

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Ordinance Regarding Occupying City Street Right-of-Way by Utilities

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

REPORT DATE: May 5, 2016

MEETING DATE: May 10, 2016

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

Wisconsin Statutes: §182.017(1r)
§196.58(1r)
Municipal Code: 122-3

BACKGROUND / ANALYSIS:

This is a complete update of our utility occupancy of public rights-of-way (ROW) in the City of Sheboygan. The competition and/or use of local ROW has increased significantly with Alternative Telecommunications Utilities (ATU's). Cellphone technology and data demands are driving the pressure for ROW access for infrastructure and equipment. Since these companies are regulated under the State of Wisconsin Public Service Commission the City's ability to regulate such access is limited.

STAFF COMMENTS:

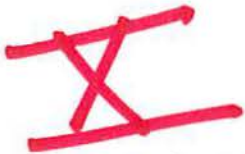
As a result, this revised ordinance will strengthen the City's position to protect the City's and its citizens' interest.

ACTION REQUESTED:

Accept and Adopt Gen. Ord. No. 2-16-17

ATTACHMENTS:

League of Municipalities memo detailing concerns



7.2

Gen. Ord. No. 2-16-17. By Alderperson Belanger. May 2, 2016.

AN ORDINANCE repealing and recreating Section 122-3 of the City of Sheboygan Municipal Code, relating to the occupancy of public rights-of-way by utilities.

WHEREAS, pursuant to §182.017(1r), Wis. Stats., a public utility may, subject to certain provisions of the Wisconsin Statutes and to reasonable regulations made by any municipality through which the public utilities' transmission lines or systems may pass, construct and maintain such lines or systems with all necessary appurtenances in, across or beneath any public highway or bridge; and

WHEREAS, pursuant to §196.58(1r), Wis. Stats., the Common Council may determine by ordinance the terms and conditions upon which a public utility may be permitted to occupy the streets, highways or other public places within the City of Sheboygan; and

WHEREAS, the Common Council has considered, and desires to hereby establish, the terms and conditions for occupancy of the public rights-of-way within the City; and

WHEREAS, the Common Council has determined that erection and maintenance of utility poles (including, but not limited to telephone, cable television, electric light and power poles), wires and appliances in the streets, alleys and public places of the city within the district described as Eighth Street from the south line of Indiana Avenue to the north line of Superior Avenue is dangerous to life and property and would obstruct and incommode the public use of such streets;

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

Section 1. Section 122-3 of the Sheboygan Municipal Code is hereby repealed and recreated so as to read as follows:

"Sec. 122-3. *Occupancy of public rights-of-way by utilities.*

(1) *General Provisions.*

(a) *Purpose and Findings.* In the exercise of governmental functions, the City of Sheboygan has priority over all other uses of the public rights-of-way. The City desires to anticipate and minimize the number of obstructions, degradation, and excavations taking place to regulate the placement of facilities in the rights-of-way to ensure that the rights-of-way remain available for public services and are

Pub. Works.

safe for public use, and to ensure that facilities are timely maintained, supported, protected or relocated to accommodate reconstruction or repairs. The taxpayers of the City bear the financial burden for the upkeep, maintenance and reconstruction of the rights-of-way and a primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by persons who locate facilities therein.

The City finds increased use of the public rights-of-way results in increased costs to the taxpayers of the City and that these costs are likely to continue into the foreseeable future.

The City finds that the above-ground use of public rights-of-way creates special and unique public health, safety, and general welfare concerns for the City, including, but not necessarily limited to, traffic safety, sight-line and vision triangle issues, break-away design consistent with other public utility pole or structure requirements, public snow plowing and snow storage, property access and public parking, obstruction to municipal Police, Fire, and Rescue Services, and related issues.

The City finds that the erection and maintenance of utility poles (including, but not limited to telephone, cable television, and electric light and power poles), wires and appliances in the streets, alleys and public places of the City within the district described as Eighth Street from the south line of Indiana Avenue to the north line of Superior Avenue is dangerous to life and property and to obstruct and incommode the public use of such streets and is hereby declared to constitute a nuisance.

The City finds that delays by occupants of the rights-of-ways in maintaining, supporting, protecting or relocating facilities, if they impact public construction projects, have the potential to significantly increase public works project costs borne by the taxpayers. Moreover, the City finds that some right-of-way occupants have a history of delays and non-responsiveness.

The City finds that right-of-way, by definition, is limited in area, use, and availability, and, as a result, requires regulation and limitation of use and occupancy, subject to all applicable state, federal, and constitutional laws and

regulations and the provision of all necessary utility services to the public.

The City finds that occupancy and excavation of its rights-of-way causes costs to be borne by the City and its taxpayers, including but not limited to:

1. Administrative costs associated with public right-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.
2. Management costs associated with ongoing management activities necessitated by public right-of-way users.
3. Repair or restoration costs to the roadway associated with the actual excavation into the public right-of-way.
4. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life due to excavations in the public right-of-way.

In response to the foregoing facts and findings, the City hereby adopts this ordinance relating to access to, administration of, and permits to excavate, obstruct and/or occupy the public rights-of-way. This ordinance imposes reasonable regulations on the placement and maintenance of equipment currently within its rights-of-way or to be placed therein in the future. It is intended to complement the regulatory roles of state and federal agencies.

The purpose of this ordinance is to provide the City a framework within which to regulate and manage the public rights-of-way, and to provide for recovery of the costs incurred in doing so. This ordinance provides for the health, safety and welfare of the residents of the City as they use the right-of-way of the City, as well as to ensure the structural integrity of the public rights-of-way.

- (b) *Definitions.* The following definitions apply in this ordinance. References hereinafter to "sections" are, unless otherwise specified, references to sections in this ordinance. Defined terms remain defined terms whether or not capitalized.

"Applicant" means any person requesting permission to excavate, obstruct and/or occupy a right-of-way.

"Degradation" means the decrease in the useful life of the paved portion of the right-of-way, excluding the sidewalk right-of-way, caused by an excavation of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

"Department" means the Department of Public Works of the City.

"Emergency" means a condition that (1) poses a clear and immediate danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.

"Engineer" means the City Engineer or his/her designee.

"Excavate" means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

"Facilities" means all equipment owned, operated, leased or subleased in connection with the operation of a public service or utility service, and shall include, but is not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances.

"In", when used in conjunction with "right-of-way", means over, above, within, on or under a right-of-way.

"Local representative" means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this ordinance.

"Municipal Code" means the Municipal Code of the City of Sheboygan, as amended.

"Obstruct" means to place any object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

"Permittee" means any person to whom a permit to occupy, excavate or obstruct a right-of-way has been granted under this ordinance or under Chapter 110, Municipal Code.

"Person" means corporation, company, association, firm, partnership, limited liability company, limited liability

partnership and individuals and their lessors, transferees and receivers.

"Prequalified Contractor" means a contractor approved by the Department on an annual basis to work in the right-of-way.

