N/A</b> |

\*This project has a CMAQ federal/earmark funding maximum of \$533,520. This maximum is cumulative for all federally funded project phases.

# Review costs are administered and paid for by WisDOT. The Project Sponsor will be billed for any required local match and for costs beyond the cumulative federal or state funding.

This request is subject to the terms and conditions that follow (pages 3 – 9) and is made by the undersigned under proper authority to make such request for the designated Project Sponsor and upon signature by the State shall constitute agreement between the Project Sponsor and the State. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing duly executed by both parties to this State/Municipal Agreement.

Signed for and in behalf of City of Sheboygan: \_\_\_\_\_ (please sign in blue ink)

\_\_\_\_\_  
 Name (print) Title (print) Date

Signed for and in behalf of the State \_\_\_\_\_ (please sign in blue ink)

Brian Brock NE Region SPO Chief  
 Name Title Date

## **GENERAL TERMS AND CONDITIONS:**

1. All projects must be in an approved Transportation Improvement Program (TIP) or State Transportation Improvement Program (STIP) prior to requesting authorization.
2. Work prior to federal authorization is ineligible for federal funding. The Project Sponsor will be notified by the State when each project phase or ID is authorized and available for charging. Authorization is required for each separate project phase or ID.
3. The initiation and accomplishment of the project will be subject to the applicable federal and state regulations, as referenced in the document *A Sponsor's Guide to Non-Traditional Project Implementation*. The Project Sponsor, throughout the entire project, commits to comply with and promote all applicable federal and state laws and regulations that include, but are not limited to, the following:
  - a. Environmental requirements, including but not limited to those set forth in 23 U.S.C. 139 and the National Environmental Policy Act (42 U.S.C. 4321 et seq.).
  - b. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. 16.765. The Project Sponsor agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition the Project Sponsor agrees not to engage in any illegal discrimination in violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The Project Sponsor agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.
  - c. All DBE requirements that the State specifies.
  - d. Federal and state statutes that govern the CMAQ Program, including but not limited to 23 U.S.C. 149 and Wis. Stat. 85.245.
4. Additional applicable state and federal requirements may include, but are not limited to, the following:
  - a. Prevailing wage requirements, including but not limited to 23 U.S.C. 113 and Wis. Stat. 103.50.
  - b. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
  - c. Competitive bidding requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06.

## **STATE RESPONSIBILITIES AND REQUIREMENTS:**

5. Funding of the project is subject to inclusion in Wisconsin's approved CMAQ program. Federal funding will be limited to participation in the costs of the following items, as applicable to the project:
  - a. The grading, base, pavement, and curb and gutter, sidewalk, and replacement of disturbed driveways in kind.
  - b. Storm sewer mains necessary for the surface water drainage.
  - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.

- d. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
- e. Signing and pavement marking, including marking of detour routes. Detour routes and haul roads are not eligible on local projects.
- f. New installations or alteration of street lighting and traffic signals or devices.
- g. Landscaping.
- h. Preliminary Engineering.
- i. State Review Services.

6. State Disbursements:

- a. Payment by the State to the Project Sponsor shall be made on a regular basis upon presentation of vouchers for expenditures incurred during prior periods of the project duration subject to the allowable maximum payment. Exceptions to this schedule will be made as appropriate. In general, State reimbursements will be made after sufficient proof of payment is sent to the State.
- b. A final adjustment of state payments will be made upon completion of the State's audit of the project. If the State's audit establishes that the State paid more than its share of the eligible project costs, the Project Sponsor shall refund to the State upon demand a sum equal to the overpayment.

**PROJECT SPONSOR RESPONSIBILITIES AND REQUIREMENTS:**

- 7. Work necessary to complete the subject CMAQ project to be financed entirely by the Project Sponsor or other utility or facility owner includes the items listed below, when applicable to the project.
  - a. New installations of or alteration of sanitary sewers and connections, water, gas, electric, telephone, telegraph, fire or police alarm facilities, parking meters, and similar utilities.
  - b. Damages to abutting property after project completion due to change in street or sidewalk widths, grades or drainage.
  - c. Detour routes and haul roads. The Project Sponsor is responsible for determining the detour route.
  - d. Conditioning, if required and maintenance of detour routes.
  - e. Repair of damages to roads or streets caused by reason of their use in hauling materials incident to the improvement.
  - f. All work related to underground storage tanks and contaminated soils.
  - g. Street and bridge width in excess of standards, in accordance with the current WisDOT Facilities Development Manual (FDM).
  - h. Real estate for the improvement
- 8. The work eligible for Federal and State participation will be administered by the Project Sponsor.
- 9. Where applicable, all contracts will be let by competitive bid and awarded to the lowest responsible bidder in accordance with the requirements set forth in 23 U.S.C. 112 and Wis. Stat. 84.06. Where applicable, all contracts for design related services shall be awarded and administered in accordance with the requirements

of 23 CFR 172 and procedures published in the Wisconsin Department of Transportation Facilities Development Manual (FDM), Chapter 8, Consulting Services.

10. The Project Sponsor must receive, read, and agree to meet the requirements outlined in the *Sponsor's Guide to Non-Traditional Transportation Project Implementation*. The Project Sponsor must indicate this understanding and agreement by submitting the *Sponsor's Guide Acknowledgement Form*, which must be accepted by the State before approval of this State/Municipal Agreement shall be granted.
11. The Project Sponsor must complete and submit *Certification for Non-Traditional Project Administration and Delivery* documentation, and this documentation must be accepted by the State, before approval of this State/Municipal Agreement shall be granted. The Project Sponsor, and all consultants and other entities working on behalf of the Project Sponsor, are required to comply with the federal and state rules and requirements for projects being administered through a local letting process.
12. The project, in accordance with its scope, must employ the services of a registered professional engineer, architect or landscape architect, to be responsible for design and construction engineering and related activities.
13. A copy of the plans, specifications, and estimates containing the engineer's, architect's, or landscape architect's seal as prepared for bidding purposes (in accordance with project scope) must be provided to the State for approval prior to advertising the project for bids.
14. The improvement will take place in accordance with the appropriate standards unless an exception to standards is granted by the State prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the project sponsor unless such exception is granted.
15. Work to be performed by the Project Sponsor without federal funding participation, necessary to ensure a complete improvement acceptable to the Federal Highway Administration and/or the State may be done in a manner at the election of the Project Sponsor but must be coordinated with all other work undertaken during construction.
16. The Project Sponsor is responsible for financing administrative expenses related to Project Sponsor responsibilities.
17. The project is subject to a discretionary DBE goal assessment.
18. The Project Sponsor will not proceed with any contract revisions without first receiving prior approval from the State. A contract change order must be executed for revisions to the contract prior to the Project Sponsor's request for reimbursement for the revisions.
19. If reviews or audits show any of the work to be ineligible for Federal funding, the Project Sponsor will be responsible for any withdrawn costs associated with the ineligible work.
20. If the Project Sponsor should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
21. The Project Sponsor will assume all responsibility for retaining a complete project file that includes not only construction documentation but also copies of letting documents, all local and State submittals and approvals contained in these instructions, and other pertinent documents to support project procurement, development, implementation and cost and any other item required by 49 CFR part 18 and submitting such information, upon request, in order to receive reimbursement. The Project Sponsor will keep all project records and have them available for inspection by representatives of the Federal Government and the State and will furnish copies thereof when requested.
22. Federal Single Audits of the Project Sponsor:

- a. The Project Sponsor shall have a single organization audit performed by a qualified independent auditor if required to do so under Federal law and regulations. (See Federal Office of Management and Budget (OMB) Circular No. 2 CFR 200).
  - b. This audit shall be performed in accordance with federal OMB Circular No 2 CFR 200 and State single audit guidelines issued by the Wisconsin Department of Administration (DOA).
  - c. The Project Sponsor will keep records of costs of construction, inspection tests, and maintenance done by it to enable the Federal Government and the State to review the amount and nature of the expenditure for those purposes. Such accounting records and any other related records shall be retained for three years from the date of final payment. If any litigation, claim, or audits are started before the expiration of the three year period, the records shall be retained until all litigations, claims or audit findings involving the records have been resolved.
23. In connection with the performance of work under this State/Municipal Agreement, the Project Sponsor 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 S. 51.01(5), sexual orientation 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. Except with respect to sexual orientation, the Project Sponsor further agrees to take affirmative action to ensure equal employment opportunities. The Project Sponsor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the employment officer setting forth the provisions of the nondiscrimination clause.
24. The Project Sponsor will include in all contracts executed by them a provision obligating the contractor 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 s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin.
25. When applicable to the project, the Project Sponsor will at its own cost and expense:
- a. Maintain all portions of the project that lie within its jurisdiction (to include, but not limited to, cleaning storm sewers, removing debris from sumps or inlets, and regular maintenance of the catch basins, curb and gutter, parking lanes, bicycle lanes, trails, and other facilities, sidewalks and other pedestrian facilities, and other project infrastructure for such maintenance through statutory requirements in a manner satisfactory to the State, and will make ample provision for such maintenance each year.
  - b. Regulate [or prohibit] parking at all times in the vicinity of the proposed improvements during their construction.
  - c. Regulate [or prohibit] all parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
  - d. Assume general responsibility for all public information and public relations for the project and to make fitting announcement to the press and such outlets as would generally alert the affected property owners and the community of the nature, extent, and timing of the project and arrangements for handling traffic within and around the projects.
  - e. Provide relocation orders and real estate plats and easements, as required by the project.
  - f. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
  - g. Provide maintenance and energy for lighting.

- h. Provide proper care and maintenance of all landscaping elements of the project including replacement of any plant materials damaged by disease, drought, vandalism or other cause.
26. It is further agreed by the Project Sponsor that:
- a. The Project Sponsor assumes full responsibility for the design, installation, testing and operation of any sanitary sewer and water main infrastructure within the improvement project and relieves the State and all of its employees from liability for all suits, actions, or claims resulting from the sanitary sewer and water main construction under this State/Municipal Agreement.
  - b. The Project Sponsor assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Project Sponsor. The Project Sponsor is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Project Sponsor will reimburse the State if the State incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
  - c. The Project Sponsor will be 100% responsible for all costs associated with utility issues involving the Contractor, including costs related to utility delays.
  - d. All signs and traffic control devices and other protective structures erected on or in connection with the project including such of these as are installed at the sole cost and expense of the Project Sponsor or by others, will be in conformity with such "Manual on Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.
27. The subject project must be completed by June 30, 2025 and the Project Sponsor must submit a project completion certificate to WisDOT central office on or before this date. WisDOT may consider a written request to extend the completion deadline from the Project Sponsor and may approve such a request in the presence of extenuating circumstances. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

**LEGAL RELATIONSHIPS:**

28. Responsibility for Damage and Tort Claims: The Project Sponsor and the Project Sponsor's surety shall indemnify and save harmless the State, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damages received or sustained by any person, persons or property on account of the operations of the Project Sponsor; or on account of or in consequence of any neglect in safeguarding the work; or because of any act or omission, neglect or misconduct of the Project Sponsor; or because of any claims or amounts recovered for any infringement by the Project Sponsor of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the Project Sponsor's employees; or any other law, ordinance, order or decree relating to the Project Sponsor's operations. So much of the money due the Project Sponsor under and by virtue of the contract as shall be considered necessary by the State for such purposes, may be retained for the use of the State; or, in case no money or insufficient money is retained, the Project Sponsor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the State; except that money due the Project Sponsor will not be withheld when the Project Sponsor produces satisfactory evidence that the Project Sponsor is adequately protected by public liability and property damage insurance. The Project Sponsor also shall comply with all of the above requirements indemnifying and saving harmless the county, town, or municipality in which the improvement is made and each of them separately or jointly and officers and employees.

The State shall not be liable to the Project Sponsor for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Project Sponsor for damages or delays resulting from injunctions or other restraining orders obtained by third parties except where the damage or delay is a direct

result of an injunction or restraining order obtained by a citizen's action alleging violations of 42 U.S.C. 4331 - 4332, 23 U.S.C. 138 or Public Law 91-646.

It shall be the Project Sponsor's responsibility to see that all of the contract operations incident to the completion of the contract are covered by public liability and property damage liability insurance so the general public or any representative of the contracting authority may have recourse against a responsible party for injuries or damages sustained as a result of the contract operations. This requirement shall apply with equal force, whether the work is performed by the Project Sponsor, by a subcontractor or by anyone directly or indirectly employed by either of them.

It is the express intent of this provision that a Project Sponsor that is a county, town or municipality may and should contractually pass on this entire Responsibility for Damage and Tort Claims provision to any public and private entities with which it may subcontract any of the work covered by this agreement.

- a. The word, "surety" in the above paragraphs refers to the issuer of a payment and performance bond under section 779.14 Wis. Stats. (1997 - 98).
  - b. Nothing in this section should be construed as a waiver of any statutory defenses that may be available to any governmental party.
29. The Project Sponsor, also known as the primary participant, as that term is defined in 49 CFR Part 29, certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
  - b. Have not, within a three year period preceding this State/Municipal Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;
  - d. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default; and
  - e. That all grantees, contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 -- Covered Transactions, have certified in writing that neither they or their principals are presently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have voluntarily been excluded from participating in this or any other Federal, state or local transaction by any Federal, State or local department, agency or official.
30. Contract Modification: This State/Municipal Agreement can only be modified by written instruments duly executed by both parties. No term or provision of neither this State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally.
31. Binding Effects: All terms of this State/Municipal Agreement shall be binding upon and inure to the benefits of the legal representatives, successors and executors. No rights under this State/Municipal Agreement may be transferred to a third party. This State/Municipal Agreement creates no third- party beneficiary rights to be held by any person or entity who is not a party to this State/Municipal Agreement. Nor does it accord on any non-party the right of enforcement.

