

*****ATTACHMENTS*****



**2nd REVISION
STATE/MUNICIPAL AGREEMENT
FOR A STATE- LET URBANIZED
AREA STP-URBAN PROJECT**

This agreement supersedes the agreement signed by the Municipality on October 17, 2016 and signed by DOT on October 24, 2016.

Program Name: STP-Urban

Population Group: 50,000 - 200,000

Sub-program #: 206

Revised Date: November 8, 2018

Date: JUNE 6, 2014

I.D.: 4996-01-72/73

Road Name: C SHEBOYGAN, SUPERIOR AVE

Limits: N TAYLOR DRIVE – N 29TH STREET

County: SHEBOYGAN

Roadway Length: 0.3 MILES

Functional Classification: MINOR ARTERIAL

Project Sponsor: CITY OF SHEBOYGAN

Urbanized Area: SHEBOYGAN MPO

The signatory, City of Sheboygan, hereinafter called the Municipality, 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 highway or street improvement hereinafter described.

The authority for the Municipality 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 Municipality 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.

Existing Facility - Describe and give reason for request: The existing facility has 2-12 foot lanes with an urban cross section. The existing pavement is concrete and has transverse, longitudinal cracking, and rutting; it was last improved in 1980. There is existing curb and gutter and sidewalk. There is existing spot lighting.

Proposed Improvement - Nature of work: The proposed construction is for a reconstruction of the urban cross section. New concrete pavement, curb and gutter, and sidewalk will be installed. Spot lighting will be improved. Permanent and temporary pavement marking and signing will be installed. Lateral and trunk storm sewer lines will be constructed.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable Federal requirements: Sanitary sewer construction and adjustments.

The Municipality agrees to the following 2013-2018 / 2015-2020 Urbanized Area STP-Urban project funding conditions:

Project design and construction costs are funded with 74.6% federal funding up to a maximum of \$848,545 for all federally-funded project phases when the municipality agrees to provide the remaining 25.4% and all funds in excess of the \$848,545 federal funding maximum, in accordance with the STP Urban program guidelines for projects in urbanized areas. Non-participating costs are 100% the responsibility of the municipality. Any work performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

This project is currently scheduled in State Fiscal Year 2018. **In accordance with the State's sunset policy**

for Urbanized Area STP Urban projects, the subject 2013-2018 / 2015-2020 Urbanized Area STP-Urban improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2015, or by June 30, 2020. Extensions may be available upon approval of a written request by or on behalf of the Municipality to WisDOT. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary Funding Table below are federal maximum amounts unless explicitly identified otherwise. The final Municipal share is dependent on the final Federal participation, and actual costs will be used in the final division of cost for billing and reimbursement.

PHASE	SUMMARY OF COSTS				
	Total Est. Cost	Federal Funds	%	Municipal Funds	%
ID 4996-01-72					
Design	\$106,605	\$79,526	74.6%*	\$27,079	25.4% + BAL
State Review	\$35,533	\$26,508	74.6%*	\$9,025	25.4% + BAL
ID 4996-01-73					
Participating Construction	\$1,859,235	\$662,961	74.6%*	\$1,196,274	25.4% + BAL
Non-Participating Construction	\$121,640	\$0	0%	\$121,640	100%
State Review	\$106,598	\$79,550	74.6%*	\$27,048	25.4% + BAL
Total Est. Cost Distribution	\$2,229,611	\$848,545	N/A	\$1,381,066	N/A

*The percentage of project costs covered by federal funding at approval, 74.6%, is based on TIP Committee Action. Due to the federal funding cap, which is \$848,545 for all federally-funded project phases, this percentage may change over the life of the project.

This request is subject to the terms and conditions that follow (pages 3 – 7) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signed for and in behalf of: City of Sheboygan (please sign in blue ink.)		
Title	Date	Name
Signed for and in behalf of the State:		
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.
3. The Municipality, 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 the 23 U.S.C. 139 and 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 municipality 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 Municipality 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 Municipality 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. Prevailing wage requirements, including but not limited to 23 U.S.C 113 and Wis. Stat. 103.50.
- d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
- e. Competitive bidding requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06.
- f. All applicable DBE requirements that the State specifies.
- g. Federal Statutes that govern the Surface Transportation Program, including but not limited to 23 U.S.C. 133.
- h. General requirements for administering federal and state aid set forth in Wis. Stat. 84.03.

STATE RESPONSIBILITIES AND REQUIREMENTS:

- 4. Funding of each project phase is subject to inclusion in Wisconsin’s approved 2013-2018 / 2015-2020 Urbanized Area STP-Urban 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. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.
 - c. Storm sewer mains necessary for the surface water drainage.
 - d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
 - e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).
 - f. Signing and pavement marking.
 - g. New installations or alteration of street lighting and traffic signals or devices.
 - h. Landscaping.
 - i. Preliminary Engineering and design.
 - j. Management Consultant and State Review Services.
- 5. The work will be administered by the State and may include items not eligible for Federal participation.
- 6. As the work progresses, the State will bill the Municipality for work completed which is not chargeable to Federal funds. Upon completion of the project, a final audit will be made to determine the final division of

costs. If reviews or audits show any of the work to be ineligible for Federal funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

7. Work necessary to complete the 2013-2018 / 2015-2020 Urbanized Area STP-Urban improvement project to be financed entirely by the Municipality or other utility or facility owner includes the items listed below.
 - 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 municipality 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.
 - i. Other 100% Municipally funded items: sanitary sewer construction and adjustments.
8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by WisDOT prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.
9. Work to be performed by the Municipality 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 Municipality but must be coordinated with all other work undertaken during construction.
10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.
11. The Municipality 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.
12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed Federal financing commitments or are ineligible for Federal financing. In order to guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.
13. **In accordance with the State's sunset policy for Urbanized Area STP-Urban projects, the subject 2013-2018 / 2015-2020 Urbanized Area STP-Urban improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2014, or by June 30, 2020.** Extensions may be available upon approval of a written request by or on behalf of the Municipality to WisDOT. The

written request shall explain the reasons for project implementation delay and revised timeline for project completion.

14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.

15. The Municipality 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, sidewalks and parking lanes [including snow and ice removal]) 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 project.
- e. Provide complete plans, specifications, and estimates.
- f. Provide relocation orders and real estate plats.
- g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
- h. Provide maintenance and energy for lighting.
- i. 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.

16. It is further agreed by the Municipality that:

- a. The Municipality 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 agreement.
- b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse WisDOT if WisDOT 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 Municipality 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 Municipality or by others, will be in conformity with such "Manual of 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.
- e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under Federal aid highway regulations, posters,

billboards, roadside stands, or other private installations prohibited by Federal or State highway regulations will not be permitted within the right-of-way limits of the project. The municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.

