

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

III

5.4

Res. No. 158 - 13 - 14. By Alderperson Heidemann. March 17, 2014.

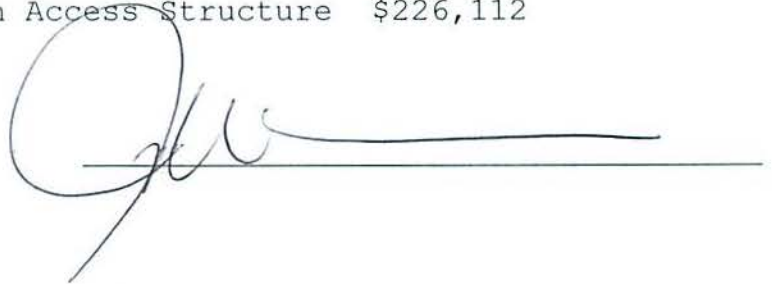
A RESOLUTION authorizing advertising entering into a contract for the Pennsylvania access structure.

RESOLVED: That the proper City Officials are hereby authorized and directed to enter into contract with Janke General Contractors, Athens, Wisconsin for the Pennsylvania Avenue siphon modifications access structure, for the proposed sum of \$226,112 per their proposal dated March 5, 2014.

BE IT FURTHER RESOLVED: That the proper City Officials are hereby authorized and directed to draw orders on the following account number in payment of same:

A/C 301-304110-521900 Siphon Access Structure \$226,112

*Pub. Wks.*



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. 159 - 13 - 14. By Alderperson Heidemann. March 17, 2014.

A RESOLUTION authorizing the appropriate City officials to execute the Management Services Agreement regarding Quarryview Park.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Management Services Agreement for 2014 in form substantially similar to the attached.

*Pub Wks.*



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

## MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2014, by and between the City of Sheboygan, a municipal corporation of the State of Wisconsin ("City"), and Empire Recreation Management, LLC, a Wisconsin limited liability company ("Manager"), collectively, the "Parties."

### RECITALS

WHEREAS, City owns Quarryview Park, a public park located at 3401 Calumet Drive, Sheboygan, Wisconsin (the "Quarry Park"); and

WHEREAS, the City finds that the Quarry Park beach, water areas and Quarryview Community Center located in Quarry Park are feature-rich assets which have been underutilized by the public; and

WHEREAS, Manager desires to provide certain management services at Quarry Park, and the City is willing to have Manager provide certain management services at Quarry Park; and

WHEREAS, Manager is experienced in the operation of seasonal, water-based family entertainment centers and desires to manage and operate the quarry beachfront, water areas, the Quarryview Community Center and other ancillary areas for the City (hereinafter known as the "Quarry"); and

WHEREAS, the City desires to obtain the benefits of Manager's expertise in the operation and management of seasonal, water-based family entertainment centers by turning over to Manager the operation and management of the Quarry for the summer season; and

WHEREAS, subject to the terms and conditions hereof, City desires to engage the Manager, and the Manager desires to be engaged, to provide personnel and certain management services to the Quarry in connection therewith.

NOW, THEREFORE, in consideration of the Recitals herein set forth and the mutual promises made herein, the sufficiency of which is acknowledged by the Parties hereto, it is hereby agreed as follows:

ARTICLE I  
ENGAGEMENT OF MANAGER; THE SERVICES

1.1 Engagement of Manager. Subject to the terms and conditions of this Agreement, City hereby engages Manager, and Manager hereby accepts such engagement, to provide the Services (as defined below) at the Quarry, within the area identified in Exhibit "A" attached hereto. In addition, City agrees to provide Manager access to the public parking lot at the Quarry for its operations.

1.2 The Services. The Manager shall provide the City with, or make arrangements for the delivery to City of, the following services during the term of this Agreement, all at no cost to the City (collectively, the "Services"):

(a) Provide management expertise and consulting services with respect to recommending and implementing improvements to the Quarry facilities, programs, offerings and attractions;

(b) Manage and operate all aspects of the Quarry and the Quarryview Community Center, including, without limitation, staffing, reservations, reception, concessions, sales, bookkeeping, administration, marketing, advertising and promotion;

(c) Manager shall be responsible for all day-to-day expenses and normal maintenance involved with operations. Manager shall finance all personnel, operations and the proposed new equipment involved with its operations.