32. Choice of Law and Forum: This State/Municipal Agreement shall be interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties hereby expressly agree that the terms contained herein and in any deed executed pursuant to this State/Municipal Agreement are enforceable by an action in the Circuit Court of Dane County, Wisconsin.

33. Nothing in this State/Municipal Agreement shall be construed as a waiver of the State's sovereign immunity.

#### **PROJECT FUNDING CONDITIONS**

34. Non-Appropriation of Fund: With respect to any payment required to be made by the Department under this State/Municipal Agreement, the parties acknowledge the Department's authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either the Project Sponsor or the Department may terminate this State/Municipal Agreement after providing written notice not less than thirty (30) days before termination.

35. Maintenance of Records: During the term of performance of this State/Municipal Agreement, and for a period not less than three years from the date of final payment to the Project Sponsor, records and accounts pertaining to the performance of this State/Municipal Agreement are to be kept available for inspection and audit by representatives of the Department. The Department reserves the right to audit and inspect such records and accounts at any time. The Project Sponsor shall provide appropriate accommodations for such audit and inspection.

In the event that any litigation, claim or audit is initiated prior to the expiration of said records maintenance period, the records shall be retained until such litigation, claim or audit involving the records is complete.

Records pertaining to the performance of the State/Municipal Agreement are subject to disclosure pursuant to Wis. Stats. Sec. 19.31 et seq., and shall be preserved by the Project Sponsor.

36. The Project Sponsor agrees to the following FY 2018-2022 CMAQ program project funding conditions:

- a. ID 4291-00-01: Design and any related review costs are funded with 80% federal funding when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap. This includes Plan Development and State Review. The work includes project review, approval of required reports and documents and processing the final PS&E document for award of the contract.
- b. ID 4291-00-71: Construction:
  - i. Costs for traffic signal radio communication and video detection installation and any related review costs are funded with 80% federal funding, when the Project Sponsor agrees to provide the remaining 20%. These costs are subject to the cumulative project federal funding cap.
- c. The maximum participation of federal funding will be limited to 80% of the actual eligible project cost or the total cost distribution of CMAQ program funds shown on page 2 of this State/Municipal Agreement, whichever is less. The project federal funding maximum of \$533,520 is cumulative for all federal funded project phases.

[End of Document]

**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

---

**ITEM DESCRIPTION:** Res. No. 168-18-19 by Alderperson Wolf authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (dated January 3, 2019), I.D. 4291-00-01\_71, to update nine signalized intersections along the 1.63 mile Taylor Drive corridor from Superior Avenue to Indiana Avenue.

---

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

---

**REPORT DATE:** January 24, 2019

**MEETING DATE:** January 29, 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:** The State Municipal Agreement reflects the cost for all entities participating in the project. The estimated cost for updating nine signalized intersections along the Taylor Drive corridor from Superior Avenue to Indiana Avenue for the proposed sum of \$666,900.00 of which the Federal Share is \$533,520.00 and of which the City of Sheboygan's share is \$133,380.00. The proposed project includes adding radio communication infrastructure, installing video detection, remove outdated loop detectors, conduct 13-hour intersection turning movement counts, preparation of traffic signal coordination timing plans, and retiming and coordinating traffic signals.

**STAFF COMMENTS:** The analysis and design for updating nine signalized intersections along the Taylor Drive corridor from Superior Avenue to Indiana Avenue will start in 2019. These nine roadways are scheduled for signalized updating construction in the Spring of 2021 with the work being completed in the Fall of 2021.

**ACTION REQUESTED:** Motion to recommend the Common Council approve Res. No. 168-18-19 authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (dated January 3, 2019), I.D. 4291-00-01\_71, to update nine signalized intersections along the 1.63 mile Taylor Drive corridor from Superior Avenue to Indiana Avenue.

**ATTACHMENTS:**

- I. Res. No. 168-18-19
- II. State Municipal Agreement dated January 3, 2019

**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

---

**ITEM DESCRIPTION:** Res. No. 169-18-19 by Alderperson Wolf and Sorenson authorizing a transfer of appropriations in the 2019 Budget.

---

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

---

**REPORT DATE:** January 22, 2019      **MEETING DATE:** January 29, 2019

---

**FISCAL SUMMARY:**

|                      |                  |                             |     |
|----------------------|------------------|-----------------------------|-----|
| Budget Line Item:    | From: General    | Budget Summary:             | N/A |
| \$15,000.00 transfer | Fund Contingency | Budgeted Expenditure:       | N/A |
|                      | Fund Balance     | Budgeted Revenue:           | N/A |
|                      | 10199020-810103  | <b>STATUTORY REFERENCE:</b> |     |
|                      | To: Contractor   | Wisconsin Statutes:         | N/A |
|                      | Services         | Municipal Code:             | N/A |
|                      | 40033170-521900  |                             |     |

---

**BACKGROUND / ANALYSIS:** The purpose of this request is to establish appropriations for emergency bridge repairs that periodically arise due to unforeseen circumstances. The 8<sup>th</sup> Street Bridge, which was constructed in 1996, underwent a major overhaul in 2017. The scope of the project did not include replacing the large pumps and motors but involved extensive testing by an outside agency. All pumps and motor passed according to specs. The appropriations will be used for hydraulic pump removal, inspection, re-installation, and start-up.

**STAFF COMMENTS:** The Department of Public Works has received a quote from MFP Automation Engineering to remove the bad hydraulic pump from the system and bring it back to MFP Automation Engineering in Grand Rapids, Michigan for inspection. Once the pump has been inspected the correct course of action for repairs can be determined and quoted separately. When the repairs are completed MFP will transport the pump back to Sheboygan for re-installation and start-up. The \$15,000.00 quote from MFP includes pump removal, inspection, re-installation, and start-up. Pump repairs will be determined and quoted separately.

**ACTION REQUESTED:** Motion to recommend the Common Council approve Res. No. 169-18-19 authorizing a transfer of appropriations in the 2019 Budget.

**ATTACHMENTS:**

- I. Res. No. 169-18-19
- II. Quote from MFP Automation Engineering

III

A.7

Res. No. 169 - 18 - 19. By Alderpersons Wolf and Sorensen.  
January 21, 2019.

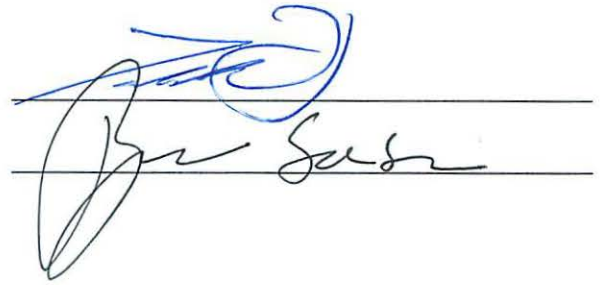
A RESOLUTION to authorize a transfer of appropriations in the 2019 Budget.

RESOLVED: That the Finance Director be and is hereby authorized and directed to make the following transfer of appropriations in the 2019 Budget for purposes of:

Establishing appropriations for emergency bridge repairs that periodically arise during the year due to unforeseen circumstances:

| <u>FROM</u>              | <u>TO</u>           | <u>AMOUNT</u> |
|--------------------------|---------------------|---------------|
| General Fund             | Contractor Services | \$15,000.00   |
| Contingency Fund Balance | 40033170-521900     |               |
| 10199020-810103          |                     |               |

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



Full-system solutions. Total flexibility.  
**Quotation**

13 December 2018

Quote # 121318TJM

To: CITY OF SHEBOYGAN  
ENGINEERING DIVISION  
SHEBOYGAN, WI

Attn: Kevin Jump

Thank you for the opportunity to quote the following.

**8<sup>th</sup> STREET BRIDGE HYDRAULIC PUMP REMOVAL / INSPECTION / RE-INSTALLATION:**

MFP Automation Engineering will send two technicians to the 8<sup>th</sup> Street bridge in Sheboygan, WI to remove the bad hydraulic pump from the system and bring back to MFP in MI for inspection. Once the pump has been inspected we can then come up with the correct course of action for repairs (to be quoted separately). Once the pump has been repaired MFP will transport the pump back to Sheboygan for re-installation and start up.

Pump Removal / Inspection / Re-Installation / Start-up ----- \$15,000.00

Pump Repairs ----- \$TBD based on inspection.

**Terms**  
Net 30

**Delivery**  
3-4 weeks ARO

**F.O.B.**  
Grand Rapids, MI

**Shipping Point**  
Grand Rapids, MI.

Tim Molis  
BSME / CFPS  
Account Manager  
Office 616-538-5700  
Cell 616-446-1571  
[tmolis@mifp.com](mailto:tmolis@mifp.com)

**APPROVED FOR PAYMENT**  
  
**SIGNATURE**  
**40033170-521900**  
**ACCOUNT NUMBER**

ACCOUNT NUMBER

SERVICE

REMOVED FOR PAYMENT

## Offer of Sale

The items described in this document are hereby offered for sale at prices to be established by Michigan Fluid Power, Inc.. This offer and its acceptance by any customer ("Buyer") shall be governed by all of the following Terms and Conditions. Buyer's order for any item described in its document, when communicated to Michigan Fluid Power, Inc., ("Seller")

verbally or in writing, shall constitute acceptance of this offer.

**1. Terms and Conditions of Sale:** All descriptions, quotations, proposals, offers, acknowledgments, acceptances and sales of Seller's products are subject to and shall be governed exclusively by the terms and conditions stated herein. Buyer's acceptance of any offer to sell is limited to these terms and conditions. Any terms or conditions in addition to, or inconsistent with those stated herein, proposed by

Buyer in any acceptance of an offer by Seller, are hereby objected to. No such additional, different or inconsistent terms and conditions shall become part of the contract between Buyer and Seller unless expressly accepted in writing by Seller. Seller's acceptance of any offer to purchase by Buyer is expressly conditional upon buyer's assent to all the terms and conditions stated herein, including any terms in addition to, or inconsistent with those contained in Buyer's offer. Acceptance of Seller's products shall in all events constitute such assent. agreed, Seller shall have the right to alter, discard or otherwise dispose of any special tooling or other property in its sole discretion at any time.

**2. Payment:** Payment shall be made by Buyer net 30 days form the date of delivery of the items purchased hereunder. Amounts not timely paid shall bear interest at the rate of 1-1/2% for each month or a portion thereof that Buyer is late in making payment. Any claims by Buyer for omissions or shortages in a shipment shall be waived unless Seller receives notice thereof within 30 days after Buyer's receipt of the shipment.

**3. Delivery:** Unless otherwise provided on the face hereof, delivery shall be made F.O.B. Seller's plant. Regardless of the method of delivery, however, risk of loss shall pass to Buyer upon Seller's delivery to a carrier. Any delivery dates shown are approximate only and Seller shall have no liability for any delays in delivery.

**4. Warranty:** Seller warrants that the items sold hereunder shall be free from defects in material or workmanship for a period of 365 days from the date of shipment to Buyer, or 2,000 hours of use, whichever expires first. THIS WARRANTY COMPRISES THE SOLE AND ENTIRE WARRANTY PERTAINING TO ITEMS PROVIDED HEREUNDER, SELLER MAKES NO OTHER WARRANTY, GUARANTEE, OR REPRESENTATION OF ANY KIND WHATSOEVER. ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR PURPOSE, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, TRADE USAGE, OR COURSE OF DEALING ARE HEREBY DISCLAIMED. NOT WITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER ON ITEMS BUILT OR ACQUIRED WHOLLY OR PARTIALLY, TO BUYER'S DESIGNS OR SPECIFICATIONS.

**5. Limitation of Remedy:** SELLER'S LIABILITY ARISING FROM OR IN ANYWAY CONNECTED WITH THE ITEMS SOLD OR THIS CONTRACT SHALL BE LIMITED EXCLUSIVELY TO REPAIR OR REPLACEMENT OF THE ITEMS SOLD OR REFUND OF THE PURCHASE PRICE PAID BY BUYER, AT SELLER'S SOLE OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST

PROFITS ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ITEMS SOLD HEREUNDER, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY.

**6. Changes, Reschedules and Cancellations:** Buyer may request to modify the designs or specifications for the items sold hereunder as well as the quantities and delivery dates thereof, or may request to cancel all or part of this order, however, no such requested modification or cancellation shall become part of the contract between Buyer and Seller unless accepted by Seller in a written amendment to this Agreement. Acceptance of any such requested modification or cancellation shall be at Seller's discretion, and shall be upon such terms and conditions as Seller may require.