LEGAL RELATIONSHIPS:

17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality'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 Municipality and its sureties; 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 Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.
19. Contract Modification: This State/Municipal Agreement can only 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.
20. 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 enforcement rights.
21. 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.

PROJECT FUNDING CONDITIONS

22. Non-Appropriation of Funds: 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.
23. 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.

24. The Municipality agrees to the following 2013-2018 / 2015-2020 Urbanized Area STP-Urban project funding conditions:

- a. ID 4996-01-72: Design is funded with 74.6% federal funding, when the municipality agrees to provide the remaining 25.4%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d). This phase includes Plan Development, Management Consultant Review, 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. Costs for this phase include an estimated amount for state review activities, to be funded 74.6% with federal funding and 25.4% by the Municipality.

- b. ID 4996-01-73: Construction:
 - i. Costs for roadway reconstruction are funded with 74.6% federal funding when the municipality agrees to provide the remaining 25.4%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d).

 - ii. Costs for this phase include an estimated amount for state review activities, to be funded 74.6% with federal funding and 25.4% by the Municipality. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d).

 - iii. Non-participating costs are funded 100% by the Municipality. Costs include construction delivery.

- c. Project Cap: In accordance with STP-Urban program guidelines for projects in urbanized areas, State action and TIP Committee action, this project has a federal funding cap of **\$848,545**. This federal funding cap applies to all federally funded project phases.

[End of Document]

III

4.8

Res. No. 135 - 18 - 19. By Alderperson Wolf. November 19, 2018.

A RESOLUTION authorizing the appropriate City Officials to enter into a revised State/Municipal Agreement (revised date November 8, 2018), I.D. 4996-01-72/73 for the reconstruction of Superior Avenue from N. Taylor Drive to N. 29th Street.

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, for the reconstruction of Superior Avenue from N. Taylor Drive to N. 29th Street for the proposed sum of \$2,229,611.00 of which the Federal share is \$848,545.00 and of which the City of Sheboygan's share is \$1,381,066.

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

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



**2nd REVISION
STATE/MUNICIPAL AGREEMENT
FOR A STATE- LET URBANIZED
AREA STP-URBAN PROJECT**

This agreement supersedes the agreement signed by the Municipality on October 17, 2016 and signed by DOT on October 24, 2016.

Program Name: STP-Urban
Population Group: 50,000 - 200,000
Sub-program #: 206

Revised Date: November 8, 2018
Date: JUNE 6, 2014
I.D.: 4996-01-72/73
Road Name: C SHEBOYGAN, SUPERIOR AVE
Limits: N TAYLOR DRIVE – N 29TH STREET
County: SHEBOYGAN
Roadway Length: 0.3 MILES
Functional Classification: MINOR ARTERIAL
Project Sponsor: CITY OF SHEBOYGAN
Urbanized Area: SHEBOYGAN MPO

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Existing Facility - Describe and give reason for request: The existing facility has 2-12 foot lanes with an urban cross section. The existing pavement is concrete and has transverse, longitudinal cracking, and rutting; it was last improved in 1980. There is existing curb and gutter and sidewalk. There is existing spot lighting.

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Signed for and in behalf of: City of Sheboygan (please sign in blue ink.)			Name
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Signed for and in behalf of the State:			
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10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.
11. The Municipality 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.
12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed Federal financing commitments or are ineligible for Federal financing. In order to guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.
13. In accordance with the State's sunset policy for Urbanized Area STP-Urban projects, the subject 2013-2018 / 2015-2020 Urbanized Area STP-Urban improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2014, or by June 30, 2020. Extensions may be available upon approval of a written request by or on behalf of the Municipality to WisDOT. The

written request shall explain the reasons for project implementation delay and revised timeline for project completion.

14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.

15. The Municipality 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, sidewalks and parking lanes [including snow and ice removal]) 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 project.
- e. Provide complete plans, specifications, and estimates.
- f. Provide relocation orders and real estate plats.
- g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
- h. Provide maintenance and energy for lighting.
- i. 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.

16. It is further agreed by the Municipality that:

- a. The Municipality 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 agreement.
- b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse WisDOT if WisDOT 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 Municipality 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 Municipality or by others, will be in conformity with such "Manual of 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.
- e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under Federal aid highway regulations, posters,

billboards, roadside stands, or other private installations prohibited by Federal or State highway regulations will not be permitted within the right-of-way limits of the project. The municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.

LEGAL RELATIONSHIPS:

17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality'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 Municipality and its sureties; 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 Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.
19. Contract Modification: This State/Municipal Agreement can only 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.
20. 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 enforcement rights.
21. 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.

PROJECT FUNDING CONDITIONS

22. Non-Appropriation of Funds: 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.
23. 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.

24. The Municipality agrees to the following 2013-2018 / 2015-2020 Urbanized Area STP-Urban project funding conditions:

- a. ID 4996-01-72: Design is funded with 74.6% federal funding, when the municipality agrees to provide the remaining 25.4%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d). This phase includes Plan Development, Management Consultant Review, 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. Costs for this phase include an estimated amount for state review activities, to be funded 74.6% with federal funding and 25.4% by the Municipality.

- b. ID 4996-01-73: Construction:
 - i. Costs for roadway reconstruction are funded with 74.6% federal funding when the municipality agrees to provide the remaining 25.4%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d).

 - ii. Costs for this phase include an estimated amount for state review activities, to be funded 74.6% with federal funding and 25.4% by the Municipality. This portion of the project is subject to the cumulative project federal funding cap (see sub-item d).

 - iii. Non-participating costs are funded 100% by the Municipality. Costs include construction delivery.

- c. Project Cap: In accordance with STP-Urban program guidelines for projects in urbanized areas, State action and TIP Committee action, this project has a federal funding cap of **\$848,545**. This federal funding cap applies to all federally funded project phases.

[End of Document]

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 135-18-19 by Alderperson Wolf authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (revised date November 8, 2018), I.D. 4996-01-72/73 for the reconstruction of Superior Avenue from N. Taylor Drive to N. 29th Street.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: November 19, 2018

MEETING DATE: November 27, 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 a project of this magnitude is going through the design process the estimated cost is constantly being revised. The revised State Municipal Agreement reflects the updated cost for all entities participating in the project. The estimated cost for the reconstruction of Superior Avenue from N. Taylor Drive to N. 29th Street is \$2,229,611.00 of which the Federal share is \$848,545.00 and of which the City of Sheboygan share is \$1,381,066.00.

STAFF COMMENTS: The analysis and design for the reconstruction of Superior Avenue from N. Taylor Drive to N. 29th Street started in 2014. This roadway is now scheduled for reconstruction in the Spring of 2019 with the work being completed in the Fall of 2019.