"Public Utility" has the meaning provided in § 196.01(5), Wis. Stats.

"Registrant" means any person who has registered with the City to have its facilities located in any right-of-way.

"Repair" means to perform construction work necessary to make the right-of-way useable for travel or its intended use according to Department specifications, or to restore equipment to an operable condition.

"Restore" means the process by which the excavated right-of-way and surrounding area, including pavement and foundation, is reconstructed to Department specifications.

"Right-of-Way" means the surface and space above and below an improved or unimproved public roadway, highway, street, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes.

"City" means the City of Sheboygan, Wisconsin, a municipal corporation.

- (c) Administration. The Engineer or his/her designee is responsible for administration of the rights-of-way and the permits and ordinances related thereto including, but not limited to, §110-102 and §110-242 of the Municipal Code.

(2) *Registration for Right-of-Way Occupancy.*

- (a) Each person who has, or seeks to have, facilities located in any right-of-way shall register with the Department and pay the fee set forth in Section (4). Registration will consist of providing application information and paying a registration fee. This section shall not apply to those persons who have facilities in the right-of-way pursuant to a franchise or other agreement.
- (b) No person may construct, install, maintain, repair, remove, relocate or perform any other work on, or use any equipment or

any part thereof in any right-of-way unless that person qualifies as a registrant, is registered with the Department, or is a prequalified contractor.

- (c) Nothing herein shall be construed to repeal or amend the provisions of a City ordinance requiring persons to plant or maintain the parkway in the area of the right-of-way between their property and the street curb or pavement, construct sidewalks or driveways or other similar activities. Persons performing such activities shall not be required to obtain any permits under this ordinance.
- (3) *Registration Information.* The information provided to the Department at the time of registration, in order to qualify as a registrant, shall include, but not be limited to, the following:
- (a) Each registrant's name, Diggers Hotline registration certificate number, address and email address, if applicable, and telephone and facsimile numbers.
 - (b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.
 - (c) A certificate of insurance on a form prescribed by the Department.
 - (d) If the registrant is a corporation, an LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified by the Secretary of State.
 - (e) A copy of the registrant's certificate of authority from the Wisconsin Public Service Commission or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
 - (f) Execution of an indemnification agreement in a form prescribed by the Department.
 - (g) The registrant shall keep all of the information listed above current at all times by providing to the Department information as to changes within fifteen (15) working days

following the date on which the registrant has knowledge of any change.

- (4) *Registration Fee.* The Department shall charge an annual Registration Fee in an amount of \$50 to recover the costs incurred by the City for processing and updating registration information.
- (5) *Reporting Obligations.* It is in the best interests of all affected parties to attempt to coordinate construction in the public right-of-way whenever it is reasonably possible. Therefore, periodic reporting by the registrant of known construction plans will be useful to achieve this objective.
 - (a) Every registrant shall, at the time of registration and no later than January 1 of each year, file a construction and major maintenance plan with the Department. The Department shall make available at the time of registration, if known and approved, the Department's construction and major maintenance plan. The registrant's plan and the Department's plan shall be submitted on a form prescribed by the Department and shall contain the information determined by the Department to be necessary to facilitate the coordination and reduction in the frequency of excavations of rights-of-way. The plan shall include, but shall not be limited to, the following information:
 1. The locations and the estimated beginning and ending dates of all projects planned to be commenced during the next calendar year; and
 2. The tentative locations and estimated beginning and ending dates for all projects contemplated for the two years following the next calendar year.
 - (b) By February 1 of each year, the Department will have available for inspection in its office a composite list of all projects of which the Department has been informed in the annual plans. All registrants are responsible for keeping themselves informed of the current status of this list.
 - (c) Thereafter, by February 15, each registrant may change any project in its list and must notify the Department of all such changes in said list. The Department will make all such changes available for inspection in its office. Notwithstanding the foregoing, a registrant may at any time join in a project of another registrant listed by the other

registrant or undertake any maintenance project not listed in registrant's plan.

(6) *Permit to Install, Excavate, or Otherwise Occupy Right-of-Way Required.*

(a) *Permit Required.* Except as otherwise provided in this ordinance or the Municipal Code, no person shall install facilities, excavate, or otherwise occupy any right-of-way without first having obtained a permit for same from the Department. A copy of any permit issued under this ordinance shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Department upon request.

(b) *Permit Application.* Application for a permit shall be made to the Department. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

1. Registration and qualification as a registrant with the Department if required by this ordinance.
2. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities that are part of applicant's proposed project.
3. Payment of all money due to the City for all of the following:
 - a. applicable permit fees and costs as set forth below;
 - b. subject to subsection (6)(b)4., unpaid fees or costs due for prior excavations;
 - c. subject to subsection (6)(b)4., any loss, damage, or expense suffered by the City because of applicant's prior excavations of the rights-of-way or any emergency actions taken by the City.
4. The Department shall not deny an applicant an excavation permit because of a dispute between the City and the applicant related to subsection (6)(b)3.a. or c. if:

- a. the dispute has been adjudicated in favor of the applicant; or
 - b. the dispute is the subject of any appeal filed by the applicant and no decision in the matter has as yet been rendered.
- (7) *Installation/Excavation/Occupancy Permit Fee.* The Permit Fee shall be established by the Department in an amount sufficient to recover the costs incurred by the City. This fee shall recover administrative and inspection costs, and excavation fees per \$110.244, Sheboygan Municipal Code. Payment of said fees shall be collected prior to issuance of the permit. However, the Engineer may, with the advice and consent of the Administrative Services Director, establish a fee collection process from governmental agencies and private utilities in order to expedite the permitting system and recognize that certain excavations are deemed emergencies.
- (a) *Waiving of Fees.* Fees shall not be waived unless the work involved is a direct result of the Engineer's demand that facilities owned by a utility be removed or relocated or unless waived by the Common Council upon review of the Engineer's decision.
 - (b) *Fee Schedule.* The minimum fee for each excavation permit for a single address shall be as set forth in \$110.244, Sheboygan Municipal Code. This permit fee shall be in addition to any forfeiture provided elsewhere in the Municipal Code.

For those permit applications which provide for a substantial undertaking of excavation within the public right-of-way attended by disruption of the general public and traffic, the Engineer is authorized to assess the actual cost of the City employee's time engaged in the review and inspection of the anticipated work, multiplied by a factor determined by the respective department to represent the City's cost for statutory expense, benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.0, plus the cost of mileage reimbursed to City employees which is attributed to the work, plus all consultant fees associated with the work at the invoiced amount plus ten percent (10%) for administration.

- (c) *City Exemption.* The City and its contractors shall not pay degradation fees for excavations due to general government functions.

- (d) Permit fees paid for a permit that the Department has revoked are not refundable.