**7. Special Tooling:** A tooling charge may be imposed for any special tooling, including without limitation, dies, fixtures, molds and patterns, acquired to manufacture items sold pursuant to this contract. Such special tooling shall be and remain Seller's property notwithstanding payment of any charges therefore by Buyer. In no event will Buyer acquire any interest in apparatus belonging to Seller which is utilized in the manufacture of the items sold hereunder, even if such apparatus has been specially converted or adapted for such manufacture and notwithstanding any

charges paid by Buyer therefore. Unless otherwise

**8. Buyer's Property:** Any designs, tools, patterns, materials, drawings, confidential information or equipment furnished by Buyer of any other items which become Buyer's property, may be considered obsolete and may be destroyed by Seller after two (2) consecutive years have elapsed without Buyer placing an order for the items which are manufactured using such property. Seller shall not be responsible for any loss or damage to such property while it is in Seller's possession or control.

**9. Taxes:** Unless otherwise indicated on the face hereof, all prices and charges are exclusive of excise, sales, use, property, occupational or like taxes which may be imposed by any taxing authority upon the manufacture, sale or delivery of the items sold hereunder. If any such taxes must be paid by Seller or Seller is liable for the collection of such tax, the amount thereof shall be in addition to the amounts for the items sold. Buyer agrees to pay all such taxes or to reimburse Seller therefore upon receipt of its invoice. If Buyer claims exemption from any sales, use or other tax imposed by any taxing authority, Buyer shall save Seller harmless from and against any such tax, together with any interest or penalties thereon which may be assessed if the items are held to be taxable.

**10. Indemnity For Infringement of Intellectual Property Rights:** Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as provided in this Part 10. Seller will defend and indemnify Buyer against allegations of infringement of U.S. patents, U.S. trademarks, copyrights, trade dress and trade secrets (hereinafter Intellectual Property Rights). Seller will defend at its expense and will pay the cost of any settlement or damages awarded in an action brought against Buyer based on an allegation that an item sold pursuant to this contract infringes the Intellectual Property Rights of a third party. Seller's obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within ten (10) days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defense of any allegations or actions including all negotiations for settlement or compromise. If an item sold hereunder is subject to a claim that it infringes the Intellectual Property Rights of a third party, Seller may, at its sole expense and option, procure for Buyer the right to continue using said item, replace or modify said item so as to make it noninfringing, or offer to accept return of said item and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to items delivered hereunder for which the designs are specified in whole or part by Buyer, or infringements resulting from the modification, combination or use in a system of any item sold hereunder. The foregoing provisions of this Part 10 shall constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of intellectual Property Rights. If a claim is based on information provided by Buyer or if the design for an item delivered hereunder is specified in whole or part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

**11. Force Majeure:** Seller does not assume the risk of and shall not be liable for delay or failure to perform any of Seller's obligations by reason of circumstances beyond the reasonable control of Seller (hereinafter "Events of Force Majeure"). Events of Force Majeure shall include without limitation, accidents, acts of God, strikes or labor disputes, acts, laws, rules or regulations of any government or government agency, fires, floods, delays or failures in delivery of carriers or suppliers, shortages of materials and any other cause beyond Seller's control.

**12. Entire Agreement/Governing Law:** The terms and conditions set forth herein, together with any amendments, modifications and any different terms or conditions expressly accepted by Seller in writing, shall constitute the entire Agreement concerning the items sold, and there are no oral or other representations or agreements which pertain thereto. This Agreement shall be governed in all respects by the law of the State of Michigan. No actions arising out of the sale of the items sold hereunder or this agreement may be brought by either party more than two (2) years after the cause of action accrues.

org -  
= rollup

1710 Wan Sabay  
1710 Sabay  
org then  
rollup

III

48

Res. No. 170 - 18 - 19. By Alderpersons Wolf and Sorensen.  
January 21, 2019.

A RESOLUTION consenting to the construction of a new spectator deck at Wildwood/Sheboygan A's Mary Testwuide Knauf Baseball Park.

WHEREAS, the City is the owner of Wildwood Baseball Park, which is used extensively by Sheboygan Athletic Club, Inc. ("Sheboygan A's") for baseball activities pursuant to an Agreement between the City and the Sheboygan A's ("Agreement"); and

WHEREAS, pursuant to the Agreement, the Sheboygan A's must obtain the City's consent prior to constructing any construction, alteration, addition, improvement, or repair to Mary Testwuide Knauf Baseball Park (the "Park") which is estimated to cost in excess of \$1,000; and

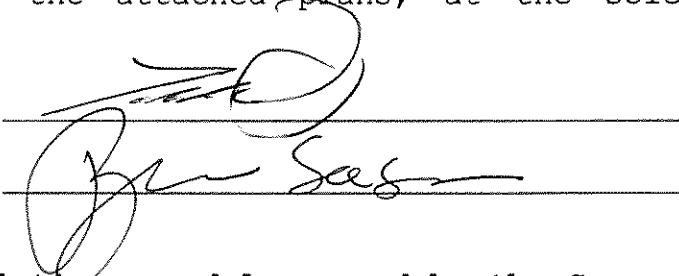
WHEREAS, the Sheboygan A's desires to construct a new spectator deck at its expense; and

WHEREAS, the Sheboygan A's have worked with Abacus Architects to obtain a design for that new spectator deck, a copy of which is attached to this Resolution and incorporated herein by reference; and

WHEREAS, the construction of a new spectator deck is in the best interests of the City and the Sheboygan A's.

NOW, THEREFORE, BE IT RESOLVED: That the City, pursuant to Section F(5)(1) of the Agreement, consents to the construction of a new spectator deck in substantially similar form to the attached plans, at the sole expense of the Sheboygan A's.

Public works

  
\_\_\_\_\_  
Ben Sorenson

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

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

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

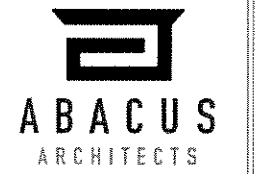


**GENERAL PLAN NOTES**

- CONSTRUCTION IS TO BE IN COMPLIANCE WITH ALL GOVERNING CODES, ORDINANCES, AND STANDARDS.
- THE INSTALLATION AND EXECUTION OF ALL PRODUCTS AND MATERIALS SHALL BE IN ACCORDANCE WITH THE MANUFACTURER'S STANDARDS, INSTRUCTIONS AND SPECIFICATIONS.
- ALL EXISTING CONDITIONS AND DIMENSIONS SHOWN ON PLANS ARE TO BE FIELD VERIFIED PRIOR TO DEMOLITION AND CONSTRUCTION.
- EACH TRADE IS RESPONSIBLE FOR THE DEMOLITION IN THEIR AREA OF EXPERTISE.

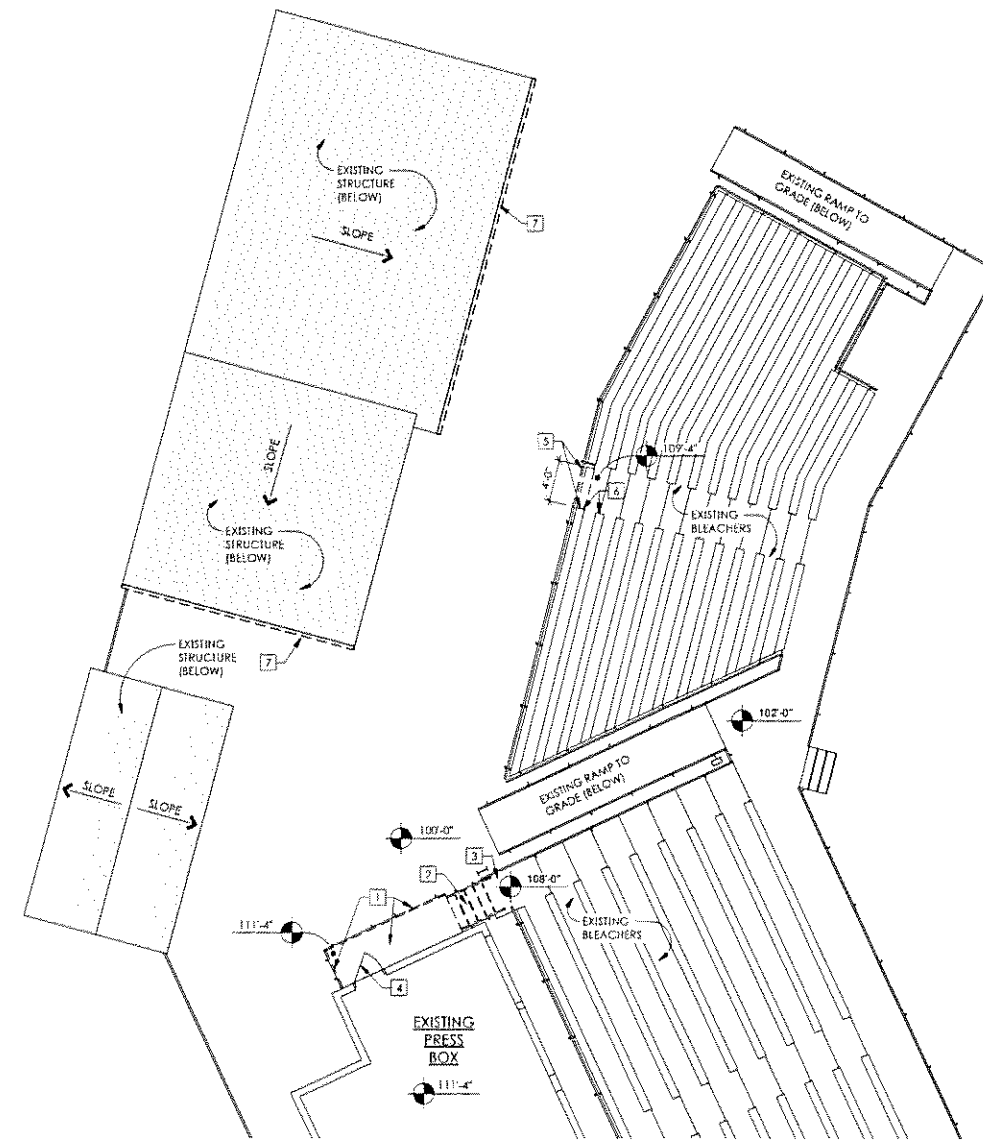
**DEMOLITION PLAN KEYNOTES**

| NO. | DESCRIPTION  |
|-----|--|
| 1   | REMOVE EXISTING ELEVATED DECK, SUPPORT COLUMNS, GUARDS AND ALL ASSOCIATED CONSTRUCTION - PATCH AND REPAIR EXISTING ADJACENT CONSTRUCTION AS NEEDED FOR NEW PLAN.   |
| 2   | TEMPORARILY REMOVE EXISTING STAIR & ALL ASSOCIATED EQUIPMENT AND SALVAGE FOR RE-USE IN EXISTING LOCATION.  |
| 3   | EXISTING BLEACHER CONSTRUCTION AND STAIR LANDING TO REMAIN.  |
| 4   | EXISTING SECOND FLOOR PRESS BOX DOOR AND WINDOWS TO REMAIN.  |
| 5   | REMOVE SEGMENT OF EXISTING GUARD RAIL AND BLEACHER SEAT AS NECESSARY FOR INSTALLATION OF NEW STAIR - CAP AND REPAIR ADJACENT CONSTRUCTION TO REMAIN AS NECESSARY. SEE NEW PLAN FOR ADDITIONAL INFORMATION. |
| 6   | ALIGN END OF TOP BLEACHER SEAT, FOLLOWING REMOVAL OF SEGMENT, WITH EXISTING BLEACHER SEATS BELOW ON SOUTH SIDE OF AISLE  |
| 7   | REMOVE EXISTING GUTTER AND DOWNSPOUT   |



REVISIONS:

NOTICE TO BIDDERS  
 BIDDERS SHALL REVIEW ALL DRAWINGS AND SPECIFICATION SECTIONS TO DETERMINE THE IMPACT OF OTHER SECTIONS OF WORK ON THEIR OWN WORK.  
 © 2018 ABACUS ARCHITECTS, INC.



**DEMOLITION PLAN**  
 SCALE: 1/8" = 1'-0"  
 N  
 E  
 S

ISSUE DATE: 12/18/2018  
 NEW SPECTATOR DECK FOR:  
**WILDWOOD PARK**

2276 NEW JERSEY, SHEBOYGAN, WI 53081  
 1135A MICHIGAN AVE. SHEBOYGAN, WI 53081 | (920) 452-4444 | 225 EAST ST. PAUL AVE. MILWAUKEE, WI 53202 | (414) 837-6450

PRELIMINARY - NOT FOR CONSTRUCTION

DRAWN BY: JAM  
 CHECKED BY: Checker

**A**  
**301**

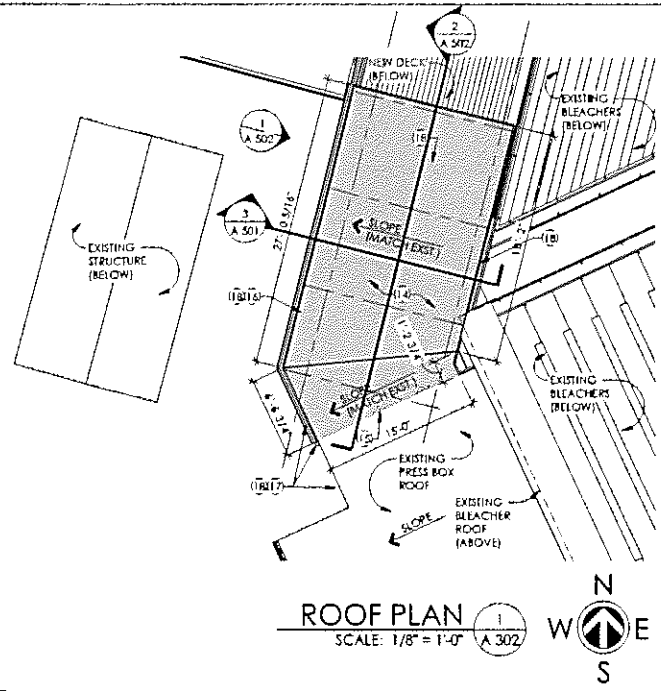
PROJ. NO. 2015-79

**GENERAL PLAN NOTES**

- CONSTRUCTION IS TO BE IN COMPLIANCE WITH ALL GOVERNING CODES, ORDINANCES, AND STANDARDS.
- THE INSTALLATION AND EXECUTION OF ALL PRODUCTS AND MATERIALS SHALL BE IN ACCORDANCE WITH THE MANUFACTURER'S STANDARDS, INSTRUCTIONS AND SPECIFICATIONS.
- ALL EXISTING CONDITIONS AND DIMENSIONS SHOWN ON PLANS ARE TO BE FIELD VERIFIED PRIOR TO DEMOLITION AND CONSTRUCTION.
- EACH TRADE IS RESPONSIBLE FOR THE DEMOLITION IN THEIR AREA OF EXPERTISE.