(d) Manage and coordinate recreational programs, facilities and equipment for Quarry users. Select and provide products appropriate for the different water depths in the Quarry, as well as different demographic groups. Select and provide site amenities to enhance guest comfort and create a unique destination that will broaden Quarryview Park's appeal and stimulate repeat visits;

(e) Hours of operation for the Quarry beach shall be 10 a.m. to 7 p.m., seven days per week from Memorial Day through Labor Day 2014, with the exception that the beach and Quarryview Community Center will not be available to the Manager for operations on Tuesday, August 12, 2014, as the Center and parking lot will be utilized all that day by the City

as a polling place for elections. The Parties may mutually agree to adjust the hours of operation based upon the weather and demand;

(f) Manager shall provide an on-site manager and two to ten additional staff members depending on weather, capacity and planned events;

(g) Such other services incidental to the operations of the City's Quarry and Quarryview Community Center as may be reasonably requested by City from time to time.

(h) Manager shall institute and maintain reasonable safety measures and procedures to include, but not be limited to the following:

(i) Utilize inflatable safety buoys to segregate the shallow-water free zone from any pay-for-play areas;

(ii) All users will need to pass a swim test and receive a wristband as an identifier to use any deep water activity area;

(iii) Lifejackets and wristbands will be required for all activities in deep water areas, including stand-up paddleboards, pedal boats and kayaks;

(iv) Utilize the existing dock also for the safety stations.

1.3 Scope. The scope of the Services under this Agreement may be enlarged, reduced, or altered from time to time by mutual agreement of the Parties and written amendment of this Agreement. City shall be responsible for any agreed-upon capital improvements, major site cleanup, and major repairs required on existing facilities and structures.

#### 1.4 Personnel.

(a) Manager shall provide all personnel reasonably necessary for Manager to perform the Services. Such personnel shall at all times be employees or contractors of Manager (collectively, the "Personnel"). Manager, in its sole discretion, shall be responsible for all aspects of the hiring and employment of its employees, including, without limitation, retirement and welfare plans, conduct policies, workers

compensation insurance and compensation. Manager shall conduct criminal background checks on all prospective hires and condition employment on successful passage of drug screen.

(b) City shall have the right, at any time upon at least fourteen (14) days' notice to Manager, to declare any Personnel no longer eligible to perform the Services for City under this Agreement.

(c) Manager may from time to time delegate its obligations hereunder to any person. City reserves the right to approve or disapprove any such delegation.

(d) All of Manager's employees shall undergo a thorough orientation and training program, with key emphasis on customer service skills and safety. All employees shall possess and maintain appropriate licensing and/or certification.

## ARTICLE II COVENANTS OF MANAGER

2.1 Compliance with Law. Manager will use commercially reasonable efforts to assure that the Services are performed in compliance with the requirements of all applicable laws, statutes, ordinances, rules, regulations, or orders of any governmental authorities or regulatory bodies having jurisdiction over Manager or City.

### 2.2 Ownership of Records, Licenses and Systems.

(a) All reports, documents and other information generated solely pursuant to the Services herein or relating solely to the operation of the Quarry and the Quarryview Community Center shall be the property of City.

(b) All business records, documents and other information generated by Manager which may pertain to the Services but which are generated pursuant to or relating to the operation of Manager shall remain the property of Manager.

(c) Software licenses, licenses, permits, procedures, processes and systems generated by or purchased by Manager and used in connection with this Agreement shall be the property of Manager, unless otherwise agreed to in writing by Manager and City.

(d) Software licenses, licenses, permits, procedures, processes and systems generated by or purchased by City and used in connection with this Agreement shall be the property of City, unless otherwise agreed to in writing by Manager and City.

