

*****ATTACHMENTS*****

III

4.6

Res. No. 82 - 20 - 21. By Alderpersons Dekker and Sorenson.
September 8, 2020.

A RESOLUTION authorizing entering into a Master Development Agreement with Stonebrook Crossing LLC.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Master Development Agreement between Stonebrook Crossing LLC and the City of Sheboygan regarding development of a subdivision for residential and commercial purposes, in form substantially similar to the attached.

Public
works

Dean Dekker

Ben Seeger

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

Master Development Agreement

This Master Development Agreement (this "AGREEMENT") is entered into this ___ day of _____, 2020, by and between STONEBROOK CROSSING LLC, a Wisconsin limited liability company, its successors, assigns and future owners of the PROPERTY, (the "DEVELOPER") and the CITY OF SHEBOYGAN, a Wisconsin municipal corporation (the "CITY").

RECITALS

WHEREAS, DEVELOPER is the owner of approximately 64 acres of land in the CITY, said land described on Exhibit A attached hereto (the "PROPERTY"); and,

WHEREAS, DEVELOPER desires to develop the PROPERTY as a subdivision for residential and commercial purposes (the "DEVELOPMENT"); and,

WHEREAS, said land consists of various parcels of land that are currently classified into three different zoning classifications: Mixed Residential (MR-8), Suburban Residential (SR-5) and Neighborhood Commercial (NC); and,

WHEREAS, DEVELOPER intends to develop the PROPERTY in multiple additions, and the parties have entered in to this AGREEMENT for the purpose of describing the general terms and conditions pursuant to the DEVELOPMENT and the specific terms and condition for the first addition. The parties further acknowledge subsequent additions may be subject to amendments to this AGREEMENT to include specific terms and conditions for subsequent additions, which amendments shall be not be generally applicable, but shall specifically relate to the subsequent additions identified. The first addition is named Stonebrook Crossing Addition No. 1 (the "FIRST ADDITION"); said land is described on Exhibit A attached hereto; and,

WHEREAS, it is now necessary that DEVELOPER and CITY enter into an AGREEMENT relative to the manner and method by which various public improvements upon the property described in this AGREEMENT ("PUBLIC IMPROVEMENTS") will be developed.

NOW, THEREFORE, DEVELOPER and CITY agree as follows:

I. GENERAL

- A. DEVELOPER shall submit Final Plats of the FIRST ADDITION, and of all future additions, to the City and the State of Wisconsin Department of Administration pursuant applicable state law and city ordinances.
- B. DEVELOPER shall prepare plans for the PUBLIC IMPROVEMENTS for each addition of the DEVELOPMENT, which plans are to be presented to and approved by the CITY.

THIS SPACE RESERVED FOR
RECORDING DATA

RETURN TO:

City of Sheboygan
City Clerk
828 Center Avenue, Suite 103
Sheboygan, WI 53081

PARCEL IDENTIFICATION NUMBER:

59281-471031*
59281-471051*
59281-471035*

** Current Parcel Identification Numbers for
2020. New numbers will be assigned later
in 2020.*

- C. DEVELOPER shall record, for each addition of the DEVELOPMENT, a Final Plat that substantially conforms to the design criteria, performance standards, and other specifications of Chapter 236, Wisconsin Statutes; Appendix C to the City of Sheboygan Municipal Code ("SUBDIVISION CODE"), and the City of Sheboygan Zoning Ordinance ("ZONING CODE").
- D. Prior to start of construction for each addition of the DEVELOPMENT, DEVELOPER shall provide certificates of insurance to the CITY with respect to the following forms of coverage and with limits not less than as stated hereunder: statutory limits for Workers Compensation; Commercial General Liability Insurance limits of \$5,000,000 for each occurrence and general aggregate; and Automotive Liability coverage with minimum limits of \$2,000,000 combined single limit per accident for bodily injury and property damage, provided on a Symbol 1-Any Auto basis. Coverages listed may be obtained with individual policies or in combination with excess or umbrella coverages. The policies shall be written by an insurance company licensed to do business in Wisconsin. DEVELOPER shall provide not less than 30 days written notice to the CITY prior to change modification or termination of said policy. Such notice provisions shall be in the unconditional affirmative, phrases such as "shall endeavor to notify" are unacceptable and shall be rejected. The requirements for insurance coverage for each addition terminate with final acceptance pursuant to section XI.B.6, below.