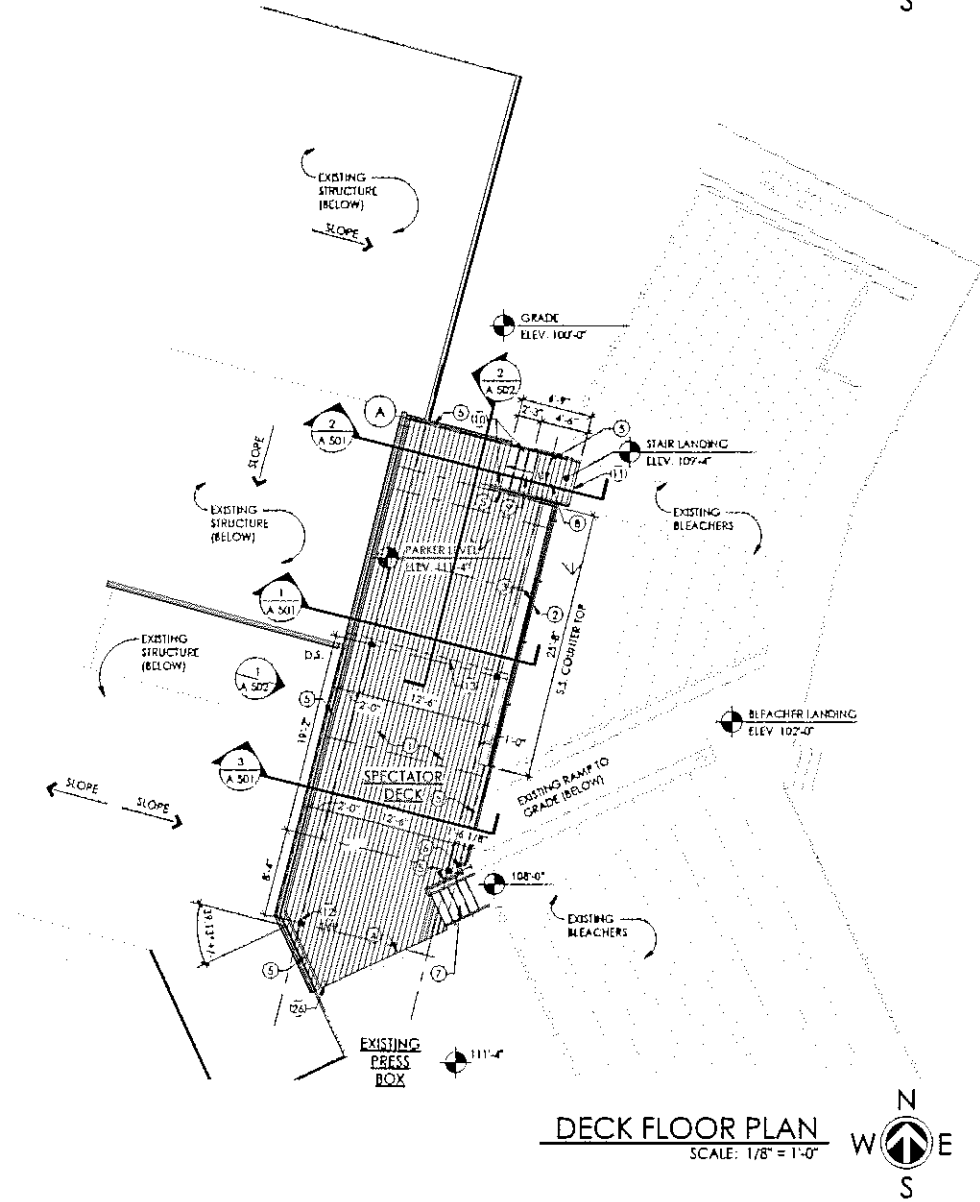
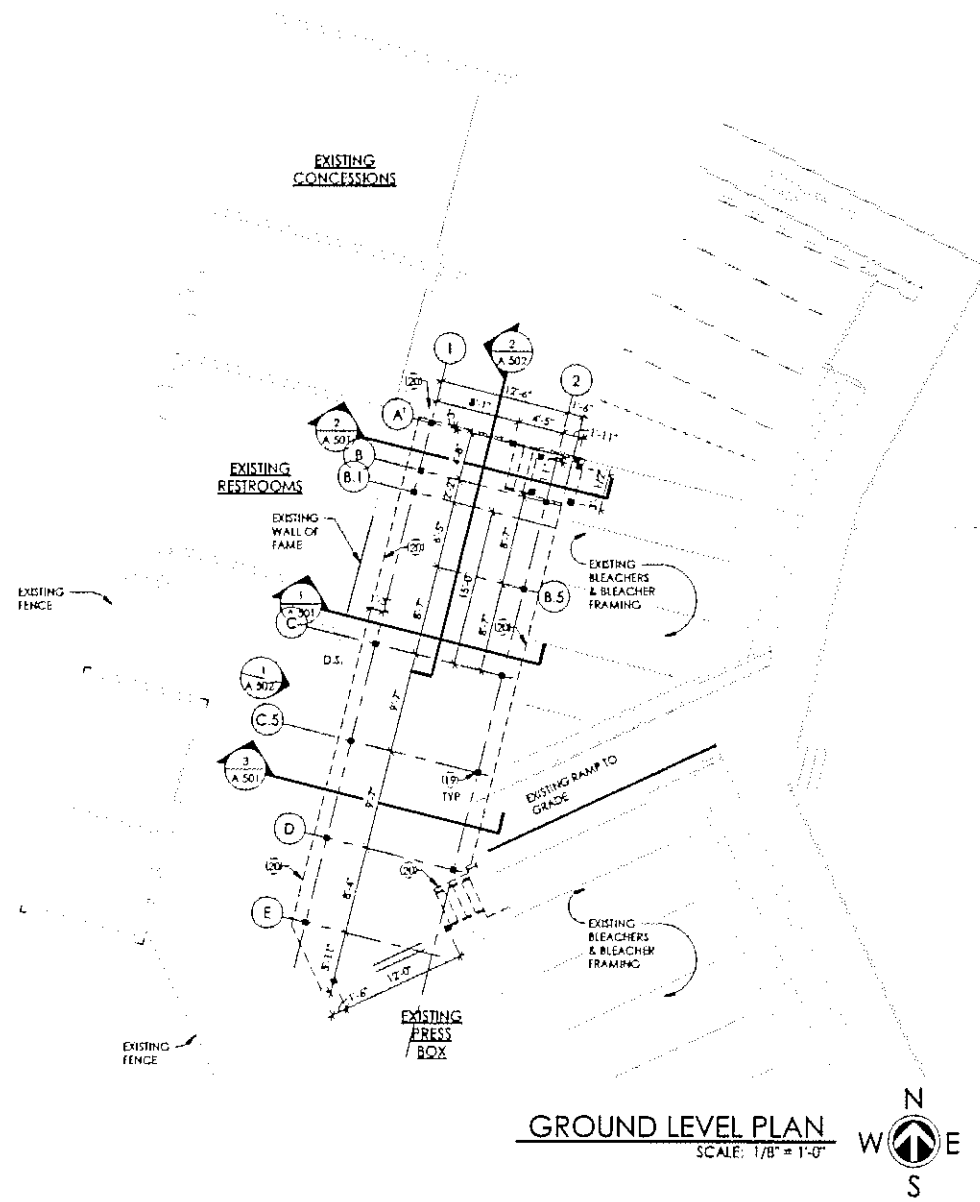
**ROOF SYMBOLS**

- SLOPED STRUCTURE ROOF DRAINAGE  
ROOF CONSTRUCTION VARIES
- FILLED REGION DENOTES AREA OF NEW ROOF CONSTRUCTION



**FLOOR PLAN KEYNOTES**

| NO. | DESCRIPTION  |
|-----|--|
| 1   | COMPOSITE DECKING ON PRESERVATIVE TREATED WOOD JOISTS. SEE STRUCTURAL DRAWINGS.  |
| 2   | EXISTING GUARD AT TOP OF BLEACHERS TO REMAIN.  |
| 3   | ALIGN NEW DECK WITH BACK SIDE OF EXISTING GUARD - NOTCH DECK CONSTRUCTION AROUND EXISTING GUARD SUPPORTS AS NECESSARY.   |
| 4   | SECURE DECK CONSTRUCTION TO EXISTING PRESS BOX STRUCTURE. SEE STRUCTURAL DRAWINGS.   |
| 5   | NEW 1 1/2" O.D. PAINTED STEEL GUARD RAIL (42" HIGH) WITH 1" HORIZONTAL INTERMEDIATE STEEL RAILS. GUARD SHALL NOT HAVE OPENINGS WHICH ALLOW PASSAGE OF A 4" SPHERE FROM THE WALKING SURFACE TO THE REQUIRED GUARD HEIGHT PER IBC 1015.4. THE TRIANGULAR OPENINGS AT THE OPEN SIDES OF A STAIR FORMED BY THE RISER, TREAD AND BOTTOM RAIL SHALL NOT ALLOW PASSAGE OF A SPHERE 6" IN DIAMETER PER IBC 1015.4. EXCEPTION 2. GUARD MUST BE DESIGNED TO RESIST A LOAD OF 50 POUNDS PER LINEAR FOOT PER IBC 1607.8.1 AND DESIGNED TO RESIST A SINGLE CONCENTRATED LOAD OF 200 POUNDS APPLIED IN ANY DIRECTION PER IBC 1607.8.1.1. REFER TO SECTIONS AND FOR ADDITIONAL INFORMATION. |
| 6   | NOTCH DECK & GUARD CONSTRUCTION AROUND EXISTING STRUCTURAL COLUMN AS NECESSARY.  |
| 7   | REINSTALL SALVAGED STAIR AND ALL ASSOCIATED EQUIPMENT IN EXISTING LOCATION.  |
| 8   | STAIR LANDING ELEVATION TO MATCH HEIGHT OF TOP BLEACHER TREAD. CONSTRUCTION TO BE COMPOSITE DECKING ON PRESERVATIVE TREATED WOOD FRAMING. SEE STRUCTURAL DRAWINGS.   |
| 9   | PREFABRICATED METAL STAIR WITH 4 EQUAL RISERS INCLUDING TOP STEP TO DECK SURFACE (7" MAX.) - SECURED TO DECK & LANDING.  |
| 10  | 1 1/2" O.D. PAINTED STEEL HANDRAILS (36" HIGH) ATTACHED TO ADJACENT GUARD WITH HANDRAIL EXTENSIONS PER IBC 1014.6. HANDRAIL MUST BE DESIGNED TO RESIST A LOAD OF 50 POUNDS PER LINEAR FOOT PER IBC 1607.8.1. AND DESIGNED TO RESIST A SINGLE CONCENTRATED LOAD OF 200 POUNDS APPLIED IN ANY DIRECTION PER IBC 1607.8.1.1. SEE SECTIONS FOR ADDITIONAL INFORMATION.   |
| 11  | ALIGN EDGE OF STAIR LANDING WITH BACK EDGE OF TOP BLEACHER TREAD AND SECURE TO EXISTING BLEACHERS. SEE STRUCTURAL DRAWINGS.  |
| 12  | COLUMN TO SUPPORT EXTENDED ROOF ABOVE. SEE STRUCTURAL DRAWINGS FOR EXACT COLUMN DESIGN AND LOCATIONS. TYPICAL.   |
| 13  | DASHED LINE DENOTES PERIMETER OF ROOF EXTENSION ABOVE. SEE ROOF PLAN.  |
| 14  | ASPHALT SHINGLES OVER # 15 ROOFING FLET ON 3/4" OSB SHEATHING ON WOOD STRUCTURE. SEE STRUCTURAL DRAWINGS.  |
| 15  | REMOVE EXISTING FACIA WHERE NECESSARY FOR NEW ROOF EXTENSION AND TIE NEW ROOF CONSTRUCTION INTO EXISTING AS NEEDED TO PROVIDE SEAMLESS TRANSITION TO THE FULLEST EXTENT POSSIBLE.  |
| 16  | NEW PREFABRICATED ALUMINUM GUTTER - STYLE & FINISH TO MATCH EXISTING.  |
| 17  | REMOVE EXISTING GUTTER AND DOWNSPOUT AS NECESSARY AND REPLACE WITH NEW PREFABRICATED ALUMINUM GUTTER & DOWNSPOUT AT ROOF EXTENSION AND ADJACENT LOCATION - STYLE & FINISH TO MATCH EXISTING.   |
| 18  | NEW FACIA CONSTRUCTION TO MATCH EXISTING - PROVIDE FLASHING AT ROOF EDGES AND GU.  |
| 19  | COLUMNS FOR DECK AND STAIR LANDING ABOVE - LOCATIONS SHOWN AND DIMENSIONS ARE FOR REFERENCE ONLY. SEE STRUCTURAL DRAWINGS FOR EXACT LOCATIONS AND SPECIFICATIONS.  |
| 20  | DASHED LINE DENOTES PERIMETER OF DECK AND STAIR LANDING ABOVE.   |
| 26  | ROUGH IN HOT/ COLD WATER AND DRAIN FOR FUTURE SINK   |