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 135-18-19 authorizing the appropriate City officials to enter into a revised State/Municipal Agreement (revised date November 8, 2018), I.D. 4996-01-72/73 for the reconstruction of Superior Avenue from N. Taylor Drive to N. 29th Street.

ATTACHMENTS:

- I. Res. No. 135-18-19
- II. Revised State Municipal Agreement dated October 23, 2018

III

4.9

Res. No. 136 - 18 - 19. By Alderperson Wolf. November 19, 2018.

A RESOLUTION authorizing the appropriate City Officials to enter into a revised State/Municipal Agreement (revised date November 1, 2018), I.D. 4996-01-78/79/80/81 for the reconstruction of North Avenue from Calumet Drive to N. 15th Street.

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, for the reconstruction of North Avenue from Calumet Drive to N. 15th Street for the proposed sum of \$4,944,370.00 of which the Federal share is \$2,785,581.00 and of which Union Pacific Railroad share is \$93,754 and of which the City of Sheboygan's share is \$1,941,554.00.

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

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



**3rd REVISION
STATE/MUNICIPAL AGREEMENT
FOR A STATE- LET URBANIZED
AREA STP-URBAN PROJECT**

This agreement supersedes the agreement signed by the Municipality on February 6, 2017 and signed by DOT on February 13, 2017.

Program Name: STP-Urban

Population Group: 50,000 - 200,000

Sub-program #: 206

Revised Date: November 1, 2018

Date: JUNE 6, 2014

I.D.: 4996-01-78/79/80/81

Road Name: C SHEBOYGAN, NORTH AVE

Limits: CALUMET DRIVE – 15TH STREET

County: SHEBOYGAN

Roadway Length: 0.6 MILES

Functional Classification: MINOR ARTERIAL

Project Sponsor: CITY OF SHEBOYGAN

Urbanized Area: SHEBOYGAN MPO

The signatory, City of Sheboygan, hereinafter called the Municipality, 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 highway or street improvement hereinafter described.

The authority for the Municipality 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 Municipality 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.

Existing Facility - Describe and give reason for request: The existing facility is 2-4 lanes that are 12 feet wide. The cross section is urban. The pavement is a combination of PCC and HMAC on PCC which has transverse and longitudinal cracking and depressions. The facility was last improved in 1952 and 1983. It has curb and gutter, sidewalk, and bicycle accommodations. There is spot lighting. There is sub-standard horizontal alignment. There is a railroad facility within 1000 feet of the project limits.

Proposed Improvement - Nature of work: The proposed project is a reconstruction of the urban cross section. New concrete pavement, sidewalk, and curb and gutter will be constructed. Signals will be installed. Railroad improvements are proposed. Spot lighting will be installed. Permanent and temporary pavement marking and signing will be installed. Lateral and trunk storm sewer lines will be installed.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable Federal requirements: Sanitary sewer and watermain adjustments, storm sewer laterals and excavation, hauling and disposal of petroleum contaminated soil.

The Municipality agrees to the following 2013-2018 / 2015-2020 Urbanized Area STP-Urban project funding conditions:

Project design and construction costs are funded with 74% federal funding up to a maximum of \$2,785,581 for all federally-funded project phases when the municipality agrees to provide the remaining 26% and all funds in excess of the \$2,785,581 federal funding maximum, in accordance with the STP Urban program guidelines for projects in urbanized areas. Non-participating costs are 100% the responsibility of the municipality. Any work

performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

This project is currently scheduled in State Fiscal Year 2019. In accordance with the State's sunset policy for Urbanized Area STP Urban projects, the subject 2013-2018 / 2015-2020 Urbanized Area STP-Urban improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2015, or by June 30, 2020. Extensions may be available upon approval of a written request by or on behalf of the Municipality to WisDOT. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary Funding Table below are federal maximum amounts unless explicitly identified otherwise. The final Municipal share is dependent on the final Federal participation, and actual costs will be used in the final division of cost for billing and reimbursement.

SUMMARY OF COSTS							
PHASE	Total Est. Cost	Federal Funds	%	UNION PACIFIC	%	Municipal Funds	%
ID 4996-01-78							
Design	\$356,839	\$267,629	75%*			\$89,210	25% + BAL
State Review	\$89,203	\$66,902	75%*			\$22,301	25% + BAL
<i>4996-01-78 Subtotal</i>	<i>\$446,042</i>	<i>\$334,531</i>				<i>\$111,511</i>	
ID 4996-01-80 Railroad							
Crossing Surface	\$208,343	\$40,000	44%*	\$93,754	45%	\$74,589	11%+ BAL
ID 4996-01-81 Railroad							
Signals	\$297,227	\$150,000	80%*			\$147,227	20% + BAL
ID 4996-01-79							
Construction	\$3,424,198	\$2,022,593	74%*			\$1,401,605	26% + BAL
State Review	\$445,079	\$238,457	74%*			\$206,622	26% + BAL
Non-participating	\$123,481	\$0	0%	\$0	0%	\$123,481	100%
<i>4996-01-79 Subtotal</i>	<i>\$3,992,758</i>	<i>\$2,261,050</i>				<i>\$1,608,227</i>	
Total Est. Cost Distribution	\$4,944,370	\$2,785,581	N/A	\$93,754	N/A	\$1,941,554	N/A

*The percentage of project costs covered by federal funding at approval, 74%, is based on TIP Committee Action. Due to the federal funding cap, which is \$2,785,581 for all federally-funded project phases, this percentage may change over the life of the project.

This request is subject to the terms and conditions that follow (pages 3 – 7) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signed for and in behalf of: City of Sheboygan (please sign in blue ink.)		
Title	Date	Name
Signed for and in behalf of the State:		
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.
3. The Municipality, 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 the 23 U.S.C. 139 and 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 municipality 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 Municipality 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 Municipality 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. Prevailing wage requirements, including but not limited to 23 U.S.C 113 and Wis. Stat. 103.50.
 - d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
 - e. Competitive bidding requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06.
 - f. All applicable DBE requirements that the State specifies.
 - g. Federal Statutes that govern the Surface Transportation Program, including but not limited to 23 U.S.C. 133.
 - h. General requirements for administering federal and state aid set forth in Wis. Stat. 84.03.

STATE RESPONSIBILITIES AND REQUIREMENTS:

4. Funding of each project phase is subject to inclusion in Wisconsin's approved 2013-2018 / 2015-2020 Urbanized Area STP-Urban 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. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.
 - c. Storm sewer mains necessary for the surface water drainage.
 - d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
 - e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).