2.3 Access to Records and Facilities. The Manager shall make available to City, its agents and attorneys, at all times during normal business hours, all records and other information described in Section 2.2 hereof which relate to Services under this Agreement. The Manager shall promptly respond to any questions from City with respect to such records and shall confer with City at all reasonable times, upon request, concerning the operations of the Quarry and the Quarryview Community Center. In addition, the City or the City's officers or designated agents shall have the right at any reasonable time or interval to examine Manager's books of account for the Quarry or any portion thereof. Manager acknowledges that certain of its records may be subject to disclosure under applicable public record laws.

2.4 Insurance.

(a) Manager agrees, at its sole cost and expense, to obtain and maintain insurance coverage in an amount not less than \$2,000,000 with respect to its operation of the Quarry, for the benefit of both the City and Manager and agrees to name the City as additional insured.

(b) Each party shall obtain and maintain property insurance coverage on their respective assets.

2.5 Performance Standards. The Manager shall undertake all of the Services in accordance with the reasonable performance standards established by City for the Services.

ARTICLE III  
FEES AND PAYMENT

3.1 Manager shall pay to the City a fee of \$1.00 for making the facilities available. Manager shall be entitled to retain all of the proceeds which it generates from the operation of the Quarry and the Quarryview Community Center under this Agreement.

ARTICLE IV  
RELATIONSHIP OF THE PARTIES

4.1 Independent Parties. Nothing in this Agreement shall be construed to constitute any party as a partner, agent or joint venturer of the other party. Neither party shall make any contract or representation, or incur any liability or obligation whatsoever, on behalf or in the name of the other party, except as set forth in this Agreement, or as may be stated otherwise in other agreements between the Parties. Except as otherwise provided herein, each party shall be responsible for its own operational expenses incurred in the performance of this Agreement.

4.2 Nonassumption of Liabilities. Neither party shall, by entering into and performing this Agreement, assume or become liable for any of the existing or future obligations, liabilities, or debts of the other party.

4.3 Other Interests. City acknowledges and agrees that Manager may provide services that are the same or substantially similar to the Services provided herein to, and that Manager or its shareholders, directors, officers or employees (collectively, the "Manager Parties") may own, manage, operate or invest in, businesses related to or in the same type of activities as the Quarry, provided, however, that none of such activities or facilities are located within a twenty (20) mile radius of the Quarry. The ownership of such an interest in, or the provision of such services to, such a business by a Manager Party shall not constitute a breach of or default under this Agreement by Manager. Nothing in this Agreement shall prohibit any Manager Party from providing such services to or having such interests in, either directly or indirectly, any other real property, business or investment of any nature or description, independently or with others, provided such services or facilities are not provided or located within a twenty (20) mile radius of the Quarry.

ARTICLE V  
HOLD HARMLESS

5.1 Scope of Liability. Manager shall not be liable to City for any negligent acts or omissions in the performance of this Agreement. Rather, Manager shall be liable to City only if the act, or failure to act, of Manager constitutes any of the following:

(a) Manager's bad faith, recklessness, gross negligence, gross misconduct or willful misconduct in its management and operation of the Quarry, or arising out of any breach or claimed breach of any representation or any of its obligations pursuant to this Agreement; or

(b) A violation of criminal law, unless Manager had reasonable cause to believe that its conduct was lawful or no reasonable cause to believe that its conduct was unlawful.

5.2 Indemnification Obligations. City and Manager agree to hold each other harmless for liabilities arising out of the performance of this Agreement as follows:

(a) Manager agrees to defend, indemnify and hold harmless City and its officers, officials, managers, employees and agents against any and all claims, lawsuits, settlements, judgments, costs, penalties, and expenses, including reasonable attorneys' fees and costs of investigation, resulting from, or arising out of, or in connection with any claim made as a result of Manager's bad faith, recklessness, gross negligence, gross misconduct or willful misconduct in its management and operation of the Quarry, or arising out of any breach or claimed breach of any representations or any of its obligations pursuant to this Agreement.