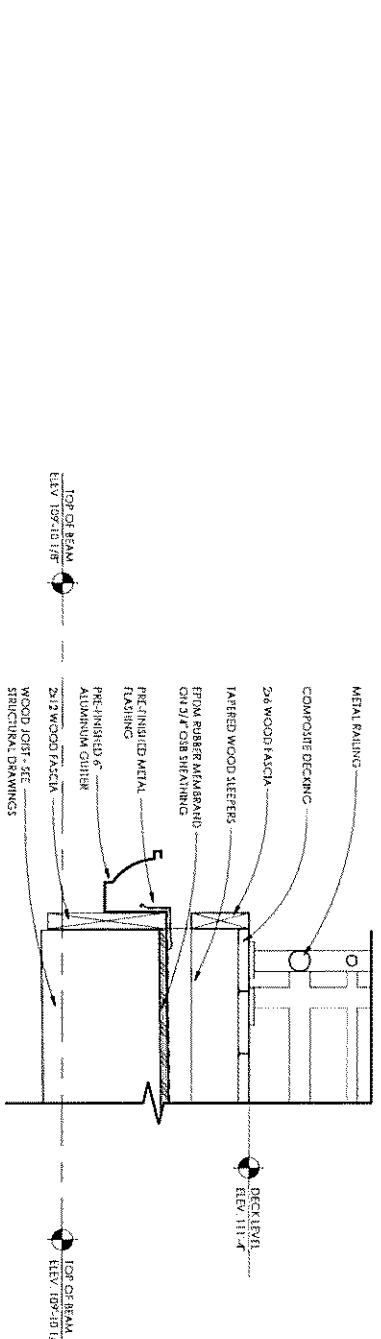
REVISIONS:

NOTICE TO READERS  
READERS SHALL REVIEW ALL DRAWINGS AND SPECIFICATION SECTIONS TO DETERMINE THE IMPACT OF OTHER SECTIONS OF WORK ON THEIR OWN WORK.  
© 2018 ABACUS ARCHITECTS, LLC

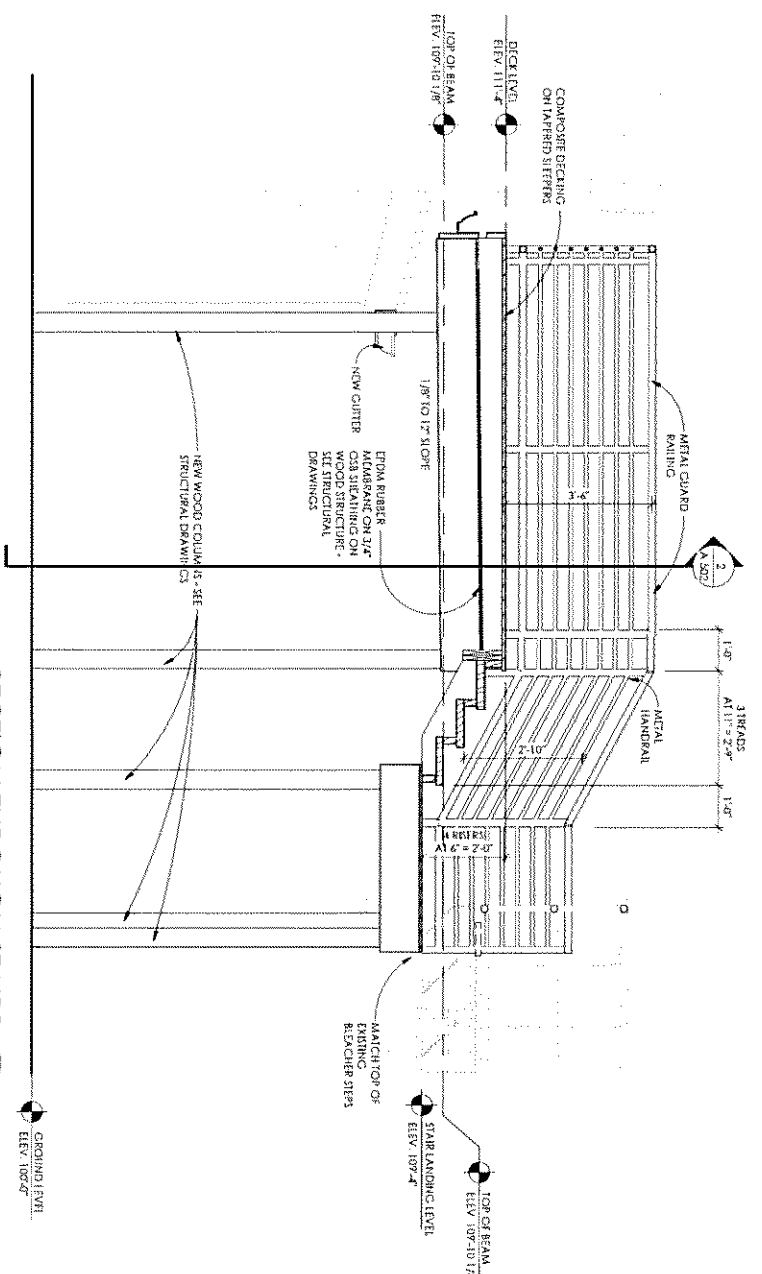
ISSUE DATE: 12/18/2018  
NEW SPECTATOR DECK FOR:  
**WILDWOOD PARK**  
2276 NEW JERSEY, SHEBOYGAN, WI 53081  
1135A MICHIGAN AVE. SHEBOYGAN, WI 53081 | (202) 452-4444 | 225 EAST ST. PAUL AVE. MILWAUKEE, WI 53202 | (414) 837-6450

DRAWN BY: JAM  
CHECKED BY: Checker  
**A 302**  
PROJ. NO. 2015-79

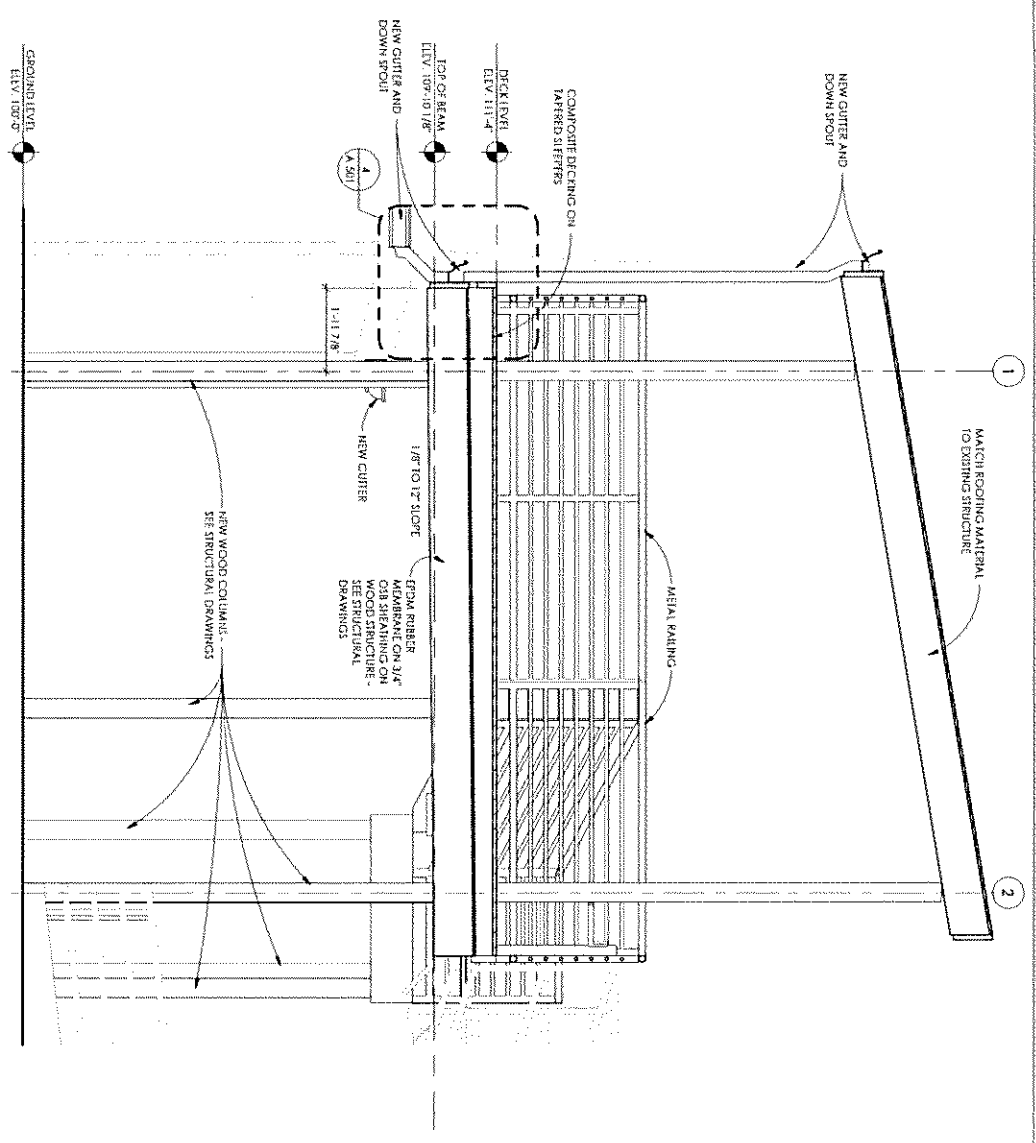
PRELIMINARY - NOT FOR CONSTRUCTION



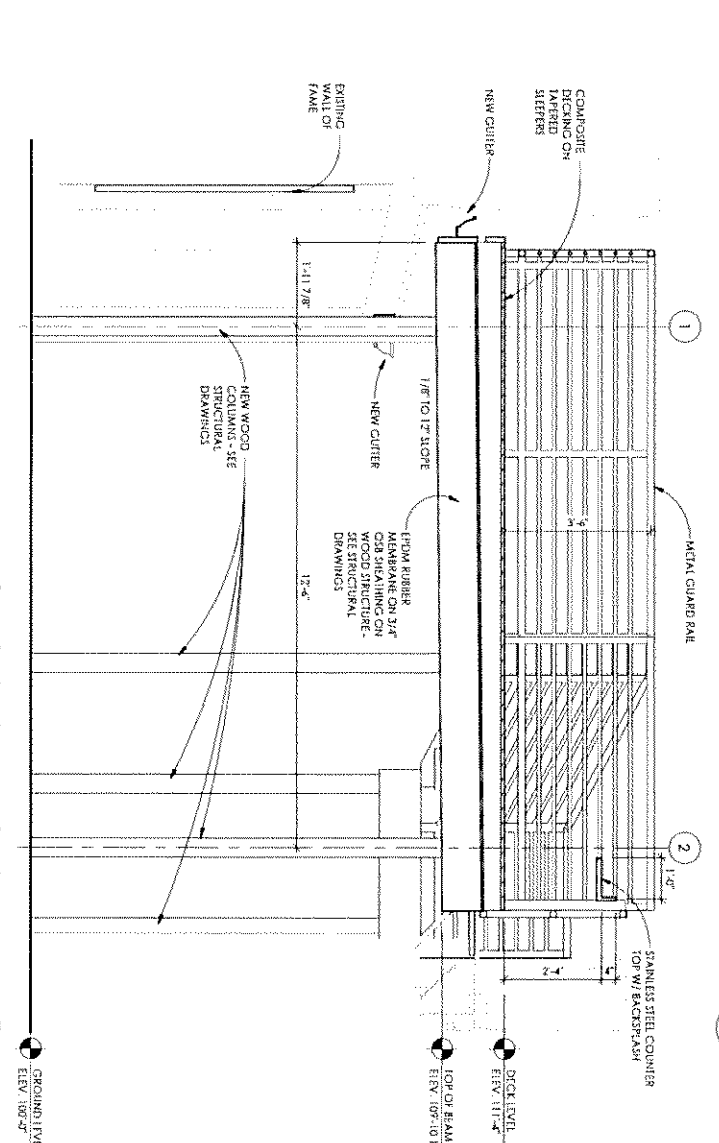
**GUTTER DETAIL**  
SCALE: 1/2" = 1'-0"  
A.501



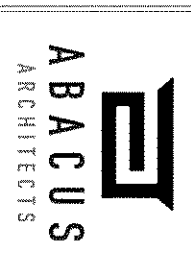
**SECTION THROUGH STAIRS**  
SCALE: 1/2" = 1'-0"  
A.501



**SECTION THROUGH ROOF**  
SCALE: 1/2" = 1'-0"  
A.501



**TYPICAL SECTION THROUGH DECK**  
SCALE: 1/2" = 1'-0"  
A.501



REVISIONS:

DESIGNER'S RESPONSIBILITY: THE ARCHITECT SHALL REVIEW AND APPROVE ALL MATERIALS AND SPECIFICATIONS SUBMITTED TO OBTAIN THE IMPACT OF OTHER SECTIONS OF WORK ON OTHER DRAWINGS.  
© 2018 ABACUS ARCHITECTS, P.C.