- f. Signing and pavement marking.
 - g. New installations or alteration of street lighting and traffic signals or devices.
 - h. Landscaping.
 - i. Preliminary Engineering and design.
 - j. Management Consultant and State Review Services.
 - k. Other eligible rail items: Crossing surface and signals
5. The work will be administered by the State and may include items not eligible for Federal participation.
 6. As the work progresses, the State will bill the Municipality for work completed which is not chargeable to Federal funds. Upon completion of the project, a final audit will be made to determine the final division of costs. If reviews or audits show any of the work to be ineligible for Federal funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

7. Work necessary to complete the 2013-2048 / 2015-2020 Urbanized Area STP-Urban improvement project to be financed entirely by the Municipality or other utility or facility owner includes the items listed below.
 - 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 municipality 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.
 - i. Other 100% Municipally funded items: Sanitary sewer and watermain adjustments, storm sewer laterals and excavation, hauling and disposal of petroleum contaminated soil
8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by WisDOT prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.
9. Work to be performed by the Municipality 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 Municipality but must be coordinated with all other work undertaken during construction.

10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.
11. The Municipality 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.
12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed Federal financing commitments or are ineligible for Federal financing. In order to guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.
13. **In accordance with the State's sunset policy for Urbanized Area STP-Urban projects, the subject 2013-2018 / 2015-2020 Urbanized Area STP-Urban improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2015, or by June 30, 2020.** Extensions may be available upon approval of a written request by or on behalf of the Municipality to WisDOT. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.
14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
15. The Municipality 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, sidewalks and parking lanes [including snow and ice removal]) 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 project.
 - e. Provide complete plans, specifications, and estimates.
 - f. Provide relocation orders and real estate plats.
 - g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
 - h. Provide maintenance and energy for lighting.
 - i. 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.
16. It is further agreed by the Municipality that:
 - a. The Municipality 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 agreement.

- b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse WisDOT if WisDOT 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 Municipality 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 Municipality or by others, will be in conformity with such "Manual of 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.
- e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under Federal aid highway regulations, posters, billboards, roadside stands, or other private installations prohibited by Federal or State highway regulations will not be permitted within the right-of-way limits of the project. The municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.

LEGAL RELATIONSHIPS:

- 17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
- 18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality'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 Municipality and its sureties; 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 Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.
- 19. Contract Modification: This State/Municipal Agreement can only 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.
- 20. 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 enforcement rights.
- 21. 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.

PROJECT FUNDING CONDITIONS

22. **Non-Appropriation of Funds:** 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.
23. **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.

24. The Municipality agrees to the following 2013-2018 / 2015-2020 Urbanized Area STP-Urban project funding conditions:

- a. ID 4996-01-78: Design is funded with 75% federal funding, when the municipality agrees to provide the remaining 25%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e). This phase includes Plan Development, Management Consultant Review, 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. Costs for this phase include an estimated amount for state review activities, to be funded 75% with federal funding and 25% by the Municipality.
- b. ID 4996-01-80: Costs for railroad crossing surface are funded with 44% federal funding when the municipality agrees to provide 11% and railroad agrees to provide the remaining 45%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e).
- c. ID 4996-01-81: Costs for railroad signals are funded with 80% federal funding when the municipality agrees to provide the remaining 20%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e).
- d. ID 4996-01-79: Construction:
 - i. Costs for roadway reconstruction are funded with 74% federal funding when the municipality agrees to provide the remaining 26%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e).
 - ii. Costs for this phase include an estimated amount for state review activities, to be funded 74% with federal funding and 26% by the Municipality. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e).
 - iii. Non-participating costs are funded 100% by the Municipality. Costs include construction delivery.
- e. **Project Cap:** In accordance with STP-Urban program guidelines for projects in urbanized areas, State action and TIP Committee action, this project has a federal funding cap of **\$2,785,581**. This federal funding cap applies to all federally funded project phases.

[End of Document]

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 136-18-19 by Alderperson Wolf authorizing the appropriate City Officials to enter into a revised State Municipal Agreement (revised date November 1, 2018), I.D. 4996-01-78/79/80/81 for the reconstruction of North Avenue from Calumet Drive to N. 15th Street.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: November 19, 2018

MEETING DATE: November 27, 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 a project of this magnitude is going through the design process the estimated cost is constantly being revised. The revised State Municipal Agreement reflects the updated cost for all entities participating in the project. The estimated cost for the reconstruction of North Avenue from Calumet Drive to N. 15th Street is \$4,944,370.00 of which the Federal share is \$2,785,581.00 and of which the City of Sheboygan share is \$1,941,554.00 and of which Union Pacific Railroad share is \$93,754.00.

STAFF COMMENTS: The analysis and design for the reconstruction of North Avenue from Calumet Drive to N. 15th Street started in 2014. This roadway is scheduled for reconstruction in the spring of 2019 with the work being completed in the Fall of 2019.

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 136-18-19 authorizing the appropriate City Officials to enter into a revised State/Municipal Agreement (revised date November 1, 2018), I.D. 4996-01-78/79/80/81 for the reconstruction of North Avenue from Calumet Drive to N. 15th Street.

ATTACHMENTS:

- I. Res. No. 136-18-19
- II. Revised State Municipal Agreement dated November 1, 2018



**3rd REVISION
STATE/MUNICIPAL AGREEMENT
FOR A STATE- LET URBANIZED
AREA STP-URBAN PROJECT**

This agreement supersedes the agreement signed by the Municipality on February 6, 2017 and signed by DOT on February 13, 2017.

Program Name: STP-Urban
Population Group: 50,000 - 200,000
Sub-program #: 206

Revised Date: November 1, 2018
Date: JUNE 6, 2014
I.D.: 4996-01-78/79/80/81
Road Name: C SHEBOYGAN, NORTH AVE
Limits: CALUMET DRIVE – 15TH STREET
County: SHEBOYGAN
Roadway Length: 0.6 MILES
Functional Classification: MINOR ARTERIAL
Project Sponsor: CITY OF SHEBOYGAN
Urbanized Area: SHEBOYGAN MPO

The signatory, City of Sheboygan, hereinafter called the Municipality, 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 highway or street improvement hereinafter described.

The authority for the Municipality 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 Municipality 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.

Existing Facility - Describe and give reason for request: The existing facility is 2-4 lanes that are 12 feet wide. The cross section is urban. The pavement is a combination of PCC and HMAC on PCC which has transverse and longitudinal cracking and depressions. The facility was last improved in 1952 and 1983. It has curb and gutter, sidewalk, and bicycle accommodations. There is spot lighting. There is sub-standard horizontal alignment. There is a railroad facility within 1000 feet of the project limits.

Proposed Improvement - Nature of work: The proposed project is a reconstruction of the urban cross section. New concrete pavement, sidewalk, and curb and gutter will be constructed. Signals will be installed. Railroad improvements are proposed. Spot lighting will be installed. Permanent and temporary pavement marking and signing will be installed. Lateral and trunk storm sewer lines will be installed.