(b) City agrees to defend, indemnify and hold harmless Manager and its shareholders, directors, officers, employees, and agents against any and all claims, lawsuits, settlements, judgments, costs, penalties, and expenses, including reasonable attorneys' fees and costs of investigation, resulting from, or arising out of, or in connection with any claim made as a result of the City's ownership of the Quarry, provided, however, that the City shall not defend, indemnify or hold Manager harmless from and against, and Manager shall not be exculpated from any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from bad faith recklessness, gross negligence, gross misconduct or willful misconduct of Manager, or arising out of any breach of representations or any of its obligations pursuant to this Agreement.

(c) The Parties shall notify each other of the existence of claims relating to the Quarry or the services provided under this Agreement and shall cooperate with each other in defense of third-party claims.

ARTICLE VI  
TERM AND TERMINATION

6.1 Term. This Agreement shall commence upon the date hereof and continue in full force and effect during the 2014 summer swimming season at the Quarry ending on or about the end of the Labor Day weekend, but in no event later than September 7, 2014. This Agreement may be renewed for one successive year summer swimming season upon written agreement of the Parties, subject to such modifications as the Parties may agree.

6.2 Termination for Cause. This Agreement may be terminated at any time for cause by the party indicated below upon fifteen (15) days' written notice to the other party:

(a) Bankruptcy. By either party, if the other party shall file a voluntary petition in bankruptcy, make a general assignment for the benefit of creditors, or take advantage of any insolvency law.

(b) Breach. By either party, if the other party shall default in the performance of this Agreement and the default shall continue for a period of fifteen (15) days after written notice to the other party stating specifically the default.

(c) Transfer of Business. By City, if Manager shall be acquired by, or transfer substantially all of its assets or business to, any third party.

6.3 Termination for Convenience. This Agreement may be terminated at any time for any reason by either party upon forty-five (45) days' written notice to the other party.

6.4 Effect of Termination or Expiration.

(a) Expiration or termination of this Agreement for any reason shall not release any party from its obligations hereunder that have accrued prior to the termination date.

(b) After any termination of this Agreement, the following shall apply:

(i) Manager shall promptly deliver to City all of City's park property and facilities in the possession of

Manager, including, without limitation, any property of City described in Section 2.2 hereof.

(ii) The parties shall promptly conduct a final accounting of the amounts due under Section 3.1 hereof, and any amount due either party under such accounting shall be promptly paid by the other party.

ARTICLE VII  
MISCELLANEOUS

7.1 Assignment. The benefits, rights, and obligations set forth herein are personal to the Parties, and, except as provided for herein, may not be assigned or transferred to a third party without the prior written consent of the other party. Any attempted assignment in violation of this section shall be void. Without in any way limiting the foregoing, this Agreement shall be binding upon, enforceable by, and inure to the benefit of the Parties, their permitted successors and assigns.

7.2 Notice. Any notice, consent, approval, request or other communication required or permitted to be given pursuant to this Agreement (a "Notice") shall be in writing and shall be either personally delivered or sent by first class mail, postage prepaid, to the address each of the Parties keeps on record for the other party, or to such other address as either party may give notice of from time to time in accordance with this Section 7.2. If Notice is sent by mail as provided above, it also shall be sent on the date of mailing by facsimile transmission to the facsimile number, if any, designated by the other party in writing for receipt of such notice. Delivery shall be deemed effective upon personal delivery or deposit in the United States mail.

7.3 Entire Agreement. This Agreement contains the entire understanding between the Parties on the subject matter hereof and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect. This Agreement supersedes any other oral or written agreement entered into between the Parties on the subject matter hereof.

7.4 Amendment. This Agreement may be amended only by a writing signed by both parties.

7.5 Waiver. No failure or delay of any party in exercising any right or power given to it under this Agreement shall operate as a waiver thereof. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach. No waiver of any breach or modification of this Agreement shall be effective unless contained in writing executed by both parties.

7.6 Severability. The invalidity or unenforceability of any particular provisions of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

7.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their permitted successors and permitted assigns, and, subject to Section 6.2(c) hereof, any corporate successors by merger, consolidation or other corporate reorganizations, without limitation.

7.8 Force Majeure. Neither party shall be deemed to be in violation of this Agreement if such party is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including, without limitation, acts of God or of any public enemy, elements, flood, strikes, or statutory or other law, regulation or rule of the federal or any state or local government or any agency thereof.