(8) *Right-of-Way Repair/Restoration.*

- (a) The Permittee shall be required to repair the public right-of-way to Department specifications, subject to inspection and acceptance by the Department. In addition to repairing its own work, the Permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the Department. The Department shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the Department.
- (b) *Guarantees.* The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this period it shall, upon notification from the Department, correct all work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done due to circumstances constituting force majeure.
- (c) *Failure to Repair/Restore.* If the Permittee fails to repair/restore the right-of-way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all work required by the Department, the Department at its option may do such work. In that event the Permittee shall pay to the City, within thirty (30) days of billing, the cost of repairing/restoring the right-of-way.

(9) *Inspection.*

- (a) *Notice of Completion.* When the work under any permit hereunder is begun and completed the Permittee shall notify the Department.
- (b) *Site Inspection.* Permittee shall make the work site available to the Department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.

- (c) *Authority of Department.* At the time of inspection the City may order the immediate cessation of any work which poses a threat to the life, health, safety or well-being of the public. The City may issue an order to the registrant or Permittee for any work that does not conform to applicable City standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant or Permittee shall present proof to the Department that the violation has been corrected. If such proof is not presented within the required time, the Department may revoke the permit pursuant to Section (12).
- (10) *Ongoing Management Fees.* The cost of trimming trees around facilities is an ongoing expense to the City. Such costs will be determined and a fee to offset costs may be assessed against permit holders in the future.
- (11) *Erection of Poles in Certain Areas Prohibited.* The erection and maintenance of telephone, cable television, telegraph, electric light and power poles, wires and appliances in the streets, alleys and public places of the city within the district described as Eighth Street from the south line of Indiana Avenue to the north line of Superior Avenue is prohibited and shall constitute a nuisance. However, any firm or corporation having previously legally erected telephone, cable television, telegraph or electric light and power poles on North Eighth Street within the limits described may construct conduits on such limited portions of such streets for placement of underground wires and cables. The location of the conduits shall be approved by the Department and shall be built in a safe, workmanlike and modern manner as approved by the Department.
- (12) *Compliance with Other Laws.* Obtaining a permit to excavate, install and/or occupy the right-of-way does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, county, state, or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.

(13) *Revocations, Suspensions, Refusals to Issue or Extend Permits.*

(a) The Department may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:

1. The applicant or Permittee is required to be registered and has not done so.
2. Issuance of a permit or installation of facilities for the requested date or location would interfere with an exhibition, celebration, festival or other event.
3. Misrepresentation of any fact by the applicant or Permittee.
4. Failure of the applicant or Permittee to maintain required bonds and/or insurance.
5. Failure of the applicant or Permittee to complete work in a timely manner.
6. The proposed activity is contrary to the public health, safety or welfare.
7. The proposed activity requires above-ground structures causing safety issues including, but not limited to, sight-line safety, vision triangles, break-away structures, public plowing and snow storage, obstruction to municipal Police, Fire, and Rescue services, and related issues with the use of the right-of-way.
8. The extent to which right-of-way space where the permit is sought is available.
9. The competing demands for the particular space in the right-of-way.
10. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the Permittee or applicant.
11. The applicability of City ordinances, or other regulations of the right-of-way, including, but not limited to, Sections 86.16 (prohibiting interference with use of highway by the public) and 182.17 (prohibiting poles in front of residence or occupied business), Wis.

Stats., that affect the location, type, height, size and/or use of facilities in the right-of-way.

- (b) *Discretionary Issuance.* The Department may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the Permittee or applicant, or (b) to allow such customer to materially improve its utility service, or (c) to allow the Permittee or applicant to comply with state or federal law or City ordinances or an order of a court or administrative agency.
- (c) *Appeals.* Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the Common Council. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Common Council may affirm, reverse or modify the decision of the Department.

(14) *Work Done Without a Permit.*

- (a) *Emergency Situations.* Each registrant shall immediately notify the City by verbal notice on an emergency phone number provided by the City of any event regarding its facilities that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this ordinance.

If the City becomes aware of any emergency regarding a registrant's facilities, the Department may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The City may take such action it deems necessary to protect public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

- (b) *Non-Emergency Situations.* Except in an emergency, any person who, without first having obtained the necessary permit, excavates, installs facilities within or otherwise attempts to occupy a right-of-way shall be subject to a stop-work order or other appropriate legal remedy, and must subsequently obtain a permit, and shall, in addition to any penalties prescribed by the Municipal Code, pay double the normal fee for said permit, pay any additional penalties for repeat occurrences provided

for in §110-244(b), pay double all the other fees required by this ordinance or other provisions of the Municipal Codes, deposit with the Department the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this ordinance.

(15) *Location of Facilities.*

- (a) *Underground.* Unless in conflict with state or federal law, except when existing above-ground facilities are used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
- (b) *Limitation of Space.* The Department may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of persons to occupy and use the right-of-way. In making such determination, the Department shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit or limit the placement of new or additional facilities when required to protect public health, safety or welfare.
- (c) *Attachment to Bridges.* Whenever an applicant or Permittee under this section requests permission to attach pipes, conduits, cables or wires to any City bridge structure, the applicant shall pay a fee of \$1,000 upon the granting of such permission to defray administrative expense in the analysis and inspection of such installation. The owner of such pipes, conduits, cables or wires shall be entitled to no compensation for removal or relocation of the same in the case of repair, removal, or replacement of said bridge structure by the City.

(16) *Relocation and Protection of Facilities.* A registrant shall promptly and at its own expense maintain, support, protect or relocate its facilities in the right-of-way whenever the City, or its agent, acting in its governmental capacity, requests such action to allow for public work in the right-of-way. The City, or its agent, shall issue a due date for the work to the local representative of not less than seventy-two (72) hours, which due date shall be reasonable and based upon the actions to be undertaken by the registrant. If requested, the registrant shall restore the right-of-way following the completion of the work. If a registrant fails to perform the actions required herein by the due date, in addition to all other available legal remedies available

to the City, the registrant shall be subject to forfeitures as provided in §122-1, Sheboygan Municipal Code. Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from a right-of-way which has been vacated in favor of a nongovernmental entity unless the reasonable costs thereof are first paid to the person therefore.

(17) *City Right to Self-Help.* In the event that a registrant does not proceed to maintain, support, protect or relocate its facilities as ordered in subsection (16), the City may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days of the date mailing to the registrant.

(18) *Abandoned Facilities.*

(a) *Discontinued Operations.* A registrant who has determined to discontinue its operations in the City must either:

1. Provide information satisfactory to the Department that the registrant's obligations for its facilities under this ordinance have been lawfully assumed by another registrant; or
2. Submit to the Department a proposal and instruments for dedication of its facilities to the City. If a registrant proceeds under this clause, the City may, at its option:
 - a. accept the dedication for all or a portion of the facilities; or
 - b. require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or above-ground level; or
 - c. require the registrant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

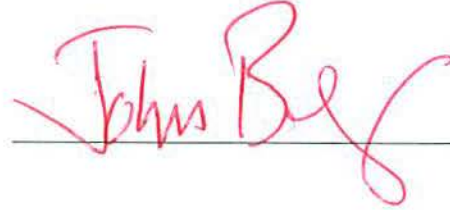
However, any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two years, unless the Department waives this requirement in writing.