II. SEQUENCE OF DEVELOPMENT

It is anticipated that the sequence of activity related to each addition of the DEVELOPMENT shall be as follows, subject, however, to the SUBDIVISION CODE:

- A. Pre-application Conference
- B. Preliminary Plat Approval
- C. Final Plat Approval
- D. Development Agreement Approval
- E. Approval of Storm Sewer and Sanitary Sewer Utility Calculations, Water Main Calculations, and Shop Drawings
- F. Construction Plan Approvals
- G. Pre-Construction Meeting
- H. Erosion Control and Stormwater Best Management Practices
- I. Utility and Street Construction
- I. Private Utilities (Electric, Gas, Telephone, CATV, Etc.)
- J. Restoration
- K. Record Drawings and Certifications

III. GRADING AND EROSION CONTROL

- A. Compliance
 - 1. DEVELOPER shall abide by the provisions of the Sheboygan Municipal Code, including the Appendices thereto, and to all other federal and state statutes and regulations related to grading and to erosion control. Nothing in this AGREEMENT shall in any way be interpreted as superseding said provisions of law.
 - 2. DEVELOPER shall secure proper Erosion Control Permits to implement the approved Erosion Control Plan.

3. Erosion Control Methods shall be those required by the erosion control ordinances under the Sheboygan Municipal Code (including, but not limited to Appendix D related to Construction Site Erosion Control and Chapter 26 related to Drainage) or by the State of Wisconsin through the Department of Natural Resources. DEVELOPER shall be responsible for maintaining erosion control in accordance with the Erosion Control Permit during construction.
4. DEVELOPER shall be responsible for pre-grading and maintaining grades within the DEVELOPMENT in accordance with the approved DEVELOPER's Grading Plan until final acceptance by the CITY of improvements.
5. DEVELOPER shall be responsible for implementing the approved Master Grading Plan. This shall be achieved as part of the DEVELOPER's construction activities and by providing the approved Master Grading Plan to lot buyers for implementation during the building permit phase of the individual lots.

B. Inspection and Maintenance

1. Oversight of all construction, maintenance, and material testing shall be performed by a certified inspector approved by the CITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.
2. All erosion control measures shall be maintained in accordance with the Erosion Control Permits.
3. DEVELOPER, at its sole expense, shall be responsible for removing erosion control measures as directed by the CITY.
4. All costs connected with providing the CITY with as-built information per CITY standards shall be pursuant to section VIII.E.4, below.

C. Construction Standards

DEVELOPER shall be responsible for performing all work related to grading and erosion control in accordance with the City of Sheboygan Construction Standards, a copy of which is attached as Exhibit C.

IV. SANITARY SYSTEM

A. Availability

1. Each building in the DEVELOPMENT shall be served by a sanitary sewer main and lateral at DEVELOPER's sole expense, except for expense reimbursement pursuant to IV.G, below, and connected to the appropriate sanitary system in accordance with determinations, plans, and specifications made or approved by the City Engineer and all other regulatory agencies, including the appropriate Sanitary District(s) serving the area of the DEVELOPMENT.
2. The sanitary sewer lateral shall be installed to five feet beyond the lot line at the DEVELOPER's sole expense. As individual buildings are being constructed, the property owner shall extend the sanitary sewer lateral from this point to the building.