Describe non-participating work included in the project and other work necessary to completely finish the project that will be undertaken independently by the Municipality. Please note that non-participating components of a project/contract are considered part of the overall project and will be subject to applicable Federal requirements: Sanitary sewer and watermain adjustments, storm sewer laterals and excavation, hauling and disposal of petroleum contaminated soil.

The Municipality agrees to the following 2013-2018 / 2015-2020 Urbanized Area STP-Urban project funding conditions:

Project design and construction costs are funded with 74% federal funding up to a maximum of \$2,785,581 for all federally-funded project phases when the municipality agrees to provide the remaining 26% and all funds in excess of the \$2,785,581 federal funding maximum, in accordance with the STP Urban program guidelines for projects in urbanized areas. Non-participating costs are 100% the responsibility of the municipality. Any work

performed by the Municipality prior to federal authorization is not eligible for federal funding. The Municipality will be notified by the State that the project is authorized and available for charging.

This project is currently scheduled in State Fiscal Year 2019. **In accordance with the State's sunset policy for Urbanized Area STP Urban projects, the subject 2013-2018 / 2015-2020 Urbanized Area STP-Urban improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2015, or by June 30, 2020.** Extensions may be available upon approval of a written request by or on behalf of the Municipality to WisDOT. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.

The dollar amounts shown in the Summary Funding Table below are federal maximum amounts unless explicitly identified otherwise. The final Municipal share is dependent on the final Federal participation, and actual costs will be used in the final division of cost for billing and reimbursement.

SUMMARY OF COSTS							
PHASE	Total Est. Cost	Federal Funds	%	UNION PACIFIC	%	Municipal Funds	%
ID 4996-01-78							
Design	\$356,839	\$267,629	75%*			\$89,210	25% + BAL
State Review	\$89,203	\$66,902	75%*			\$22,301	25% + BAL
<i>4996-01-78 Subtotal</i>	<i>\$446,042</i>	<i>\$334,531</i>				<i>\$111,511</i>	
ID 4996-01-80 Railroad							
Crossing Surface	\$208,343	\$40,000	44%*	\$93,754	45%	\$74,589	11%+ BAL
ID 4996-01-81 Railroad							
Signals	\$297,227	\$150,000	80%*			\$147,227	20% + BAL
ID 4996-01-79							
Construction	\$3,424,198	\$2,022,593	74%*			\$1,401,605	26% + BAL
State Review	\$445,079	\$238,457	74%*			\$206,622	26% + BAL
Non-participating	\$123,481	\$0	0%	\$0	0%	\$123,481	100%
<i>4996-01-79 Subtotal</i>	<i>\$3,992,758</i>	<i>\$2,261,050</i>				<i>\$1,608,227</i>	
Total Est. Cost Distribution	\$4,944,370	\$2,785,581	N/A	\$93,754	N/A	\$1,941,554	N/A

*The percentage of project costs covered by federal funding at approval, 74%, is based on TIP Committee Action. Due to the federal funding cap, which is \$2,785,581 for all federally-funded project phases, this percentage may change over the life of the project.

This request is subject to the terms and conditions that follow (pages 3 – 7) and is made by the undersigned under proper authority to make such request for the designated Municipality and upon signature by the State and delivery to the Municipality shall constitute agreement between the Municipality and the State. No term or provision of neither the State/Municipal Agreement nor any of its attachments may be changed, waived or terminated orally but only by an instrument in writing executed by both parties to the State/Municipal Agreement.

Signed for and in behalf of: City of Sheboygan (please sign in blue ink.)		
Title	Date	Name
Signed for and in behalf of the State:		
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.
3. The Municipality, 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 the 23 U.S.C. 139 and 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 municipality 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 Municipality 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 Municipality 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. Prevailing wage requirements, including but not limited to 23 U.S.C 113 and Wis. Stat. 103.50.
 - d. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. 313 and Wis. Stat. 16.754.
 - e. Competitive bidding requirements set forth in 23 U.S.C 112 and Wis. Stat. 84.06.
 - f. All applicable DBE requirements that the State specifies.
 - g. Federal Statutes that govern the Surface Transportation Program, including but not limited to 23 U.S.C. 133.
 - h. General requirements for administering federal and state aid set forth in Wis. Stat. 84.03.

STATE RESPONSIBILITIES AND REQUIREMENTS:

4. Funding of each project phase is subject to inclusion in Wisconsin’s approved 2013-2018 / 2015-2020 Urbanized Area STP-Urban 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. The substructure, superstructure, grading, base, pavement, and other related bridge and approach items.
 - c. Storm sewer mains necessary for the surface water drainage.
 - d. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main.
 - e. Construction engineering incident to inspection and supervision of actual construction work (except for inspection, staking, and testing of sanitary sewer and water main).

- f. Signing and pavement marking.
 - g. New installations or alteration of street lighting and traffic signals or devices.
 - h. Landscaping.
 - i. Preliminary Engineering and design.
 - j. Management Consultant and State Review Services.
 - k. Other eligible rail items: Crossing surface and signals
5. The work will be administered by the State and may include items not eligible for Federal participation.
 6. As the work progresses, the State will bill the Municipality for work completed which is not chargeable to Federal funds. Upon completion of the project, a final audit will be made to determine the final division of costs. If reviews or audits show any of the work to be ineligible for Federal funding, the Municipality will be responsible for any withdrawn costs associated with the ineligible work.

MUNICIPAL RESPONSIBILITIES AND REQUIREMENTS:

7. Work necessary to complete the 2013-2048 / 2015-2020 Urbanized Area STP-Urban improvement project to be financed entirely by the Municipality or other utility or facility owner includes the items listed below.
 - 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 municipality 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.
 - i. Other 100% Municipally funded items: Sanitary sewer and watermain adjustments, storm sewer laterals and excavation, hauling and disposal of petroleum contaminated soil
8. The construction of the subject improvement will be in accordance with the appropriate standards unless an exception to standards is granted by WisDOT prior to construction. The entire cost of the construction project, not constructed to standards, will be the responsibility of the Municipality unless such exception is granted.
9. Work to be performed by the Municipality 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 Municipality but must be coordinated with all other work undertaken during construction.