(b) *Abandoned Facilities.* Facilities of a registrant who fails to comply with subsection (18)(a)1, and which, for two (2) years, remain unused shall be deemed to be abandoned. Abandoned

facilities are deemed to be a public nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the registrant, or the registrant's successor in interest.

- (c) *Public Utilities.* This subsection (18) shall not apply to a public utility, as defined in §96.01(5), Wis. Stats., that is required to comply with §196.81, Wis. Stats.
- (19) *Reservation of Regulatory and Police Powers.* The City, by the granting of a permit to excavate, install facilities within, obstruct and/or occupy the right-of-way, or by registering a person under this ordinance, does not surrender, in any manner or to any extent lose, waive, impair or lessen the lawful powers and rights which it now has or which may be hereafter granted to the City under the Constitution and statutes of the state of Wisconsin to regulate the use of the right-of-way by the permittee; and the permittee, by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under this ordinance, agrees that all lawful powers and rights, regulatory powers, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect, and permittee is subject to the regulatory and police powers of the City to adopt and enforce general ordinances and ordinances necessary to the health, safety and welfare of the public, and is deemed to agree to comply with all applicable general ordinances and ordinances enacted by the City pursuant to such powers.
- (20) *Severability.* If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.
- (21) *Penalty.* Except as otherwise provided herein, and in addition to all other legal remedies available to the City, any person who violates this ordinance or fails to comply with the provisions hereof shall be subject to forfeitures as provided in §110-2, Sheboygan Municipal Code."

Section 2. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.



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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

MEMORANDUM

TO: Claire Silverman, Legal Counsel
League of Wisconsin Municipalities

FROM: Anita Gallucci

DATE: April 12, 2016

RE: Regulation of WITN's Poles in Local Right-of-Way

The League has been contacted by several members regarding requests they have received from Wisconsin Technology Networking, LLC ("WITN") to place utility poles in local rights-of-way ("ROW"). In response, I have been asked for a memorandum addressing the following questions:

1. What right does WITN have to place poles in local ROW?
2. What right does a municipality have to regulate WITN's proposed use of local ROW?
3. What sort of regulations may a municipality apply to WITN?
4. What may a municipality do if it has not adopted regulations that would apply to utility poles placed in local ROW?

BACKGROUND

WITN has submitted permit applications to various municipalities in southeast Wisconsin, seeking to install one or two 120' "transport utility poles and facilities" in local ROW. WITN's cover letter, submitted with its applications, states that:

WITN is an alternative telecommunications utility ["ATU"] regulated by the Wisconsin Public Service Commission ["PSCW"] to provide intrastate telecommunications service, whether switched or dedicated, including all telecommunications service available, such as intraLATA and interLATA toll telecommunications, access service to telecommunications providers and private-line service.

The letter also states that it is "deploying a hybrid transport network" that can be used to "support a variety of technologies and services that required connectivity to the internet,"

including “mobile service providers.” According to the letter, the “transport utility poles and facilities are not dedicated to any particular customer, and, to the extent capacity on the structures is available, are available to be used by other entities, including the [municipality].” In addition, plans submitted by WITN show that the company intends to install two microwave dishes on the poles and install fiber up to the poles.

According to records maintained on the PSCW’s website, WITN is listed as an active competitive local exchange carrier (a “CLEC”) and, therefore, has ATU status under Wisconsin law. The original certification was granted on June 20, 2007 to a company called Mobilitie, LLC, in PSCW Docket No. 3778-NC-100 (PSC REF#: 77803), and was subsequently transferred to WITN. On April 5, 2016, a company called Mobilitie Management, LLC, applied to the PSCW for authorization to provide competitive local telecommunications services throughout Wisconsin. It is not clear what, if any, connection Mobilitie Management has to WITN and its current build out efforts.

DISCUSSION

A. WHAT RIGHT DOES WITN HAVE TO PLACE POLES IN LOCAL ROW?

Under Wis. Stat. § 182.017(1r), certain “companies” have the right to place their facilities in local ROW subject “to reasonable regulations made by any municipality through which [their] transmission lines or systems may pass.” A “company,” as defined in the statute, may include a limited liability company organized to furnish telecommunications service¹ to the public or for public purposes. Wis. Stat. § 182.017(1g)(b)1.

An ATU, such as WITN, is a company within the meaning of the statute. Accordingly, WITN has the right to place its utility poles in local ROW. However, that right is a qualified one. WITN must comply with all “reasonable” regulations imposed by the municipality with jurisdiction over the affected ROW.

As an ATU, WITN also has the right to challenge any municipal regulations that it believes are “unreasonable.” Those challenges are heard by the PSCW. Wis. Stat. § 182.017(8).

B. WHAT RIGHT DOES A MUNICIPALITY HAVE TO REGULATE WITN’S UTILITY POLES?

Municipalities have police power authority to regulate local ROW. With respect to a company’s use of local ROW, such regulations must be reasonable. League members have several questions regarding what is “reasonable regulation” with regard to WITN’s utility poles. These questions are addressed as follows:

¹ “Telecommunications service” is very broadly defined as “the offering for sale of the conveyance of voice, data, or other information, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication regardless of the technology or mode used to make such offering.” Wis. Stat. § 182.017(1g)(cq).

1. *May a municipality adopt a moratorium on the placement of 120' poles in the ROW in order to have time to put regulations in place that would apply to such structures?*

No. According to Wis. Stat. § 182.017(8)(am), a municipal regulation is unreasonable if it “has the effect of creating a moratorium on the placement of company lines or systems” in local ROW.

2. *How much time can a municipality take in acting on WITN's permit application?*

60 days. According to Wis. Stat. § 182.017(9), a “municipality shall approve or deny a permit application no later than 60 days after receipt of the application.” If it fails to act within that time period, then the application is deemed granted. In addition, if the application is denied, the “municipality shall provide the applicant a written explanation of the reasons for the denial” at the time of the denial.

3. *May a municipality charge WITN rent for use of its ROW?*

No. According to Wis. Stat. § 182.017(8)(b), a municipality may not charge rent to an ATU for use of the ROW. It may only charge fees that compensate the municipality for certain “management functions,” such as

- Registering companies, including the gathering and recording of information necessary to conduct business with a company.
- [I]ssuing, processing, and verifying excavation or other company permit applications, including supplemental applications.
- Inspecting company job sites and restoration projects.
- Maintaining, supporting, protecting, or moving company equipment during work in municipal ROWs.
- Undertaking restoration work inadequately performed by a company after providing notice and the opportunity to correct the work.
- Revoking company permits.
- Maintenance of databases.
- Scheduling and coordinating highway, street, and ROW work relevant to a company permit.