3. All buildings or units in the DEVELOPMENT shall be individually served with private laterals. In the event it is later determined that the locations or size of such laterals are insufficient to service certain parcels or units of land within the project, the owner(s) of such parcel(s) may install laterals subject to CITY approval which will be paid for by the property owner.
4. DEVELOPER shall provide for the extension of the sanitary sewer system in accordance with the approved plans by the CITY by laying sanitary sewer mains in public right-of-way and/or public easement as directed by the CITY.

B. Capacity

The system shall conform to the Sheboygan Municipal Code and have a capacity sufficient to meet the needs of the DEVELOPMENT and each building therein, and as directed by the CITY.

C. Inspection

Oversight of all construction, maintenance, and material testing shall be performed by a certified inspector approved by the CITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.

D. Ownership

Upon CITY's final acceptance of the sanitary sewer system, those portions of the sanitary sewer system located in the public right-of-way and/or public easement shall be dedicated by the DEVELOPER to the CITY and shall thereafter be maintained and serviced by the CITY.

E. Sanitary Fees

All building sites and buildings in the DEVELOPMENT shall be subject to all sanitary fees at the time of connection and in the same amount and collected in the same manner as are sanitary fees for all other CITY parts served by the same wastewater treatment facilities.

F. Construction Standards

DEVELOPER shall be responsible for performing all work related to sanitary sewer service in accordance with the City of Sheboygan Construction Standards, a copy of which is attached as Exhibit C.

G. Reimbursement for Sanitary Sewer Extension to Site Boundary

Upon inspection and approval by the CITY of the Moenning Road extension area, DEVELOPER shall be reimbursed for construction of the extension of the sanitary sewer on Moenning Road to the PROPERTY boundary pursuant to a separate 2007 agreement between the parties made as part of a purchase and sale agreement. DEVELOPER shall provide the CITY with an invoice quantifying the cost to extend the sewer. The City Engineer shall review the invoice, which shall contain sufficient information to allow him or her to determine whether or not the cost is reasonable and consistent with local construction costs. Upon approval of the City Engineer, the CITY shall reimburse actual costs within 30 days pursuant to said separate agreement.

V. WATER SYSTEM

A. Availability

1. Each building in the DEVELOPMENT shall be served by water main of at least eight inches in diameter and a lateral installed at DEVELOPER's sole expense, except for expense reimbursement pursuant to V.B, below, and connected to the Sheboygan Water Utility ("UTILITY") in accordance with plans and specifications approved by the CITY, the UTILITY, and all other agencies.
2. The water lateral shall be installed to five feet beyond the lot line at the DEVELOPER's sole expense. As individual buildings are being constructed, the property owner shall extend the water lateral from this point to the building.
3. All buildings or units in the DEVELOPMENT shall be individually served with private laterals. In the event it is later determined that the locations, pressure or size of such laterals are insufficient to service certain parcels or units of land within the project, the owner(s) of such parcel(s) may install laterals subject to UTILITY approval which will be paid for by the property owner.
4. In lieu of the UTILITY constructing water main extensions, the DEVELOPER shall provide for the extension and construction of the water system in accordance with the Site Development Plan approved by the CITY and the UTILITY by laying water mains in public right-of-way and/or public easement as directed by the CITY and shown on the plans.

B. Capacity of the System

The water system shall conform to the Sheboygan Municipal Code and have a capacity sufficient to meet the needs of the DEVELOPMENT and each building therein and as directed by the CITY and the UTILITY. However, the parties acknowledge that the water mains necessary to serve the DEVELOPMENT may need to be increased in size in order to serve areas which may develop in the future, or in order to serve areas currently outside of the territorial limits of the CITY that may, in the future, be annexed into the CITY. Should the UTILITY determine that it is in its best interest to increase the size of mains beyond an eight-inch diameter based on needs outside of the DEVELOPMENT (e.g. a 16-inch main when 8-inch is sufficient for the DEVELOPMENT) the parties agree that in lieu of the UTILITY constructing the water main extensions, the DEVELOPER shall construct the larger water mains required by the UTILITY within the PROPERTY, and the DEVELOPER shall be reimbursed by the UTILITY for the cost difference between an 8-inch main and the actual size of the larger main installed. In such a case, the DEVELOPER shall obtain no fewer than three acceptable bids for the installation of both sizes of main. The cost difference shall be calculated based on lowest of the acceptable bids received, using the difference in cost between the larger main and the 8-inch main multiplied by the lineal feet installed. The UTILITY reserves the right to reject cost differences that do not reflect reasonable market pricing. DEVELOPER shall, after installation, provide the UTILITY with calculations quantifying the cost of the larger water mains per this agreement, and the UTILITY shall reimburse said costs within 30 days.