10. The Municipality is responsible for financing administrative expenses related to Municipal project responsibilities.
11. The Municipality 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.
12. The Municipality will pay to the State all costs incurred by the State in connection with the improvement that exceed Federal financing commitments or are ineligible for Federal financing. In order to guarantee the Municipality's foregoing agreements to pay the State, the Municipality, through its above duly authorized officers or officials, agrees and authorizes the State to set off and withhold the required reimbursement amount as determined by the State from any moneys otherwise due and payable by the State to the Municipality.
13. **In accordance with the State's sunset policy for Urbanized Area STP-Urban projects, the subject 2013-2018 / 2015-2020 Urbanized Area STP-Urban improvement must be constructed and in final acceptance within six years from the start of State Fiscal Year 2015, or by June 30, 2020.** Extensions may be available upon approval of a written request by or on behalf of the Municipality to WisDOT. The written request shall explain the reasons for project implementation delay and revised timeline for project completion.
14. If the Municipality should withdraw the project, it will reimburse the State for any costs incurred by the State on behalf of the project.
15. The Municipality 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, sidewalks and parking lanes [including snow and ice removal]) 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 project.
 - e. Provide complete plans, specifications, and estimates.
 - f. Provide relocation orders and real estate plats.
 - g. Use the *WisDOT Utility Accommodation Policy* unless it adopts a policy, which has equal or more restrictive controls.
 - h. Provide maintenance and energy for lighting.
 - i. 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.
16. It is further agreed by the Municipality that:
 - a. The Municipality 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 agreement.

- b. The Municipality assumes full responsibility for the plans and special provisions provided by their designer or anyone hired, contracted or otherwise engaged by the Municipality. The Municipality is responsible for any expense or cost resulting from any error or omission in such plans or special provisions. The Municipality will reimburse WisDOT if WisDOT 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 Municipality 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 Municipality or by others, will be in conformity with such "Manual of 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.
- e. The right-of-way available or provided for the project will be held and maintained inviolate for public highway or street purposes. Those signs prohibited under Federal aid highway regulations, posters, billboards, roadside stands, or other private installations prohibited by Federal or State highway regulations will not be permitted within the right-of-way limits of the project. The municipality, within its jurisdictional limits, will remove or cause to be removed from the right-of-way of the project all private installations of whatever nature which may be or cause an obstruction or interfere with the free flow of traffic, or which may be or cause a hazard to traffic, or which impair the usefulness of the project and all other encroachments which may be required to be removed by the State at its own election or at the request of the Federal Highway Administration, and that no such installations will be permitted to be erected or maintained in the future.

LEGAL RELATIONSHIPS:

- 17. The State shall not be liable to the Municipality for damages or delays resulting from work by third parties. The State also shall be exempt from liability to the Municipality for damages or delays resulting from injunctions or other restraining orders obtained by third parties.
- 18. The State will not be liable to any third party for injuries or damages resulting from work under or for the Project. The Municipality and the Municipality'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 Municipality and its sureties; 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 Municipality or its sureties; or because of any claims or amounts recovered for any infringement by the Municipality and its sureties of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Worker's Compensation Act, relating to the employees of the Municipality and its sureties; or any other law, ordinance, order or decree relating to the Municipality's operations.
- 19. Contract Modification: This State/Municipal Agreement can only 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.
- 20. 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 enforcement rights.
- 21. 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.

PROJECT FUNDING CONDITIONS

22. Non-Appropriation of Funds: 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.
23. 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.

24. The Municipality agrees to the following 2013-2018 / 2015-2020 Urbanized Area STP-Urban project funding conditions:
- a. ID 4996-01-78: Design is funded with 75% federal funding, when the municipality agrees to provide the remaining 25%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e). This phase includes Plan Development, Management Consultant Review, 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. Costs for this phase include an estimated amount for state review activities, to be funded 75% with federal funding and 25% by the Municipality.
 - b. ID 4996-01-80: Costs for railroad crossing surface are funded with 44% federal funding when the municipality agrees to provide 11% and railroad agrees to provide the remaining 45%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e).
 - c. ID 4996-01-81: Costs for railroad signals are funded with 80% federal funding when the municipality agrees to provide the remaining 20%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e).
 - d. ID 4996-01-79: Construction:
 - i. Costs for roadway reconstruction are funded with 74% federal funding when the municipality agrees to provide the remaining 26%. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e).
 - ii. Costs for this phase include an estimated amount for state review activities, to be funded 74% with federal funding and 26% by the Municipality. This portion of the project is subject to the cumulative project federal funding cap (see sub-item e).
 - iii. Non-participating costs are funded 100% by the Municipality. Costs include construction delivery.
 - e. Project Cap: In accordance with STP-Urban program guidelines for projects in urbanized areas, State action and TIP Committee action, this project has a federal funding cap of **\$2,785,581**. This federal funding cap applies to all federally funded project phases.

[End of Document]

III

Other Matters

7.3

Res. No. 137 - 18 - 19. By Alderpersons Wolf and Sorenson.
November 19, 2018.

A RESOLUTION authorizing the appropriate City Officials to enter into a contract or contracts to obtain trees and tree planting services to replace street trees in the City of Sheboygan.

WHEREAS, the City of Sheboygan currently has over 1800 plantable sites for street trees that have been lost due to age, size, or devastation by the Emerald Ash Borer; and

WHEREAS, the City desires to plant as many trees as possible on these plantable sites for street trees, recognizing that it is not financially possible to replace all 1800 trees at once; and

WHEREAS, to that end, the City previously issued Request for Proposals #1952-18, and approved Resolution No. 106-18-19 on October 15, 2018, authorizing the appropriate City Officials to enter into a contract to obtain trees and tree planting services based upon Request for Proposals #1952-18 with an aim to planting trees in 2018; and

WHEREAS, in accordance with Resolution No. 106-18-19, Staff has reviewed the responses to the Request for Proposals, and determined that the response from Property Solutions Contracting, LLC is the response that will maximize the number of trees planted and appropriately respecting the need for bio-diversity; and

WHEREAS, in consultation with Property Solutions Contracting, LLC, Staff believes that the best schedule for planting the trees desired by Staff is for planting to occur in Spring 2019; and

WHEREAS, Resolution No. 106-18-19 identified four funding sources for the trees and tree planting services:

2018 Parks & Forestry Budget 26553000-631100	\$ 40,000.00
2017 Community Development Block Grant 21761100-631100	\$ 66,000.00
2018 Community Development Block Grant 21861100-631100	\$110,000.00
2018 Rotary Club Donation 26553000-467101	\$ 14,580.00; and

WHEREAS, because some of those funds must be expended in 2018, Staff has negotiated a new contract which provides for the City to prepay for some of the trees and tree planting services in 2018, with the services to be completed in 2019 when the weather conditions are more conducive to planting the desired trees; and

Public Works

WHEREAS, a copy of the new contract is attached to this Resolution;
and

WHEREAS, Resolution No. 106-18-19 instructed Staff to report the outcome of the Request for Proposals to the next scheduled Public Works Committee meeting, which has been accomplished through this Resolution.