7.9 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

7.10 Counterparts. This Agreement may be executed in two or more counterparts, including by signature pages provided by facsimile or in PDF format. All such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

**MANAGER:**

EMPIRE RECREATION  
MANAGEMENT, LLC

By: \_\_\_\_\_

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

**CITY:**

CITY OF SHEBOYGAN

By: \_\_\_\_\_

Michael J. Vandersteen  
Mayor

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

**ATTEST:**

\_\_\_\_\_  
Susan Richards  
City Clerk

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

**EXHIBIT "A"**

*[DPW to provide photo or drawings identifying  
areas covered by Management Services Agreement]*

II

Other Matters

8.1

R. O. No. 320- 13 - 14. By CITY CLERK. March 17, 2014.

Submitting a communication from Atty. Hahn regarding the City Council's decision to terminate the lease agreement with the Sheboygan Softball Association relating to the Wildwood Softball Complex.

Public Works

Susan Richards  
City Clerk

1.8



062

James F. Roberts

**HOLDEN & HAHN, S.C.**

**ATTORNEYS AT LAW  
903 NORTH SIXTH STREET  
SHEBOYGAN, WI 53081  
TELEPHONE: (920) 458-0707  
FACSIMILE: (920) 458-4359**

**RICHARD B. HAHN**  
e-mail: [consult@holdenandhahn.com](mailto:consult@holdenandhahn.com)

**ROBERT C. HAHN**  
OF COUNSEL

**CHRISTOPHER M. EIPPERT**  
e-mail: [c.eippert@holdenandhahn.com](mailto:c.eippert@holdenandhahn.com)

March 13, 2014

**Via Fax & Email**

Common Council  
c/o City Clerk of Sheboygan  
828 Center Avenue, Suite 100  
Sheboygan, WI 53081

RE: Sheboygan Softball Association  
Our File No. 21023

Ladies and Gentlemen of the Council:

This office represents the Sheboygan Softball Association, and I write to you regarding the City's Resolution dated February 19, 2014 in which the City apparently has decided to terminate its lease agreement with the Sheboygan Softball Association relating to the Wildwood Softball Complex. At the outset, the decision to terminate a lease agreement is highly unusual. The term of the lease does not expire for another nine years. Further, there is no basis to terminate the lease agreement.

The February 19th Resolution contains a great deal of inaccurate information. First, representatives of the City have not worked with the Sheboygan Softball Association for three years regarding a "need to change and work with the City on long-term solutions to an unsustainable program." In fact, discussions between the City and the Sheboygan Softball Association only started in 2012. The discussions that I was involved in were clearly an attempt by the City to change the terms of the lease agreement. It is quite clear to me that the City was unhappy with the terms of the lease agreement that was originally entered into back in February 20, 2002.

Second, the Sheboygan Softball Association is not required, under the terms of the lease agreement, to contribute any specific sum of money to the improvement of the complex. Nevertheless, the Sheboygan Softball Association has been contributing a significant amount of money to the improvement of the park.

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It is inaccurate to claim that the Sheboygan Softball Association has lost money. When concession money is factored into its profit and loss statements, the Sheboygan Softball Association has been profitable.

Regarding the federal tax exemptions for the Sheboygan Softball Association, this issue is entirely irrelevant to the lease agreement and the relationship between the Sheboygan Softball Association and the City of Sheboygan. Prior to 2007, the Sheboygan Softball Association was not a 501(c)(3) exempt entity, and this is not a requirement of the lease, nor could it be a requirement of the lease. Nevertheless, the Sheboygan Softball Association recently verified that its 501(c)(3) status is current and that the Sheboygan Softball Association is in good standing.

The February 19th Resolution indicates that the Sheboygan Softball Association has discriminated against other organized softball clubs within the City. This, again, is patently false. The Sheboygan Softball Association only required a rental agreement for its personal property and a \$500.00 refundable deposit for the use of the park. Any entity that utilized the Sheboygan Softball Association's personal property was required to sign such an agreement and put a deposit down for potential damage to the personal property. This rental agreement has been required of all softball clubs that want to utilize the personal property for decades.