ISSUE DATE: 12/18/2018  
**NEW SPECTATOR DECK FOR:  
WILDWOOD PARK**

2276 NEW JERSEY, SHEBOYGAN, WI 53081

1135A MICHIGAN AVE. SHEBOYGAN, WI 53081 | (920) 452-4444 | 225 EAST ST. PAUL AVE. MILWAUKEE, WI 53202 | (414) 837-6450

**PRELIMINARY - NOT FOR CONSTRUCTION**

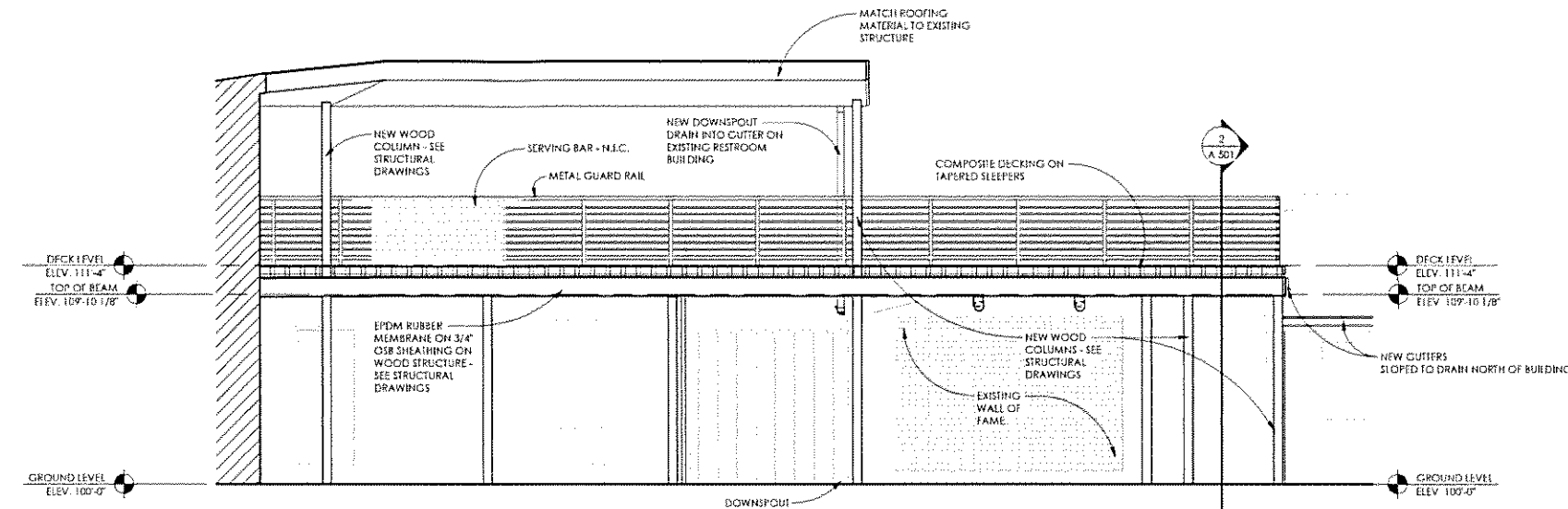
DRAWN BY: JAM  
CHECKED BY: Checker

**501**

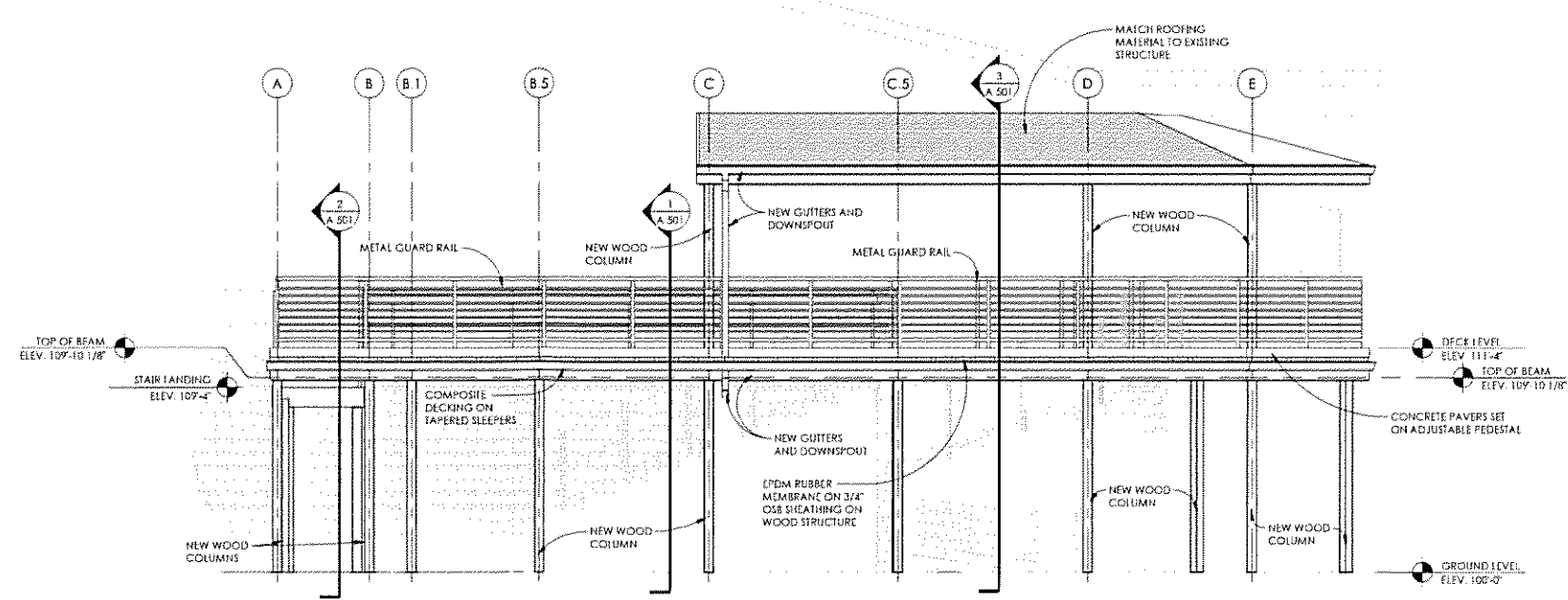
PROJ. NO. 2015-79

REVISIONS:

NOTICE TO BIDDERS  
BIDDERS SHALL REVIEW ALL DRAWINGS AND SPECIFICATION SECTIONS TO DETERMINE THE IMPACT OF OTHER SECTIONS OF WORK ON THEIR OWN WORK.  
© 2018 ABACUS ARCHITECTS, P.C.



**LONGITUDINAL SECTION**  
SCALE: 1/4" = 1'-0"  
2  
A 502



**WEST ELEVATION**  
SCALE: 1/4" = 1'-0"  
1  
A 502

ISSUE DATE: 12/18/2018  
NEW SPECTATOR DECK FOR:  
**WILDWOOD PARK**

1135A MICHIGAN AVE. SHEBOYGAN, WI 53081 (920) 452-4444 | 225 EAST ST. PAUL AVE. MILWAUKEE, WI 53202 (414) 837-6450

**PRELIMINARY - NOT FOR CONSTRUCTION**

DRAWN BY: Author

CHECKED BY: Checker

**A**  
**502**

PROJ. NO. 2015-79



ABACUS



**ABACUS**  
ARCHITECTS



**CITY OF SHEBOYGAN**

**REQUEST FOR MARINA, PARKS & FORESTRY CONSIDERATION**

---

**ITEM DESCRIPTION:** Res. No. 170-18-19 by Alderperson Wolf consenting to the construction of a new spectator deck at Wildwood/Sheboygan A's Mary Testwuide Knauf Baseball Park.

---

**REPORT PREPARED BY:** Joseph L. Kerlin, Superintendent of Parks and Forestry

---

**REPORT DATE:** January 23, 2019

**MEETING DATE:** January 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:** In 2016 the Sheboygan A's wrote a new long term master plan for Wildwood Baseball Park. The plan revolved around enhancing Wildwood as a destination for great entertainment filled with fun fan experience. The addition of social spectator deck was part of the Sheboygan A's long term plan.

**STAFF COMMENTS:** The Sheboygan A's have worked with Abacus Architects to obtain a design for the new spectator deck. They have fundraised and are working with a sponsor for the funding of the deck. The deck will be the sole expense of the Sheboygan A's. The DPW has worked closely with the Sheboygan A's through the planning process and design and commends the Sheboygan A's for their efforts in building the new spectator deck.

**ACTION REQUESTED:** Motion to recommend the Common Council approve Res. No. 170-18-19 consenting to the construction of a new spectator deck at Wildwood/Sheboygan A's Mary Testwuide Knauf Baseball Park.

**ATTACHMENTS:**

- I. Res. No. 170-18-19
- II. Architects plans for spectator deck

**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

---

**ITEM DESCRIPTION:** Gen. Ord. No. 40-18-19 by Alderperson Wolf and Sorensen creating Section 66-15 of the Municipal Code entitled “Coal Tar Sealant Products” regulating the application and sale of coal tar sealant products.

---

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

---

**REPORT DATE:** January 23, 2019

**MEETING DATE:** January 29, 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:** Tar-based pavement sealants are the primary sources of toxic PAHs (polycyclic aromatic hydrocarbons) pollution in urban landscapes. The PAHs are harmful to human health and hurt fish and other aquatic life in our lakes and rivers. Children living from birth to age six near parking lots with tar-based sealants have a 14 time higher lifetime cancer risk. Asphalt-based pavement sealants can be used as an alternate to tar-based sealants and have up to 1,000 times lower PAH levels at a similar cost.

**STAFF COMMENTS:** There is a growing trend in the State of Wisconsin and surrounding states banning tar-based sealants. In Wisconsin, Brown Deer, Dane County, Elm Grove, Franklin, Glendale, Greenfield, Hales Corners, Milwaukee, Port Washington, Shorewood, Wauwatosa, West Allis and Whitefish Bay along with the state of Minnesota have all passed a ban on tar-based sealants. The department believes that there are similar priced sealants that do not pose the same health risk as tar-based products.

**ACTION REQUESTED:** Motion to recommend the Common Council approve Gen. Ord. No. 40-18-19 creating Section 66-15 of the Municipal Code entitled “Coal Tar Sealant Products” regulating the application and sale of coal tar sealant products.

**ATTACHMENTS:**

- I. Gen. Ord. No. 40-18-19

~~A~~

6.4.

Gen. Ord. No. 40 - 18 - 19. By Alderpersons Wolf and Sorenson.  
January 21, 2019.

AN ORDINANCE creating Section 66-15 of the Municipal Code entitled "Coal Tar Sealant Products" regulating the application and sale of coal tar sealant products.

WHEREAS, the Common Council of the City of Sheboygan finds that the City's water resources are a natural asset which enhance the environmental, recreational, cultural, and economic resources of the area and contribute to the general health and welfare of the public; and

WHEREAS, the Common Council finds that polycyclic aromatic hydrocarbons (PAHs), which are contained in coal tar sealants and other high PAH sealants: volatilize off of sealed pavement and can be inhaled by humans and animals; are broken down by sunlight and abraded by vehicle and foot traffic; can be carried off of sealed pavement as small particles by that same traffic and transported into homes and onto nearby soils; and can be carried by storm water and other run off into the water resources of the City; and

WHEREAS, PAHs are an environmental concern because they are toxic to aquatic life, resulting in a loss of species and a lower number of organisms; and

WHEREAS, PAH compounds have been proven to be carcinogenic, mutagenic, and teratogenic to humans according to the International Agency for Research on Cancer; individuals with lifelong exposure to coal tar sealcoat treated pavements and playgrounds have a 38-fold higher risk of cancer; and the American Medical Association therefore advocates for legislation to ban the use of pavement sealcoats that contain PAHs, or which requires the use of sealcoat products that contain minimal PAH; and

WHEREAS, environmental impacts and human health risks can be minimized, and pavements can be maintained by utilizing alternative products or methods, absent PAHs; and

WHEREAS, the Common Council finds that regulating the amount of contaminants, including PAHs contained in coal tar sealant products and other high PAH sealant products, entering the water resources of the City will improve and protect public health and the water quality of the City and neighboring water resources.

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

Public Works

Section 1. Section 66-15 of the Municipal Code is hereby created to read as follows:

"Sec. 66-15. - Coal Tar Sealant Products.