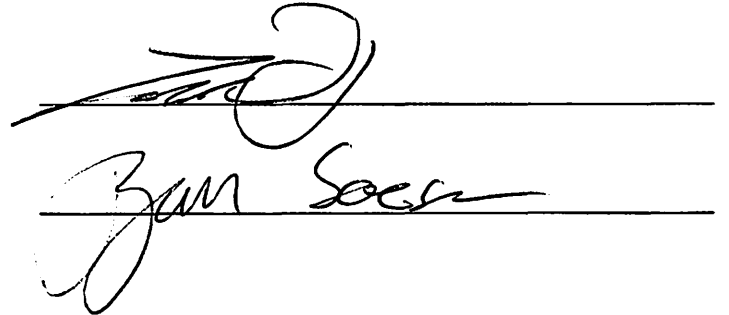
NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into the attached contract with Property Solutions Contracting, LLC.

BE IT FURTHER RESOLVED: That the following funding sources shall be used in payment of the contract authorized by this Resolution:

2018 Parks & Forestry Budget 26553000-631100	\$ 40,000.00
2017 Community Development Block Grant 21761100-631100	\$ 66,000.00
2018 Community Development Block Grant 21861100-631100	\$110,000.00
2018 Rotary Club Donation 26553000-467101	\$ 14,580.00

All of the above funding will be used for the purchase and planting of street trees with the exception of \$10,000.00 which will be used for Federal Payroll and Wage monitoring with a third party contractor to assure compliance to the grant requirements.

BE IT FURTHER RESOLVED: That any approval for the expenditure of funds approved by Resolution No. 106-18-19 is hereby revoked and replaced by the approval in 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

**AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND
PROPERTY SOLUTIONS CONTRACTING, LLC**

**REGARDING THE INSTALLATION OF TREES AT SELECTED LOCATIONS IN THE
CITY OF SHEBOYGAN**

This Agreement (“Agreement”) is made and entered into effective this ____ day of _____, 2018 (the “Effective Date”), by and between the City of Sheboygan (the “City”), a municipal corporation, and Property Solutions Contracting, LLC (“Contractor”).

WITNESSETH:

- WHEREAS, the City is in need of tree planting services from a qualified provider in order to replace some of the numerous street trees that have needed to be removed; and
- WHEREAS, in an effort to determine the best qualified provider to provide these tree planting services to the City, the City issued Request for Proposals #1952-18; and
- WHEREAS, the City received responses, reviewed those responses, and determined that it is in the best interests of the City to have Contractor provide tree planting services for the City; and
- WHEREAS, Contractor desires to provide these planting services under the terms and conditions set forth in this Agreement.

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

Article 1. Scope of Services

Contractor shall provide tree planting services (including the trees to be planted, as selected under Article 3) as set forth in City of Sheboygan Request for Proposals #1952-18 (“Services”). The Services shall be done in accordance with the Detailed Specifications set forth in Request for Proposals #1952-18 (the “Request for Proposals”). The Request for Proposals is hereby incorporated into the Agreement by reference as though fully set forth.

Contractor shall be responsible for:

- Obtaining any and all applicable City permits and paying any and all applicable permit fees prior to beginning work.
- Furnishing, erecting, and maintaining suitable barricades, warning signs, flashers, fencing, and other protective equipment to properly protect and safeguard its personnel and the public during all phases of the Services.
- Giving notice to the proper authorities in charge of streets, gas and water pipes, electric and other conduits, railroad, poles, catch basins, sewers, and all other property that may be

affected by Contractor's operations, at least three (3) business days before beginning operations. Contractor shall not hinder or interfere with any persons in the protection of such property or with the operations of utilities at any time. Contractor shall protect such utilities from damage and unnecessary exposure. The cost of repairing any damage to utilities shall be the responsible of Contractor.

- Promptly making payment to each and every person or party entitled thereto of all the claims for work or labor performed and materials furnished in the performance of this Agreement.
- Providing all necessary documentation with the City's third party payroll monitor in order to ensure that wage and hour reporting is performed in a manner acceptable to the United States Department of Labor. This may include submitting time sheets on Form WH-347 for its own and all subcontracted employees.

Article 2. Standard of Care

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

Article 3. Responsibilities of the City

The City designates Joe Kerlin as its project manager for purposes of this Agreement.

The City's project manager shall select one or more trees from Contractor's price list, which was contained in Contractor's response to the Request for Proposals. Contractor's price list is incorporated herein by reference as though fully set forth. The City's project manager shall work with Contractor to ensure the selected tree or trees are installed at the most appropriate locations on an appropriate schedule.

Article 4. Compensation

The City shall pay Contractor for the trees selected by the City's project manager based on the prices set forth in the price list.

No later than the full execution of this Agreement, the City shall provide Contractor with a list of the trees that the City desires to have purchased and planted under this Agreement ("Initial Tree Order"). The Initial Tree Order could either be some or all of the trees that the City will order from Contractor under this Agreement. Within five (5) days of the execution of this Agreement, Contractor shall purchase those trees identified on the Initial Tree Order on behalf of the City, and within three (3) days shall submit an invoice to the City based upon the prices set forth in the price list. These trees identified on the Initial Tree Order shall be planted beginning in spring 2019.

In the event that the City provides Contractor with a subsequent list of trees that the City desires to have purchased and planted under this Agreement, Contractor shall send invoices to the City on a monthly basis, which shall be based on the trees selected by the City's project manager that were

planted in that month. Invoices shall be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within thirty (30) days of receipt of invoice.

The total amount paid to Contractor (for the Initial Tree Order and any subsequent order) shall not exceed Two Hundred Twenty Thousand Five Hundred Eighty Dollars (\$220,580.00). The Division I Project shall not exceed One Hundred Sixty Six Thousand Dollars (\$166,000.00). The Division II Project shall not exceed Fifty Four Thousand Five Hundred Eighty Dollars (\$54,580.00).

The invoice shall be sent to:

Bernie Ramer
City of Sheboygan
828 Center Ave.
Sheboygan, Wisconsin 53081

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

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

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

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

Article 5. Appropriation of Funds

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty. The City agrees that it will make its best effort to obtain sufficient funds for the Agreement to meet its obligations hereunder in full.

Article 6. Schedule

Contractor shall complete the Services by May 31, 2019, or within such extra time as may have been allowed by a mutually agreed extension. The Parties recognize that the planting of trees will not begin until spring 2019.

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

Article 7. Workmanship and Quality of Materials

Contractor shall guarantee all plants to be healthy and in flourishing condition for one year from the date of acceptance. This guarantee does not include vandalism, storm damage, or animal damage.

The Contractor shall remove and replace (as soon as weather conditions permit) all plants not in a healthy and flourishing condition—as determined by the City Forester—at any point during the guarantee period. The replacement trees shall be furnished by Contractor. Replacement trees shall be subject to all requirements stated in this specification.