The Sheboygan Softball Association is fully insured. During the period of time that I have been involved with the Public Works Committee, no mention was made of insurance at all.

It was quite clear from my perspective that from the first meeting with the Public Works Committee it was acknowledged that the City was unhappy with the terms of the lease agreement that it drafted and that it was looking for some pretext to claim that the Sheboygan Softball Association was in violation of its terms. None of the allegations set forth in the February 19th Resolution rise to the level of a material violation of the terms of the lease by the Sheboygan Softball Association which would justify termination of the agreement by the City.

Frankly, it is my opinion that the City has attempted to breach this contract and is acting in bad faith. The recent agreement entered into with the Mid-Lake Softball Organization is only further evidence of the City's intentions to violate the lease agreement that has been in effect now for well over a decade.

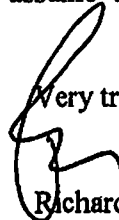
The Sheboygan Softball Association has a substantial investment in the Wildwoods Softball Complex. There is a significant amount of personal property

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stored on the premises which is owned by the Sheboygan Softball Association. Unless the City agrees to rescind its Resolution and honor its lease agreement, I have been authorized to seek redress by all possible means to enforce the terms of the lease.

I am sending a copy of this letter to the City Attorney, and if I do not hear to him prior to the end of this month, I will assume that the City will not reconsider its position.

Very truly yours,



Richard Hahn

RH/jl

cc: Attorney Stephen G. McLean (Via Email)  
Dawn Martinez (Via Email)

II

4.9

R. O. No. 296 13 - 14. By CITY CLERK. March 3, 2014.

Submitting a communication from Collin Kachel, Armory Foundation President making two requests of the Council:

- To enter into short term rent/lease agreement for the Armory through October 31, 2014 to start improving the appearance of the building
- To use the parking lot and grounds of the Armory on July 4, 2014 for a music and food venue called Taste of the 4<sup>th</sup>

P.W.

  
\_\_\_\_\_  
City Clerk

## Requests to members of the Sheboygan Common Council

We are asking that the common council give the Armory Foundation a short term rent/lease agreement from GLASEC's vacancy through Oct 31st 2014. Allow us to start improving the appearance of this Iconic building instead of allowing it to be neglected for another year.

If another proposal plans on using the Auditorium they would be coming forward. If the city needs to use the building for the RFP process, it can be vacated. Our volunteers are lined up and would like start improving the condition of the building even if it is to be sold, razed or used for boat storage.

The quality of life in Sheboygan will increase for at least seven months and maybe for another 100 years. We could fail or the City might chooses another direction. The citizens can then be given the opportunity to drive by new condos, boat storage or an empty lot thereafter. A short term lease from GLASEC's vacancy to Oct 31st<sup>h</sup> will also be a positive impact to our community, downtown businesses and tourism.

We already poured millions in concrete, try building the Armory again for under \$20 million. We all know this, but as realists understand that when November rolls around the Council will likely vote unanimously for what the City planners decide. This seems inevitable. If someone does come along with similar aspirations we will be behind them 100%.

For now, allow the Sheboygan Auditorium to go peacefully. It can be enjoyed one last time. We believe the Council owes it to the Armory and the people who live in Sheboygan. Don't let this opportunity go to waste. You have nothing to lose.

Sincerely,

Collin Kachel    The Armory Foundation President

The Armory Foundation:    Preserve---Improve---Enjoy  
[www.thearmoryfoundation.com](http://www.thearmoryfoundation.com)

**LEASE AGREEMENT**  
**BETWEEN**  
**THE ARMORY FOUNDATION**  
**AND**  
**CITY OF SHEBOYGAN, WISCONSIN**

**THIS LEASE AGREEMENT** is made and entered into by and between **THE ARMORY FOUNDATION, Inc.**, a nonprofit corporation, and the City of Sheboygan, (hereinafter referred to as **"THE ARMORY FOUNDATION"** or **"TENANT"** Wisconsin, a municipal corporation (hereinafter referred to as **"CITY"** or **"LANDLORD"**).