(a) *Definitions.* As used hereinbelow, the following terms shall have the meanings indicated:

1. COAL TAR - is a byproduct of the process used to refine coal. Coal tar contains high levels of polycyclic aromatic hydrocarbons (PAHs).
2. COAL TAR SEALANT PRODUCT - means a pavement sealant product that contains coal tar, coal tar pitch, coal tar pitch volatiles, RT- 12, Refined Tar, or any variation assigned the Chemical Abstracts Service (CAS) numbers 65996-92-1, 65996-93-2, 65996-89-6, or 8007-45-2 , or related substances.
3. HIGH PAH SEALANT PRODUCT - means any pavement sealant product that contains greater than 0.1% polycyclic aromatic hydrocarbons (PAHs) by weight, including, but not limited to coal tar sealant products and sealant products containing steam-cracked petroleum residues, steam-cracked asphalt, pyrolysis fuel oil, heavy fuel oil, ethylene tar, or any variation of those substances assigned the Chemical Abstracts Service (CAS) numbers 64742-90-1, 69013-21-4, or related substances.
4. PAVEMENT SEALANT PRODUCT - also known as sealcoat, is any substance that is typically applied as a coating on paved surfaces to protect the surfaces from water, oils, and/or damage from ultraviolet light. This may include but is not limited to sealant products that are coal tar based or asphalt based.
5. POLYCYCLIC AROMATIC HYDROCARBONS - also known as PAHs, are a group of organic chemicals that are formed during the incomplete combustion of coal, oil, gas, or other organic substances, are present at high levels in coal tar, and are known to be harmful to humans, fish, and other aquatic life.

(b) *Regulation of Application and Sale of Coal Tar and Other High PAH Sealant Products.*

1. Except for those exemptions provided for in subsection (c), no person shall apply any coal tar sealant product or high PAH sealant product within the City.

2. No person shall sell, offer to sell, or display for sale any coal tar sealant product or high PAH sealant product within the City.
3. Any person who sells pavement sealant products shall prominently display, on the shelf, pallet, rack, display fixture or space where such pavement sealant products are sold, a legible written notice that contains the following language:

"The application of coal tar sealant products or other high PAH sealant products on driveways, parking lots, and all other paved surfaces in the City is prohibited by Section 66-15 of the Municipal Code. Polycyclic Aromatic Hydrocarbons (PAHs) are a group of organic chemicals that are known to cause cancer and are toxic to aquatic life. Coal tar and other high PAH sealant products are a major source of PAHs that can migrate into homes, buildings, and soils, or be carried by storm water and other run off into the water resources of the City."

4. No person shall allow a coal tar sealant product or other high PAH sealant product to be applied upon property that is under that person's ownership or control.
5. No person shall contract with a commercial applicator, residential or commercial developer, or any other person for the application of a coal tar sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the City.
6. No commercial applicator, residential or commercial developer, or other similar person or entity shall apply, or allow, cause or direct any employee, independent contractor, volunteer or other person to apply, a coal tar sealant product or high PAH sealant product to any driveway, parking lot or other surface within the City.

(c) *Exemptions.* The Director of Public Works may exempt a person from the restrictions or prohibitions under subsection (b) if the Director makes either of the following determinations:

1. The person is conducting bona fide research concerning the effects of a coal tar sealant product or high PAH sealant product on the environment; and the use of the coal tar


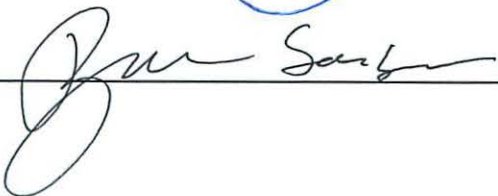
product or high PAH sealant product is required for said research; and the Director determines that such research will not cause significant contamination of the surrounding environment, including soils and aquatic ecosystems, nor unduly endanger human health.

2. The person does not intend to apply the sealant product within the City's boundaries.

(d) *Penalties.* In addition to other action or relief to which the City may be entitled to prevent or remove a violation, penalties assessed for convictions of violating this ordinance shall be as follows:

1. Any person who violates subsection (b) by applying a coal tar sealant product or high PAH sealant product upon property that is his or her residence shall be subject to a forfeiture of \$250 for a first violation, and \$500 for a second and subsequent violations.
2. Any commercial applicator, residential or commercial developer, industrial or commercial property owner or lessee, or any other person, other than a person identified under subsection (d) 1, who violates subsection (b) shall be subject to a forfeiture of \$1,000 for a first violation, and \$2,000 for a second and subsequent violations.
3. Each violation, and each day that a violation occurs or continues, constitutes a separate offense and shall be punishable as such.
4. In addition to the forfeitures provided for herein, persons violating this ordinance shall be required to pay court costs, fees, surcharges, and assessments, and may be required to pay the costs of prosecution; and, in the event of event of nonpayment of any of the foregoing amounts, may be imprisoned in the county jail until said sums are paid, except that the amount owed shall be reduced at the rate of \$25 for each day of imprisonment and the maximum period of imprisonment shall be 90 days.

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

**STORMWATER FACILITIES  
MAINTENANCE AGREEMENT**

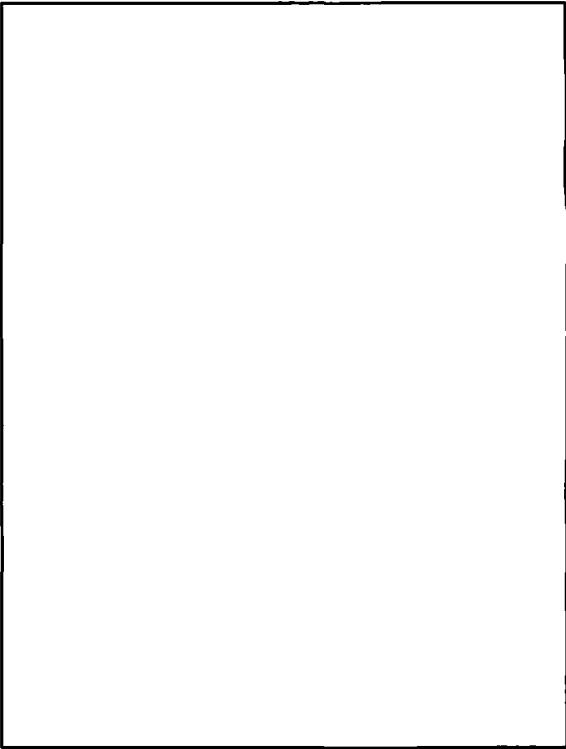
This Stormwater Facilities Maintenance Agreement is made by and between the City of Sheboygan, Wisconsin ("City"), and St. Nicholas Hospital of the Hospital Sisters of the Third Order of St. Francis ("Owner"). 3100 Superior Avenue.

**RECITALS**

The upkeep and maintenance of stormwater facilities is essential to the protection of water resources in the City of Sheboygan.

All property owners are expected to conduct business in a manner that promotes environmental protection. This Agreement contains specific provisions with respect to maintenance of stormwater facilities. The authority to require maintenance and pollution source control is provided in the City of Sheboygan "Post-Construction Stormwater Management Zoning Ordinance," being Appendix E to the Sheboygan Municipal Code.

[Legal Description]



59281631527

Parcel Ident. No.

PRT OF THE SWSE SEC 16, T15N, R23E BOUNDED BY THE E LN OF N TAYLOR DR, THE OF W LN N 29TH ST, S LN OF SAEMANN AVE & THE N LN SUPERIOR AVE; EXC COM AT S1/4 COR SD SEC 16; TH N01-31-56W, 40' AND N88-29-58', 50.46' TO E LN N TAYLOR DR; TH N01-31-56W, ALG SD E LN 528.94'; TH N88-28'-04"E 315'; TH N- 01-31'-56"W 155'; TH S88-28'-04"W 125'; TH N01-31-56W, 217'; TH S88-28-04W, 190'; TH S01-31-56E ALG E LN N TAYLOR DR TO POB; ALSO EXC COM AT INT OF N LN SUPERIOR AVE W WEST LN N 29TH ST; TH W ALG SUPERIOR AVE 199.89'; TH N 125'; TH E 66.63'; TH N 138'; TH E 133.3' TO E LN N 29TH ST; TH S 263' TO POB; ALSO EXC COM IN W LINE OF N 29TH ST 507.9' N OF ITS INTER WITH N LINE OF SUPERIOR AVE, TH N 59.6', W 133.3', S 59.6', TH E 133.3' TO BEG; ALSO EXC COM IN W LINE OF N 29TH ST 657.5' N OF ITS INTERSECT WITH N LINE OF SUPERIOR AVE, TH N 90', TH W 133.3', TH S 90', TH E 133.3 TO BEG; ALSO EXC COM IN W LINE OF N. 29TH ST. 996.5' N OF ITS INTERSECTION WITH N LINE OF SUPERIOR AVE, TH W 133.3', TH N 180', TH E 133.3'; TH S 180' TO POB; EXC THAT CONV TO CITY SHEB IN WD #2060173.

Owner has designed and installed or caused to be designed and installed certain structural and/or non-structural stormwater management measures in accordance with the approved stormwater management plan and permit on the property described above. In order to further the goals of the City to ensure the protection and enhancement of Sheboygan's water resources, and in consideration of the recitals and mutual agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner hereby enter into this maintenance agreement. The responsibilities of each party to this Agreement are identified below.

**OWNER SHALL:**

- (1) Implement or cause to be implemented the stormwater facility maintenance program included herein as Attachment "A".
- (2) Maintain a record (in the form of a log book) of steps taken to implement the program referenced in (1) above. The log book shall be available for inspection by City staff at Owner's business during normal business hours, or at an alternate location approved by City staff. The log book shall catalog the action taken, who took it, when it was done, how it was done, and any problems encountered or follow-on actions recommended. Maintenance items listed in Attachment "A" shall be inspected on a monthly or more frequent basis as necessary. Owner is encouraged to photocopy the individual checklists in Attachment "A" and use them to complete its monthly inspections. These completed checklists would then, in combination, comprise the log book.

- (3) **Maintain the approved stormwater management practices in accordance with the schedule referenced in (1) and (2).**
- (4) **Provide the City with the name, address and telephone number of the business, the person or the firm responsible for plan implementation, if other than the Owner.**
- (5) **Permit authorized representatives of the City access to the property described above to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with this Agreement.**
- (6) **Permit authorized representatives of the City to perform corrective actions if the Owner does not make or cause to make required corrections within a specified time period and enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to state statutes, if payment is not made within thirty (30) days of submittal of invoice to Owner for City performed corrective actions.**
- (7) **Prevent any unauthorized modifications to the approved stormwater management practices and prevent them from being dismantled, revised, altered or removed except as necessary for maintenance, repair or replacement. Any such actions shall be approved of by the City. Modifications to the approved stormwater management practices must be approved in advance by the City.**

**THE CITY OF SHEBOYGAN SHALL:**

- (1) **Provide technical assistance to Owner in support of its operation and maintenance activities conducted pursuant to its maintenance and source control programs. Said assistance shall be provided upon request, and as City time and resources permit, at no charge to Owner.**
- (2) **Maintain public records of the results of site inspections, inform the Owner or other designated responsible party of the inspection results, and specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.**
- (3) **Review this agreement with Owner and modify it as necessary at least once every three (3) years.**

**REMEDIES:**

- (1) **If the City determines that maintenance or repair work is required to be done to the stormwater facility existing on the Owner property, the Director of the Department of Public Works, or his/her designee, shall give the Owner, and/or the person or agent in control of said property, notice of the specific maintenance and/or repair required. The Director or designee shall set a reasonable time in which such work is to be completed. If the above required maintenance and/or repair is not completed within the time set by the Director, or his/her designee, written notice will be sent to the persons who were given notice stating the City's intention to perform such maintenance and bill the Owner for all incurred expenses.**
- (2) **If at any time the City determines that the existing system creates any imminent threat to public health or welfare, the Director, or his/her designee, may take immediate measures to remedy said threat. No notice to the persons listed in Remedies (1), above, shall be required under such circumstances.**
- (3) **The Owner grants unrestricted authority to the City for access to any and all stormwater system features for the purpose of performing maintenance or repair as may become necessary under Remedies ( 1) and/or (2).**

- (4) The persons listed in Remedies (1), above, shall assume all responsibility for the cost of any maintenance and for repairs to the stormwater facility. Such responsibility shall include reimbursement to the City within 30 days of the receipt of the invoice for any such work performed. Overdue payments will require payment of interest at the current legal rate for liquidated judgments. If legal action ensues, any costs or fees incurred by the City will be borne by the parties responsible for said reimbursements.
- (5) The Owner hereby grants to the City a lien against the above-described property in an amount equal to the cost incurred by the City to perform the maintenance or repair work described herein.

This Agreement is intended to protect the value and desirability of the real property described above and to benefit all the citizens of the City. It shall run with the land and be binding on all parties having or acquiring from Owner or their successors any right, title or interest in the property or any part thereof, as well as their title, or interest in the property or any part thereof, as well as their heirs, successors and assigns. They shall inure to the benefit of each present or future successor in interest of said property or any part thereof, or interest therein, and to the benefit of all citizens of the City.