The guarantee of all replacement plants shall extend for an additional period of one year from the date of their acceptance after replacement. In the event that a replacement plant is not acceptable during or at the end of said extended guarantee period, the City Forester may elect subsequent replacement or credit for that item or items.

Article 8. Safety Requirements

All materials, equipment, and supplies provided to the City must comply fully with all safety requirements set forth under state and federal law.

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

Contractor is required to comply with OSHA regulations regarding any trenches of at least five (5) feet in depth. All cost for trench safety systems shall be the responsibility of Contractor.

Article 9. Open Records

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

Article 10. Termination

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

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

Article 11. Default

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

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

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

Permitting Contractor to continue and finish the work or any part of same after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way be construed as a waiver on the part of the City of any of its rights under this Agreement.

Article 12. Identity of Contractor

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

Article 13. Independent Contractor Status

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

Article 14. Indemnification

Contractor shall indemnify, pay the cost of defense (including attorneys' fees) and hold harmless the City and all of its officers, agents, and employees from all suits, actions, or claims of any character arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Article 15. Insurance

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

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

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

\$1,000,000, Personal and Advertising Injury of at least \$1,000,000, Bodily Injury and Property Damage of at least \$1,000,000 per occurrence, Fire Damage of at least \$100,000 per fire, and Medical Expense of at least \$5,000 per person.

c. Auto Liability Insurance — Contractor shall acquire and maintain, for the duration of the Agreement, Automobile Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

d. Umbrella Liability – Contractor shall acquire and maintain, for the duration of the Agreement, an Umbrella Liability coverage over its General Liability Insurance and Auto Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The deductible on the Umbrella Liability shall not be more than \$10,000.

With the prior written approval of the City’s project manager, Contractor may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.

Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor’s provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City the required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

Article 16. Conflict of Interest

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

Article 17. Waiver

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

Article 18. Severability

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

Article 19. Assignment

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

Article 20. Third Party Rights

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

Article 21. Governing Law and Venue

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

Article 22. Non-Discrimination

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

Article 23. Compliance with Laws

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

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

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

Article 24. Notices

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

City:

Contractor:

City Clerk	Andrew Novak
City of Sheboygan	Property Solutions Contracting, LLC
828 Center Ave.	7245 W. Concord Creek Drive
Sheboygan, Wisconsin 53083	Mequon, WI 53092

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

Article 25. Intent to be Bound

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

Article 26. Force Majeure

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

Article 27. Integration and Modification

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

Article 28. Non-Collusion

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

- a. The prices in its response to the Request for Proposals were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition as to any other matter relating to such prices with any other bidder, or with any other competitor.
- b. The prices quoted in its Request for Proposals were not knowingly disclosed—directly or indirectly—by the Contractor prior to opening of the proposals.
- c. No attempt was made to induce any other person, partnership, or corporation to submit or not submit a proposal for the purpose of restricting competition.

Article 29. Provisions Relating to Federal Funding

Division I of this Project is receiving federal funding. As such, there are certain provisions required to be included in the Agreement.

Federal Labor Standards Provisions (HUD-4010, dated 6/2009) are included in this Agreement and incorporated herein by reference.

All contracts and subcontracts relating to Division I of this Project, including this Agreement, must include the following:

- a. Section 3 of the Housing and Urban Development Act of 1968. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulation.
- c. The contractor agrees to send each labor organization or representatives of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, set forth minimum number and job titles subject to hire, availability of apprenticeship, and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- d. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f. Non-compliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians; and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Article 30. Payment and Performance Bonds

Contractor shall provide the City with a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the contract amount.

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

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

Article 31. Other Provisions

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

- g. Ambiguity or Inconsistency. In resolving conflicts, errors, discrepancies, and disputes concerning the Scope of Work to be performed by Contractor, and other rights and obligations of the City and Contractor, the document expressing the greater quantity, quality, or other scope of work in question, or imposing the greater obligation upon Contractor and affording the greater right or remedy to the City shall govern.
- h. Nonexclusive Contract. The City reserves the right to purchase work or materials outside of this Agreement.

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

CITY OF SHEBOYGAN, WISCONSIN

PROPERTY SOLUTIONS CONTRACTING, LLC

BY: _____
Michael J. Vandersteen, Mayor

BY: _____
Andrew Novak, President

ATTEST: _____
Meredith DeBruin, City Clerk

ATTEST: _____

DATE: _____

DATE: _____

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 137-18-19 by Alderperson Wolf authorizing the appropriate City Officials to enter into a contract or contracts to obtain trees and tree planting services to replace street trees in the City of Sheboygan.

REPORT PREPARED BY: Bernard Rammer, Purchasing Agent

REPORT DATE: 11/20/18

MEETING DATE: 11/27/18

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item:	See Below	Wisconsin Statutes:	N/A
Budget Summary:	CDBG Grant and Local Funding	Municipal Code:	N/A
Budgeted Expenditure:	\$230,580.00		
Budgeted Revenue:	N/A		

BACKGROUND / ANALYSIS: The City has issued and received a proposal from Property Solutions Contracting of Mequon, WI to furnish and install street trees in the City of Sheboygan. The proposal was the only proposal complete in its response. One other partial proposal was received and the pricing on a per tree basis was found to be higher.

Utilizing the following available funding, The Superintendent of Parks and Forestry has made the appropriate species selections and quantities of each so as to provide a good blend of disease resistant species in the targeted areas:

2017 Community Development Block Grant	21761100-631100	\$ 66,000.00
2018 Community Development Block Grant.....	21861100-631100	\$ 110,000.00
2018 Parks & Forestry Budget.....	26553000-631100	\$ 40,000.00
Rotary Club donation.....	26553000-467101	\$ 14,580.00

STAFF COMMENTS: Due to time constraints related to a portion of the funding above, certain funds need to be expended by the end of 2018. In addition, time constraints on the part of the Contractor as well as the uncertainty of the weather as it relates to tree planting have led to the determination that it would be prudent for the city to pre-purchase trees in 2018 but defer the actual planting until spring of 2019. Under this plan, the City will take ownership of the trees but will leave them in the ground at the nursery until they are ready to be planted.

This change necessitates certain changes in the contract document as well as calls for the purchase of a performance and payment bond. Once Federal Payroll monitoring and the cost of the bond are deducted, the City will be able to plant 398 trees

ACTION REQUESTED: A motion to recommend the Common Council approve Res. NO. 137-18-19 authorizing the appropriate City Officials to enter into an amended contract for the provision and planting of street trees with Property Solutions Contracting, LLC of Mequon, WI. The amended contract will allow for the purchase of a certain percentage of the trees this fall with planting to follow in the spring of 2019. The contract also stipulates the purchase of a Performance & Payment Bond and Federal Wage rate monitoring by a third party vendor.

ATTACHMENTS:

- I. Res. No. 137-18-19