**WITNESSETHs**

**WHEREAS, THE ARMORY FOUNDATION'S** mission is to preserve and improve the Sheboygan Municipal Auditorium and Armory and to provide enjoyment in the Auditorium.

**WHEREAS,** the Sheboygan Auditorium is currently underutilized by the **CITY** and could be used by the Citizens and Visitors of Sheboygan.

**NOW, THEREFORE,** in consideration of the promises, covenants, agreements and payments herein named, the **CITY** and **THE ARMORY FOUNDATION** mutually agree as follows:

**ARTICLE I - TERM OF LEASE.**

The **CITY** hereby agrees to lease to **TENANT**, and **TENANT** hereby agrees to lease from the **CITY**, from the date of **GLASEC'S** vacancy until the **CITY** takes action on the **RFPS** for the property known as the Sheboygan Armory, 516 Broughton Drive, Sheboygan, Wisconsin, legally described as.:

**ALL THAT TRACT OF LAND BOUNDED AS FOLLOWS; ON THE NORTH BY CENTER AVE, ON THE EAST BY BROUGHTON DRIVE, ON THE SOUTH BY PENNSYLVANIA AVE., & ON THE WEST BY N. 4TH ST., WITH THE EXCEPTION OF THE PARKING LOT ON THE WEST 102 FEET THEREOF; SEC 23 T15N R23E, CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.**

Tax Parcel: Part of 112980

Map No.: 23417001

Hereinafter called the "Premises;" provided, however~ that the lease shall not include the following portions of the Premises, to which the CITY reserves the right of reasonable access:

- a. The storage garages on the north and south sides of the lower level.
- b. The storage room on the lower level identified as "City Hall and DPW Records Storage" on the attached Exhibit A-4 entitled "Armory-Basement."

#### **ARTICLE II - CONSIDERATION.**

The annual rent for the herein leased property shall be one and 00/100 (\$1.00) dollar, payable to the CITY in advance each year.

#### **ARTICLE III - USE.**

The leased premises shall be used only for purposes in furtherance of the TENANT's mission. No other use shall be permitted without the prior written consent of the CITY, subject to and in compliance with all other provisions of this Lease.

TENANT shall comply with all federal, state, or local government laws, regulations, rules, codes or ordinances relating to the Premises and TENANT'S use thereof and to the building and TENANT's use thereof, including, without limitation, health, safety and building codes, the Americans With Disabilities Act and the Wisconsin Barrier-Free Design Act, and any permit or license requirements.

TENANT agrees: (1) to occupy and use the Premises in a safe and careful manner without permitting or committing waste; (ii) to keep any refuse in proper containers in the interior of the Premises until the same is removed; (iii) to heat and cool the Premises sufficiently to avoid damage to plumbing systems and structural components; and (iv) to permit no lien to attach to the Building or Premises.

#### **ARTICLE IV - CONDITION OF PREMISES; IMPROVEMENTS TO LEASEHOLD.**

The TENANT is hereby authorized to make improvements to the property for the benefit of its program(s), shall be responsible for the upkeep and maintenance of the premises and property, including but not limited to janitorial, snow removal and lawn care services, and shall make arrangements and pay for its own utilities, including but not

limited to electricity, heat, water and sewer. Notwithstanding the above, during the original lease term, the CITY agrees: {a} to timely reimburse (within approximately 15 days after submittal to City Finance Department) TENANT in an amount not to exceed \$25,000 per year for TENANT's reasonable expenses for electricity, water, heat, and sewer attributable to the leased premises; and {b} to be responsible for snow removal from the public sidewalks surrounding the Premises.

Any TENANT proposed structural alterations, repairs or additions to the building presently on the premises shall be made known to the Director of the Department of Public Works prior to the undertaking of the same, for which his written approval shall be secured, along with all appropriate permits, prior to commencement of any such modifications by TENANT. All such work shall be effected in a good and worker like manner and in compliance with all legal requirements. All improvements to the premises shall revert to the CITY at the end of the term of this Lease.