Dated at Sheboygan, Wisconsin, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 Owner  
 \_\_\_\_\_  
 Owner

STATE OF WISCONSIN     )  
   ) ss  
 COUNTY OF SHEBOYGAN )

On this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the persons described, and who executed the foregoing Agreement and acknowledged before me that they executed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
 Notary Public, Sheboygan County, WI  
 My commission (expires)(is) \_\_\_\_\_

Dated at Sheboygan, Wisconsin, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF SHEBOYGAN  
 \_\_\_\_\_  
 Authorized Agent for the City of Sheboygan

This document consists of four (4) typewritten pages, including the following attestation page.

STATE OF WISCONSIN     )  
  ) ss  
COUNTY OF SHEBOYGAN )

On this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_ , Authorized Agent of the above-named municipal corporation, to me known to be the person who executed the foregoing instrument, and to me known to be such Authorized Agent of said corporation, and acknowledged that he/she executed the foregoing instrument as such officer of said corporation, by its authority.

\_\_\_\_\_  
Notary Public, Sheboygan County, WI  
My commission (expires)(is) \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
City of Sheboygan, WI

**CITY OF SHEBOYGAN**

**REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION**

---

**ITEM DESCRIPTION:** Res. No. 159-18-19 by Alderperson Wolf authorizing the Director of Public Works to execute a Stormwater Facilities Maintenance Agreement between the City of Sheboygan and St. Nicholas Hospital of the Hospital Sisters of the Third Order of St. Francis regarding the Prevea St. Nicholas Medical Office Building project.

---

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

---

**REPORT DATE:** January 11, 2018

**MEETING DATE:** January 29, 2018

---

**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:** As part of the City of Sheboygan Stormwater ordinance all entities which create a stormwater facility on their property must have a maintenance agreement with the City of Sheboygan stating they will construct and maintain these facilities per the rules and regulations of the City of Sheboygan and WI DNR.

**STAFF COMMENTS:** This Stormwater Facility Maintenance Agreement is the standard agreement required for all entities per the City of Sheboygan Stormwater Ordinance and the WI DNR.

**ACTION REQUESTED:** Motion to approve Res. No. 159-18-19 authorizing the Director of Public Works to execute a Stormwater Facilities Maintenance Agreement between the City of Sheboygan and St. Nicholas Hospital of the Hospital Sisters of the Third Order of St. Francis regarding the Prevea St. Nicholas Medical Office Building project.

**ATTACHMENTS:**

- I. Res. No. 159-18-19
- II. Stormwater Facilities Maintenance Agreement

III


4.3

Res. No. 159 - 18 - 19. By Alderpersons Wolf and Sorenson.  
January 7, 2019.

A RESOLUTION authorizing the Director of Public Works to execute a Stormwater Facilities Maintenance Agreement between the City of Sheboygan and St. Nicholas Hospital of the Hospital Sisters of the Third Order of St. Francis regarding the Prevea St. Nicholas Medical Office Building project.

RESOLVED: That the Director of Public Works is hereby authorized to execute the Stormwater Facilities Maintenance Agreement between the City of Sheboygan and St. Nicholas Hospital of the Hospital Sisters of the Third Order of St. Francis, a copy of which is attached hereto.

*Public Works*

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

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

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

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

**STORMWATER FACILITIES  
MAINTENANCE AGREEMENT**

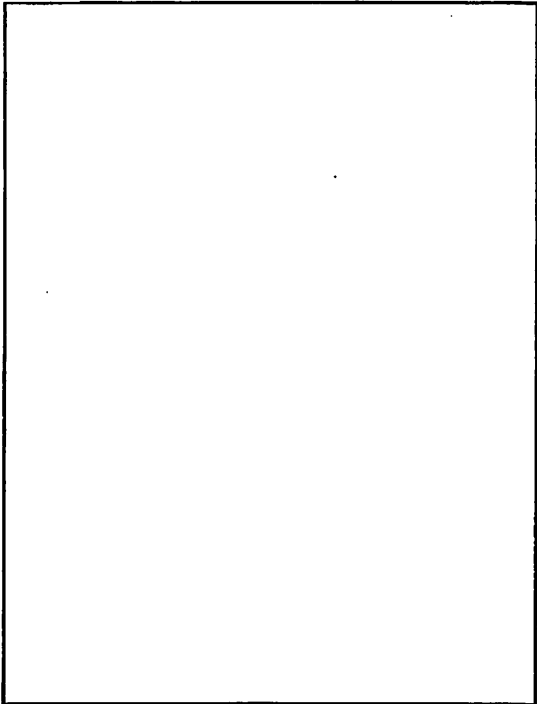
This Stormwater Facilities Maintenance Agreement is made by and between the City of Sheboygan, Wisconsin ("City"), and St. Nicholas Hospital of the Hospital Sisters of the Third Order of St. Francis ("Owner"). 3100 Superior Avenue.

**RECITALS**

The upkeep and maintenance of stormwater facilities is essential to the protection of water resources in the City of Sheboygan.

All property owners are expected to conduct business in a manner that promotes environmental protection. This Agreement contains specific provisions with respect to maintenance of stormwater facilities. The authority to require maintenance and pollution source control is provided in the City of Sheboygan "Post-Construction Stormwater Management Zoning Ordinance," being Appendix E to the Sheboygan Municipal Code.

[Legal Description]



\_\_\_\_\_  
Parcel Ident. No.

Owner has designed and installed or caused to be designed and installed certain structural and/or non-structural stormwater management measures in accordance with the approved stormwater management plan and permit on the property described above. In order to further the goals of the City to ensure the protection and enhancement of Sheboygan's water resources, and in consideration of the recitals and mutual agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner hereby enter into this maintenance agreement. The responsibilities of each party to this Agreement are identified below.

**OWNER SHALL:**

- (1) Implement or cause to be implemented the stormwater facility maintenance program included herein as Attachment "A".
- (2) Maintain a record (in the form of a log book) of steps taken to implement the program referenced in (1) above. The log book shall be available for inspection by City staff at Owner's business during normal business hours, or at an alternate location approved by City staff. The log book shall catalog the action taken, who took it, when it was done, how it was done, and any problems encountered or follow-on actions recommended. Maintenance items listed in Attachment "A" shall be inspected on a monthly or more frequent basis as necessary. Owner is encouraged to photocopy the individual checklists in Attachment "A" and use them to complete its monthly inspections. These completed checklists would then, in combination, comprise the log book.
- (3) Maintain the approved stormwater management practices in accordance with the schedule referenced in (1) and (2).

- (4) Provide the City with the name, address and telephone number of the business, the person or the firm responsible for plan implementation, if other than the Owner.
- (5) Permit authorized representatives of the City access to the property described above to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with this Agreement.
- (6) Permit authorized representatives of the City to perform corrective actions if the Owner does not make or cause to make required corrections within a specified time period and enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to state statutes, if payment is not made within thirty (30) days of submittal of invoice to Owner for City performed corrective actions.
- (7) Prevent any unauthorized modifications to the approved stormwater management practices and prevent them from being dismantled, revised, altered or removed except as necessary for maintenance, repair or replacement. Any such actions shall be approved of by the City. Modifications to the approved stormwater management practices must be approved in advance by the City.

**THE CITY OF SHEBOYGAN SHALL:**

- (1) Provide technical assistance to Owner in support of its operation and maintenance activities conducted pursuant to its maintenance and source control programs. Said assistance shall be provided upon request, and as City time and resources permit, at no charge to Owner.
- (2) Maintain public records of the results of site inspections, inform the Owner or other designated responsible party of the inspection results, and specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
- (3) Review this agreement with Owner and modify it as necessary at least once every three (3) years.

**REMEDIES:**

- (1) If the City determines that maintenance or repair work is required to be done to the stormwater facility existing on the Owner property, the Director of the Department of Public Works, or his/her designee, shall give the Owner, and/or the person or agent in control of said property, notice of the specific maintenance and/or repair required. The Director or designee shall set a reasonable time in which such work is to be completed. If the above required maintenance and/or repair is not completed within the time set by the Director, or his/her designee, written notice will be sent to the persons who were given notice stating the City's intention to perform such maintenance and bill the Owner for all incurred expenses.
- (2) If at any time the City determines that the existing system creates any imminent threat to public health or welfare, the Director, or his/her designee, may take immediate measures to remedy said threat. No notice to the persons listed in Remedies (1), above, shall be required under such circumstances.
- (3) The Owner grants unrestricted authority to the City for access to any and all stormwater system features for the purpose of performing maintenance or repair as may become necessary under Remedies (1) and/or (2).
- (4) The persons listed in Remedies (1), above, shall assume all responsibility for the cost of any maintenance and for repairs to the stormwater facility. Such responsibility shall include reimbursement to the City within 30

days of the receipt of the invoice for any such work performed. Overdue payments will require payment of interest at the current legal rate for liquidated judgments. If legal action ensues, any costs or fees incurred by the City will be borne by the parties responsible for said reimbursements.

- (5) The Owner hereby grants to the City a lien against the above-described property in an amount equal to the cost incurred by the City to perform the maintenance or repair work described herein.

This Agreement is intended to protect the value and desirability of the real property described above and to benefit all the citizens of the City. It shall run with the land and be binding on all parties having or acquiring from Owner or their successors any right, title or interest in the property or any part thereof, as well as their title, or interest in the property or any part thereof, as well as their heirs, successors and assigns. They shall inure to the benefit of each present or future successor in interest of said property or any part thereof, or interest therein, and to the benefit of all citizens of the City.

Dated at Sheboygan, Wisconsin, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

STATE OF WISCONSIN     )  
  ) ss  
COUNTY OF SHEBOYGAN )

On this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the persons described, and who executed the foregoing Agreement and acknowledged before me that they executed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public, Sheboygan County, WI  
My commission (expires)(is) \_\_\_\_\_

Dated at Sheboygan, Wisconsin, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

CITY OF SHEBOYGAN

\_\_\_\_\_  
Authorized Agent for the City of Sheboygan

This document consists of four (4) typewritten pages, including the following attestation page.

STATE OF WISCONSIN     )  
  ) ss

COUNTY OF SHEBOYGAN )

On this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_ , Authorized Agent of the above-named municipal corporation, to me known to be the person who executed the foregoing instrument, and to me known to be such Authorized Agent of said corporation, and acknowledged that he/she executed the foregoing instrument as such officer of said corporation, by its authority.

\_\_\_\_\_  
Notary Public, Sheboygan County, WI  
My commission (expires)(is) \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
City of Sheboygan, WI

**ATTACHMENT A**

## **OPERATION AND MAINTENANCE**

A logbook shall be kept on-site to record all inspection and maintenance activities to be performed on the facilities. Below is a general description of the required maintenance activities and attached is a detailed checklist that describes the various inspection and maintenance activities to be performed.

### **General**

1. A logbook shall be kept for the site that includes all inspection and maintenance activities to be recorded.
2. An annual inspection and evaluation of the BMPs and drainage facilities shall be performed by the owner or contracted representative.
3. A minimum of once per year, a representative of the owner shall perform a visual inspection of the BMPs during a runoff event. Observations of storm water color entering and exiting the BMPs, odors, turbidity, and any other indicators of storm water impact shall be noted in the logbook.
4. Owner shall ensure that vegetation planted within the swale and pond embankments are maintained and established at all times. Vegetation shall be replaced on an as-needed basis. Vegetation shall exist to no less than 90 percent of ground cover.
5. Regular maintenance shall also include annual inspection of all storm sewer systems including the piping system, manholes, and inlets. The inlet sumps shall be cleaned when sediment has accumulated within six inches of the pipe flow line. The piping system shall be cleaned, as necessary, to remove any accumulated sediments. The system shall be observed to ensure water is flowing and appears to be unobstructed.
6. When sediment in the wet detention pond has accumulated to an elevation of three feet below the outlet elevation, it must be removed. All removed sediment must be placed in an appropriate upland disposal site and stabilized.

**Storm Water Management Plan, Maintenance, and Management Inspection  
Checklist  
Prevea St. Nicholas Medical Office Building**

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

Time: \_\_\_\_\_

Inspector: \_\_\_\_\_

| Maintenance Item   | Satisfactory /<br>Unsatisfactory | Comments |
|--|----------------------------------|----------|
| <b>1. Wet Detention Pond (Monthly, After Major Storms)</b> |                                  |          |
| A. Pond  |                                  |          |
| 1. Bank erosion  |                                  |          |
| 2. Debris / trash accumulation                             |                                  |          |
| 3. Sediment accumulation                                   |                                  |          |
| B. Embankment  |                                  |          |
| 1. Erosion or Slides                                       |                                  |          |
| 2. Trees / brush growing on slopes                         |                                  |          |
| 3. Animal burrows  |                                  |          |
| 4. Poor Grass Cover  |                                  |          |
| 5. Crest settlement  |                                  |          |
| 6. Excessive or cloudy seepage on downstream slope         |                                  |          |
| C. Inlet   |                                  |          |
| 1. Debris in conveyance area                               |                                  |          |
| 2. Erosion or undercutting                                 |                                  |          |
| 3. Inadequate riprap                                       |                                  |          |
| D. Outfall   |                                  |          |
| 1. Obstructions or debris                                  |                                  |          |
| 2. Excessive Siltation                                     |                                  |          |
| E. Downstream Area   |                                  |          |
| 1. Erosion   |                                  |          |
| 2. Debris / obstructions                                   |                                  |          |