4. *May WITN's poles be regulated on the basis of aesthetics?*

No. Municipal regulations are reasonable if they regulate on the basis of an adequate health, safety, or welfare concern. According to the PSCW's ROW rules, a project's

negative aesthetic impact is not an adequate justification for the regulation of utility poles in local ROW. *See* Wis. Admin. Code Ch. PSC 130 (Municipal Regulation of Municipal Rights-of-way).

C. WHAT SORT OF REGULATIONS MAY A MUNICIPALITY APPLY TO WITN?

A municipality may regulate the placement of WITN's poles as it does any other utility structures in the ROW (e.g., telephone or electric utility poles). The following requirements, among others, could be applied to WITN:

- Permit and registrations fees.
- Bonding and insurance requirements during construction in ROW.
- Fall zone and set back restrictions.
- Siting restrictions based on safety factors; for example:
 - Line of sight restrictions (i.e., prohibit the placement of poles in places where a driver's line of sight may be obstructed).
 - Siting restriction due to interference with the provision of municipal police or fire services (e.g., prohibit the placement of the poles within a certain distance of buildings so that the poles do not impede the work of firefighters should the building catch fire).
- Removal requirements for when a pole is no longer serving a permitted use.
- Requirements to comply with all applicable state and local building codes and electric codes.
- Proof of strength requirements (i.e., when equipment is placed on the poles, the company must ensure that the weight of the equipment will not compromise the structural integrity of the pole).

Care should be taken that any such regulations, as applied to WITN's use of local ROW, be competitively neutral and nondiscriminatory. *See* 47 U.S.C. 253(c).² Under state law, the municipality's regulations will be judged on the basis of reasonableness. The PSCW's ROW rules, cited above, and Wis. Stat. § 182.017(8) provide some guidance on what the PSCW will consider reasonable regulation.

² That federal statutory provisions provides:

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

D. MAY WITN'S POLES BE REGULATED AS CELL PHONE TOWERS?

League members have also asked whether their zoning ordinances applicable to cell phone towers can be applied to WITN. Such ordinances would apply if WITN's poles are considered "mobile service support structures" within the meaning of Wis. Stat. § 66.0404³. According to the plans it submitted to various municipalities, WITN intends to install two microwave dishes on its poles, and it apparently intends to offer backhaul and other support services to mobile service providers,⁴ among others. While WITN's poles and equipment may be used to support the provision of mobile services⁵ by others, it does not appear that such a facility was intended to be treated as a "mobile service facility"⁶ within the scope of Wis. Stat. § 66.0404. In other words, WITN is not initially, at least, planning to provide cell phone service using the equipment to be installed on the poles. It is likely that WITN will lease or license pole space and/or equipment to cell phone providers in the future. The future installation of cell phone antennas and other such equipment on WITN poles would be subject to municipal regulations either consistent with or adopted pursuant to Wis. Stat. § 66.0404.⁷

While the municipality's cell tower regulations would not apply at this time, a municipality's ROW regulations would, of course, apply. A municipality should review its ordinances to see if other regulations might apply. For example, some communities regulate the placement of microwave towers. Such regulations would likely apply here because the poles will be used to support microwave equipment for the provision of back haul and other support services.

E. WHAT MAY A MUNICIPALITY DO IF IT HAS NOT ADOPTED REGULATIONS THAT WOULD APPLY TO UTILITY POLES PLACED IN LOCAL ROW?

A municipality has broad police power authority to manage and control the public ROW under its jurisdiction and may exercise its regulatory powers by, among other things, license,

³ This statute was adopted as part of 2013 Wis. Act 20 and greatly restricts the ability of municipalities to regulate cell phone towers and related facilities.

⁴ In this context, backhaul service provides the link between a carrier's cell site (e.g., base station at the cell tower) and its mobile switching facility and then to the public switched telephone network.

⁵ Under 47 U.S.C. § 153(33), "mobile service" is defined as:

. . . a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

⁶ A "mobile service facility" is defined as "the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure." Wis. Stat. § 66.0404(1)(L).

⁷ The municipality should consult with its attorney regarding any such regulations and their applicability to facilities located in the ROW.

regulation, fine, and other necessary or convenient means. *See* Wis. Stat. § 62.11(5) (for cities) and § 61.34(1) (for villages). Accordingly, if a municipality currently has no ROW regulations to apply to the placement of utility poles in local ROW and if it does not have time to do adopt such regulations within the 60-day time period for acting on permit applications, then alternatively, the municipality could enter into a license agreement with WITN.⁸

The terms and conditions to be considered for such an agreement might include:

- A provision granting the company a license to use the ROW, subject to the terms and conditions of the license and setting out the scope of the license (i.e., permitted uses).
- A description of the licensed area (i.e., a legal description of the area of the ROW where the pole(s) will be installed).
- A provision for a license fee, which covers the cost of regulation as discussed above.
- A provision setting out the term of the license agreement and conditions for termination. The agreement should be in place for as long as the pole is being used for a permitted purpose in accordance with the agreement.
- A removal provision, setting out the time frame for removal of the company's equipment from the ROW and the conditions under which removal is required.
- A provision stating what the permitted uses are.
- A requirement to submit construction plans and schedule and list of contractors.
- A requirement that a traffic control plan be submitted in advance of construction if one is necessary.
- Requirements regarding set back and fall zone.
- A requirement that the company be responsible for any damage it does to private property.
- A requirement that the company be responsible for all locates under Wis. Stat. § 182.0175.
- Insurance, indemnification, and bonding requirements.
- A requirement that the company comply with all application laws, regulations, and codes (e.g., Wis. Stat. §§ 86.16(2) and 182.017 and the Wisconsin State Electrical Code).

⁸ The right to regulate ATU and public utility use of local ROW by contract is recognized in Wis. Stat. §§ 182.017(1g)(bm); 182.917(8); 196.58(1g); and 196.58(1r)(a).

- Company responsible for maintenance and improvements.
- Requirement that the licensed area be free from debris, etc.

CONCLUSION

A municipality has 60 days in which to act on WITN's permit application. It is important that, during this relatively short time period, the municipality work with the company to ensure that the public's interest in local ROW is protected. If the municipality's ROW regulations are inadequate or do not exist, the municipality should consider entering into a license agreement with WITN to address the terms and conditions under which the company will be permitted to use local ROW. Care should be taken not to impose any non-neutral, unduly discriminatory, or unreasonable requirements on WITN. Finally, now may be a good time for the municipality to consider adopting a generic ROW ordinance, as these same issues are likely to arise in the future.

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Resolution to Authorize Levying Special Assessments

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

REPORT DATE: May 5, 2016

MEETING DATE: May 10, 2016

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

Wisconsin Statutes: §66.0701
Municipal Code: 110-37

BACKGROUND / ANALYSIS:

This resolution authorizes the Department to exercise the police power to levy special assessments for the 2016 Bituminous Resurfacing Program. According to the City's Municipal Code Section 110-37 half the cost of resurfacing is paid for by the City as a whole with the remaining 50% shared with the abutting property owners.