The TENANT understands its responsibility is for normal maintenance of the premises, including regular cleaning and repairs. Should major repairs/replacements be required for normal occupancy, such as a furnace, plumbing, re-roofing, or other major items affecting the integrity of the building structure, these costs shall be borne by the CITY. TENANT shall make same known to the CITY via the Director of Public Works. The CITY shall, in its discretion, have the option to undertake such major repairs at its sole cost and expense, or terminate the Lease after providing TENANT at least 90 days advance notice. However, the CITY shall not be called upon to make any such repairs occasioned by the act or negligence of TENANT, TENANT'S agents, employees, licensees or contractors.

#### **ARTICLE V - SUBLETTING.**

No subletting of the premises or assignment of this Lease shall be permitted without the express written consent of the CITY.

#### **ARTICLE VI - LANDLORDS RIGHTS.**

CITY shall have the right to enter the Premises at all reasonable times upon reasonable notice to TENANT to make structural repairs or modifications as deemed necessary by the CITY and to access CITY'S storage areas in the basement. Any repairs or modifications by the CITY shall be done in such a manner as to minimize to the extent possible any interference with TENANT's use of the Premises. In the event of an emergency, the CITY may enter the Premises to repair or preserve the Premises without notice to TENANT.

LANDLORD shall at all times have and retain keys with which to unlock all of the doors in, upon or about the Premises, and LANDLORD shall have the right to use any and all means which the CITY may deem necessary or proper to open such doors in an emergency in order to obtain entry. If TENANT changes the locks or security service or security codes to any doors or windows in the Premises, TENANT shall immediately

provide the CITY with a key for each such new lock and the security service code(s). Any entry to the Premises shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, of TENANT.

#### **ARTICLE VII - HOLD HARMLESS.**

The TENANT agrees to indemnify and save the CITY harmless from any and all liability arising out of the TENANT'S use and occupancy of the herein leased property.

#### **ARTICLE VIII - INSURANCE.**

The TENANT agrees to furnish the CITY with insurance policies naming the City of Sheboygan as coinsured, covering public liability in amounts of not less than \$500,000/\$1,000,000 and property damage for not less than \$1,000,000.

The CITY agrees, at its expense, to continue to insure the building under the State's Local Government Property Insurance Program during the term of the Lease to the extent the State's Program allows.

#### **ARTICLE IX - DESTRUCTION OF PREMISES.**

In the event the building or the demised premises is destroyed by fire or other casualty, or is partially destroyed so as to render it unfit for occupancy, then this Lease shall cease and terminate.

#### **ARTICLE X - TERMINATION.**

1) In the event this Lease for any reason whatsoever is canceled, terminated or not renewed at the end of the term herein stated, the TENANT shall not be entitled to any relocation costs, expenses or awards.

2) The CITY may terminate this Lease any time it is determined by resolution of its Common Council that public necessity and convenience require it to do so, by serving upon the TENANT a written notice of its election to so terminate; said notice shall be served at least ninety (90) days prior to the date in said notice named for such termination. Upon termination of this Lease by the CITY under this Section X.2 prior to the expiration of the initial term of this Lease, the CITY will reimburse the TENANT, on a pro rata basis, TENANT's costs of leasehold improvements to the building.

3) If, for any reason, the TENANT shall discontinue its program for which the property is herein leased, or it shall move to other facilities, this Lease shall forthwith terminate and the property and its use, including the right to immediate possession, shall revert to the CITY.

Request to members of the Sheboygan Common Council

We are asking to use the and parking lot and grounds of the Armory on July 4<sup>th</sup> 2014 for a music and food venue called Taste of the 4<sup>th</sup>

Sincerely,

Collin Kachel The Armory Foundation President

The Armory Foundation: Preserve---Improve---Enjoy  
[www.thearmoryfoundation.com](http://www.thearmoryfoundation.com)



**THE ARMORY FOUNDATION**  
**PRESERVE IMPROVE ENJOY**  
**CONTACT: [THEARMORYFOUDNATION.COM](http://THEARMORYFOUDNATION.COM)**

**KICK START JULY 4TH 2014**