STAFF COMMENTS:

This work was authorized by the Common Council with Res. No. 172-15-16.

ACTION REQUESTED:

Approve Res. No. 5-16-17

ATTACHMENTS:

III

5.4

Res. No. 5 - 16 - 17. By Alderperson Belanger. May 2, 2016.

An amended PRELIMINARY RESOLUTION declaring intent to exercise the police power to levy special assessments for the 2016 Bituminous Resurfacing Program:

- S. 17th St. from 120 feet south of Arizona Ave. to Maryland Ave.
- N. 6th St. from Niagara Ave. to Superior Ave.
- Saemann Ave. from Calumet Dr. to N. 21st St.

WHEREAS, Resolution 172-15-16 was approved by the common council, providing for resurfacing on, among other streets, S. 17th Street from Arizona Ave. to Maryland Ave., at the expense of the property to be benefited thereby; and

WHEREAS, for the work to be done properly, resurfacing work will need to begin 120 feet south of Arizona Ave.

NOW, THEREFORE, BE IT RESOLVED: That Resolution 172-15-16 is hereby amended to provide that the resurfacing on S. 17th St from 120 feet south of Arizona Ave. to Maryland Ave. is hereby proposed at the expense of the property to be benefited thereby, and that no part of the estimated aggregate cost shall be paid in advance under §66.54(3), Stats. All remaining provisions of said Resolution shall remain in full effect.

Pub. Wks.

Jim Beg

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

III

5.5

Res. No. 6 - 16 - 17. By Alderperson Belanger. May 2, 2016.

A RESOLUTION authorizing the Purchasing Agent to enter into a contract for the 2016 Concrete Sidewalk Replacement Program.

WHEREAS: On an annual basis the Sheboygan Department of Public Works contracts for the replacement of broken concrete sidewalks within the City based upon need. For 2016 approximately 9,000 square feet of sidewalks have been identified as being in need of replacement.

WHEREAS: The Purchasing Agent was directed to put the 2016 Concrete Sidewalk Construction Program to public bid. Two bids were received in response to bid # 2396-16. The low bid has been determined to meet all of the specifications.

RESOLVED: That the Purchasing Agent is hereby authorized to enter into contract with Klunck Masonry LLC of Sheboygan for the 2016 Concrete Sidewalk Replacement Program.

BE IT FURTHER RESOLVED: That the appropriate City Officials are authorized to draw funds on account #40033190-631300 in payment of same.

Pub Wks.

John Berg

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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: 2016 Concrete Sidewalk Replacement Program

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

REPORT DATE: May 5, 2016

MEETING DATE: May 10, 2016

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: 40033190-631300
Budget Summary: Capital Improvements
Budgeted Expenditure: \$77,660
Budgeted Revenue: \$70,000 Assessed

Wisconsin Statutes: §66.0907
Municipal Code: Sec. 110-204

BACKGROUND / ANALYSIS:

The Department of Public Works (DPW) annually inspects and replaces defective sidewalks within the City. DPW has divided the City into ten zones for inspections with the intent to inspect a zone within a calendar year. In addition, the DPW will inspect complaints and order replacements if necessary. The average annual contract has been between \$75,000 to \$150,000.

STAFF COMMENTS:

DPW has had a Concrete Sidewalk Replacement Program for over 30 years and has approximately 375 miles of sidewalk.

ACTION REQUESTED:

Approve Res. No. 6-16-17 and Accept/File R.O. No. 20-16-17

ATTACHMENTS:

II

4.15

R. O. No. 20 - 16 - 17. By PURCHASING AGENT. May 2, 2016.

Submitting a tabulation of bids for Bid # 2396-16 for the 2016 Concrete Sidewalk Replacement Program.

Klunck Masonry LLC, Sheboygan WI	\$ 77,660.00
Marvin Gleason Construction, Franksville WI	\$ 96,570.00

The Bid submitted by Klunck Masonry, LLC of Sheboygan meets or exceeds all requirements as set forth in the bid package.

Therefore, the recommendation is to award the contract to Klunck Masonry, LLC

Pub Wks.

Respectfully Submitted

**Bernard Rammer
Purchasing Agent**

III

5.6

Res. No. 7 - 16 - 17. By Alderperson Belanger. May 2, 2016.

A RESOLUTION authorizing the appropriate City officials to execute an agreement between the City of Sheboygan and Milk Specialties Company (d/b/a Milkspecialties Global) regarding the delivery of whey processing waste product to the Waste Water Treatment Plant.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute said Agreement in form substantially similar to the attached.

Pub. Wks.

John Berg

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
AND
MILK SPECIALTIES COMPANY
d/b/a MILKSPECIALTIES GLOBAL

Whey Processing Delivery

THIS AGREEMENT is entered into and is effective as of the ___ day of _____, 2016, by and between THE CITY OF SHEBOYGAN, a public entity, herein called "CITY" and MILK SPECIALTIES COMPANY, d/b/a MILKSPECIALTIES GLOBAL a Delaware corporation, herein called "MSG."

WITNESSETH

WHEREAS, the CITY owns and operates a wastewater treatment facility located in Sheboygan, Wisconsin, generally referred to as the Sheboygan Regional Wastewater Treatment Plant ("WWTP"); and

WHEREAS, the CITY has excess treatment capacity and is currently receiving whey processing waste product from MSG at the WWTP; and

WHEREAS, MSG is interested in delivering a targeted amount of its whey processing waste product to the CITY over a five year period.

NOW, THEREFORE, in consideration of the mutual promises exchanged herein, the CITY and MSG hereby agree as follows:

1. **Scope of Services.** Milk Specialties Global, Inc. (MSG) agrees to undertake commercially reasonable efforts to furnish a targeted number of loads of non DAF or Ditch high strength waste (HSW) from their whey processing facilities in Fond du Lac and Adell, Wisconsin to the Sheboygan Regional WWTP. The targeted number of loads of non DAF or Ditch HSW would be an average of six to seven, 6,000 gallon truck loads per day or 252,000 – 294,000 gallons per week. The non DAF or Ditch HSW would be transported, with the exception of any day MSG is unable to do so for reasons known or unknown. To the extent feasible MSG shall give CITY prior notice of deliveries that will be greater than 294,000 gallons per week or greater than 7 trucks per day.

The CITY agrees to provide treatment and disposal services for six to seven, 6,000 gallon truck loads per day or 252,000 – 294,000 gallons per week, of MSG's non DAF or Ditch high strength waste (HSW) from their whey processing facilities in Fond du Lac and Adell, Wisconsin. The non DAF or Ditch HSW will be accepted and treated by the WWTP, with the exception of any day that acceptance of the HSW will adversely impact the WWTP facility and its processes and/or cause the WWTP to violate any regulations.

2. **Compensation.** Both parties do hereby agree that there will be no disposal fee charged for the mutually agreeable targeted volume of non DAF or Ditch HSW and that the transportation costs of the non DAF or Ditch HSW to the WWTP are the complete responsibility of MSG during the Term (defined hereinafter).

The actual gallons delivered will be determined by the City's flow meter at the receiving station where the HSW is discharged to the WWTP. The CITY will provide a monthly summary of the daily deliveries including volumes with monthly totals to MSG.

3. **Effective Date.** This Agreement is effective as of the date first written above.
4. **Termination or Suspension.** Either the CITY or MSG may terminate this Agreement immediately *for cause* or upon its determination that continued performance of this Agreement would adversely affect its adherence to regulatory requirements, including but not limited to compliance with the Wisconsin Department of Natural Resources ("WDNR"). This Agreement may be suspended, rather than terminated, only upon the advanced written mutual consent.

The CITY may terminate this Agreement *without cause* upon thirty days' written notice if in its sole discretion it determines either of the following conditions exists:

- a. Continued performance of this Agreement would adversely affect the operation of the CITY's treatment plant, or
- b. The approval of the Agreement and/or the Agreement itself is challenged in court under any provision of law.

MSG may terminate this Agreement without cause upon thirty days' written notice if in its sole discretion it determines either of the following conditions exists:

- a. Continued performance of this Agreement would adversely affect the operation of MSG's manufacturing facility located in Adell, Wisconsin;
- b. MSG intends to cease the generation of the waste stream described above.

5. Release of Information. MSG agrees to maintain in confidence, and not disclose to any person or entity without the CITY's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of the CITY. MSG further agrees to maintain in confidence and not to disclose to any person or entity any data, information, technology, or material developed or obtained by the CITY during and under the term of this Agreement.

The CITY agrees to maintain in confidence, and not to disclose to any person or entity without MSG's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of MSG, to the extent allowed by law. The covenants contained in this paragraph 5 shall survive the termination of this Agreement for whatever cause.

The CITY solely owns all anaerobic digester process data and can publish these data and use these data for any purpose at the CITY's sole discretion. For example, such use may include, but not be limited to, the CITY's use of such data to obtain any patents or other rights to intellectual property.

6. Designation of Personnel. MSG agrees that all activities performed by MSG under this Agreement shall be performed under the direction of MSG's Director of Operations, having an office located in its manufacturing facility located in Fond du Lac, Wisconsin, or such other person as MSG shall so designate in writing. The CITY contact throughout the period of the Agreement shall be the WWTP Superintendent.
7. Independent Contractor. MSG is an independent contractor and not an employee or agent of the CITY. MSG expressly warrants that it will not represent that it is an employee or agent of the CITY.
8. Mutual Indemnification. MSG and the CITY shall each defend, indemnify, and hold harmless the other and its officers, agents, and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from its associates', employees', subcontractors', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement, except for loss caused by the sole negligence of the other party, its directors, officers, agents or employees.
9. Insurance. MSG shall take out and maintain during the life of the Agreement all the insurance required by the CITY's Municipal Code Section 122-340 and shall submit certificates for review and approval by the CITY. MSG shall not deliver any waste product to the CITY's WWTP until such insurance has been approved by the CITY. The certificates shall be on forms approved by the CITY. Acceptance of the certificates shall not relieve MSG of any of the insurance requirements, nor decrease the liability of MSG. The CITY reserves the right to require MSG to provide insurance policies for review by CITY.
10. Notice. Any notice or communication given under this Agreement shall be effective when deposited postage prepaid with the United States Postal Service and addressed to the contracting parties as follows:

Sheboygan Regional WWTP
3333 Lakeshore Drive
Sheboygan, WI 53081
Attn: WWTP Superintendent

Milk Specialties Global
325 Tompkins Street
Fond du Lac, WI 54935
Attn: Director of Operations

Either party may change the address to which notice or communication is sent by providing advance written notice to the other party.

11. Entire Agreement and Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin and constitutes the entire Agreement of the parties, superseding all prior agreements written or oral, between the parties relating to the subject matter of this Agreement and also superseding the terms set forth on any purchase order issued in connection with this Agreement.

12. **No Assignment or Modifications.** This Agreement is to be binding on the successors and assigns of the parties hereto. The services called for herein are unique and, except as provided herein, MSG shall not assign, transfer, subcontract, or otherwise substitute its interest in this Agreement or any of its obligations herein without the written consent of the CITY. This Agreement may be modified only by a written amendment signed by both parties.
13. **No Waiver.** Either party's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this Agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. Either party's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.
14. **No Discrimination.** There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender, age, marital status, disability, or sexual orientation in the performance of this Agreement. MSG shall not establish or permit any such practice(s) of discrimination with reference to this Agreement or any part thereof. If MSG is determined to be in violation of this section MSG shall be deemed to be in material breach of this Agreement.
15. **Force Majeure.** Neither the CITY nor MSG shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, labor unrest, Government restrictions (including the denial, cancellation, or material alteration of any necessary permits), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
16. **Term.** Unless terminated pursuant to Article 4 herein, this Agreement shall expire five years from the date of this agreement.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

CITY OF SHEBOYGAN

By: _____
 Mayor

Date _____

Approved As to Form

By: _____
 City Clerk

Date _____

**MILK SPECIALTIES COMPANY
 d/b/a MILK SPECIALTIES GLOBAL**

 By: _____

Date _____

Its: _____

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Agreement to Accept High Strength Waste at the Wastewater Treatment Plant.

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

REPORT DATE: May 5, 2016

MEETING DATE: May 10, 2016

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS:

This agreement with Milk Specialties Company d/b/a Milk Specialties Global is to accept delivery of whey processing waste product to the Wastewater Treatment Plant (WWTP). This material is delivered via tanker trucks from Fond du Lac, Wisconsin and Adell, Wisconsin in Sheboygan County.

This agreement is for five years and will provide the WWTP with a steady stream of high strength waste which produces high volumes of bio-gas that is used to produce electricity and heat at the plant. The WWTP is currently upgrading the high strength waste receiving station at a cost of \$1.3 million. The energy savings from this program is approximately \$500,000 annually. This agreement will assure the project will be viable during the length of the agreement.

STAFF COMMENTS:

This agreement also helps continue the resource recovery program success into the future.

ACTION REQUESTED:

Approve Res. No. 7-16-17

ATTACHMENTS:

II

4.16

R. O. No. 21 - 16 - 17. By PURCHASING AGENT. May 2, 2016.

Submitting a tabulation of bids for Bid # 2398-16 for the 2016 Sewer Lining and manhole re-sealing project.

Michel's Pipeline Construction, Brownsville, WI	\$ 557,432.30
Insituform Inc., Chesterfield, MO	\$ 391,936.62
Terra Engineering Inc., Madison, WI	\$ 385,047.70
Visu-Sewer Inc., Pewaukee, WI	\$ 371,537.95

A review of the bids submitted has determined that the low bid submitted by Visu-Sewer Inc. of Pewaukee WI exceeds all requirements and related specifications.

It is recommended that the contract be awarded to Visu-Sewer Inc. in the amount of \$371,537.95

Pub. Wks.

Respectfully Submitted

**Bernard Rammer
Purchasing Agent**

III

5.7

Res. No. 8 - 16- 17. By Alderperson Belanger. May 2, 2016.

A RESOLUTION authorizing the Purchasing Agent to enter into a contract for the 2016 Sewer Lining and Manhole Sealing project.

WHEREAS: The City of Sheboygan will be contracting for the repaving of several street sections in 2016. In preparation for this repaving, the associated sanitary sewer lines and specific storm sewer lines have been identified to be in need of re-lining and the manholes in need of resealing.

WHEREAS: The Purchasing Agent was directed to put the re-lining and re-sealing work out to public bid. Four bids were received in response to bid # 2398-16. The low bid has been determined to meet all of the specifications.

RESOLVED: That the Purchasing Agent is hereby authorized to enter into contract with Visu-Sewer Inc. of Pewaukee WI in the amount of \$ 371,537.95

BE IT FURTHER RESOLVED: That the appropriate City Officials are authorized to draw funds on account # 60134110-521900 in payment of same.

Pub. Works

John Belanger

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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Contract for 2016 Sewer Lining and Manhole Sealing Project

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

REPORT DATE: May 5, 2016

MEETING DATE: May 10, 2016

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: 60134110-521900
Budget Summary: Sanitary Sewer
Maintenance
Contracted Services
Budgeted Expenditure: \$371,538
Budgeted Revenue: N/A

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

BACKGROUND / ANALYSIS:

This contract involves lining existing sanitary sewers and manholes that have been inspected and determined to need this repair prior to the street being resurfaced. This technique places a liner inside the existing pipe. Basically, creating a new sanitary sewer within the old. The advantage of this process is that the road surface does not have to be excavated. The City has used this method successfully for over twenty-five years.

STAFF COMMENTS:

We received four competitive bids which indicates increased competition for this type of work. Ideally resulting in lower overall costs.

ACTION REQUESTED:

Approve Res. No. 8-16-17 and Accept/File R.O. No. 21-16-17

ATTACHMENTS:

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Resolution to Authorize Levying Special Assessments

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

REPORT DATE: May 5, 2016

MEETING DATE: May 10, 2016

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

Wisconsin Statutes: §66.0701
Municipal Code: 110-37

BACKGROUND / ANALYSIS:

This resolution authorizes the Department to exercise the police power to levy special assessments for the 2016 Bituminous Resurfacing Program. According to the City's Municipal Code Section 110-37 half the cost of resurfacing is paid for by the City as a whole with the remaining 50% shared with the abutting property owners.

STAFF COMMENTS:

This resolution authorizes additional special assessments on other streets that are scheduled to be resurfaced in 2016.

ACTION REQUESTED:

Approve Res. No. 195-15-16

ATTACHMENTS:

III

5.1

Res. No. 195 - 15 - 16. By Alderperson Belanger. April 18, 2016.

A PRELIMINARY RESOLUTION declaring intent to exercise the police power to levy special assessments for the 2016 Bituminous Resurfacing Program:

S. 9th St. from Indiana Ave. to Georgia Ave.
Georgia Ave. from S. 8th St. to S. 9th St.
Kentucky Ave. from S. 8th St. to S. 9th St.

RESOLVED: That the resurfacing on the following streets is hereby proposed at the expense of the property to be benefited thereby and that no part of the estimated aggregate cost shall be paid in advance under 66.54(3), Stats.:

BE IT FURTHER RESOLVED: That the City of Sheboygan does herewith intend to exercise its municipal police powers for the aforesated municipal purpose.

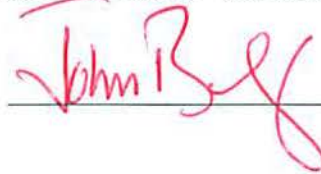
BE IT FURTHER RESOLVED: That the Department of Public Works is hereby authorized and directed to prepare a report in accordance with 66.60(2) and 66.60(3), Stats., and that such report should contain the following information:

- a. Preliminary or final plans and specifications
- b. An estimate of the entire cost of the proposed work or improvement
- c. A schedule of the proposed assessments
- d. A statement that the work or improvement constitutes an exercise of the municipality's police power
- e. A statement that the property against which the assessments are proposed is benefited

BE IT FURTHER RESOLVED: That the expenses so incurred maybe paid in five (5) annual installments under 66.54(7), Stats., with interest thereon at (3.18%) commencing the first of the month after thirty (30) days following publication of the installment assessment notice.

*Pub Wks.
of new Council*

BE IT FURTHER RESOLVED: That the Department of Public Works is hereby authorized and directed to advertise for bids under the five (5%) alternative of 62.15(3), Stats., for the paving aforementioned according to the plans and specifications prepared by the City Engineer and submit a resume of bids received and accepted to the Common Council for further consideration.



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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

II

4.9

R. O. No. 331 - 15 - 16. By CITY CLERK. April 6, 2016.

Submitting an email from Alderperson Bohren to City Attorney Adams regarding "Hot in Place Paving" legal options.

Pub. Wks.

City Clerk

Richards, Susan

From: Alderperson Jim Bohren
Sent: Saturday, March 26, 2016 12:38 PM
To: Richards, Susan
Cc: Alderperson John Belanger
Subject: FW: Hot in Place Paving Legal Options

Sheboygan City Clerk Sue Richards - Sue

Please submit my e-mail as a document for the April 6th 2016 Council Meeting. Please refer it to the Public Works Committee. Thanks.

Alderman Jim Bohren

Serving on the Sheboygan Common Council Since April, 2006.

8th District - Wards 24, 25 & 26

City of Sheboygan, Wisconsin

920.452.1777

jim.bohren@ci.sheboygan.wi.us

2015 - 2016 Committee Assignments

Public Works Committee

Salaries & Grievances Committee

Capital Improvements Commission

From: Alderperson Jim Bohren
Sent: Saturday, March 26, 2016 12:30 PM
To: Adams, Charles
Cc: Biebel, David; Mayor Vandersteen; Alderperson John Belanger; Alderperson Don Hammond; Amodeo, James
Subject: Hot in Place Paving Legal Options

Attorney Adams - Chuck

Has the City or should the City be looking at its legal or other options to deal with the sub standard work that was done by the company that did the "Hot In Place Paving" in the summer of 2015? I am hearing from citizens from the North and South side complaining about the poor workmanship. I drive the Taylor Drive Access road several times a week and have noticed the very poor quality of the work. Please Advise. Thanks.

Alderman Jim Bohren

Serving on the Sheboygan Common Council Since April, 2006.

8th District - Wards 24, 25 & 26

City of Sheboygan, Wisconsin

920.452.1777

jim.bohren@ci.sheboygan.wi.us

2015 - 2016 Committee Assignments

Public Works Committee

Salaries & Grievances Committee

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