C. Inspection

Oversight of all construction, maintenance, and material testing shall be performed by a certified inspector approved by the CITY and UTILITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.

D. Ownership

Upon UTILITY's final acceptance of the water system, all water main extensions and those portions of the water system located in the public right-of-way and/or public easement shall be dedicated by the DEVELOPER to the UTILITY for public utility purposes and shall thereafter be maintained and serviced by the UTILITY. The parties agree to execute and deliver any additional documents as may be reasonably required to effectuate the dedication and transfer of the extensions of water mains contemplated by this AGREEMENT.

E. Water Utility Charges

Upon final acceptance of the water system by the UTILITY, all buildings, or building sites in the DEVELOPMENT shall be subject to all water service charges and/or assessments in the same amount and collected in the same manner, as are water service charges and/or assessments for all other parts of the CITY served by CITY water.

For the possible future water main extension along Moenning Road, the UTILITY and CITY have determined that since no privately owned residential lots would be able to exceed 220 feet of second side water main frontage, that pursuant to Section 122-98(c), Sheboygan Municipal Code, that no special assessment would apply to this PROPERTY for water main extensions along Moenning Road.

F. Construction Standards

In addition to any standards set forth in this AGREEMENT, DEVELOPER shall be responsible for performing all work related to water service in accordance with the City of Sheboygan Construction Standards, a copy of which is attached as Exhibit C, and the "Standard Specifications for Sewer and Water Construction in Wisconsin" (6th edition, dated December 22, 2003 with Addendum No. 1 dated December 22, 2004 and Addendum No. 2 dated April 22, 2008) as further modified by the Sheboygan Water Utility Special Provisions, a copy of which is attached as Exhibit D.

VI. STORM DRAINAGE SYSTEM

A. Components

Storm drainage shall be provided by means of storm sewers, culverts, ditches, Stormwater Best Management Practices (BMP's), and appurtenances in the public right-of-way and/or in drainage easements where required and/or within natural areas (where applicable and permitted), all in accordance with storm drainage plans prepared by DEVELOPER and approved by the CITY and entirely at the DEVELOPER's sole expense, except for reimbursement pursuant to section VI.F, below. All storm drainage shall be in conformance with the requirements of the Sheboygan Municipal Code, including but not limited to the approved Stormwater Management Plan required pursuant to Chapter 26 of the Sheboygan Municipal Code and the Post-Construction Stormwater Management Zoning Ordinance contained in Appendix E to the Sheboygan Municipal Code.

B. Construction

1. The DEVELOPER shall be responsible for the planning, design, construction plan, and construction of facilities for storm drainage (the Storm Drainage System) until such stormwater exits the exterior perimeter line of the DEVELOPMENT or until it reaches a point, outside of and adjacent to the PROPERTY from which point such stormwater passes into, or through specified conduits or channels. Such design shall be reviewed and approved by the CITY prior to construction.
2. Nothing in this paragraph shall be deemed to limit the DEVELOPER's responsibility to adjacent owners for discharged water. Should any claim be made against the CITY for increased water discharge or altered drainage patterns from the project, DEVELOPER shall indemnify, defend and hold harmless the CITY paying all costs thereof (including but not limited to actual attorney fees) and further indemnify the CITY from any loss or damage based upon a claim arising from water allegedly discharged within or from the site, except if the loss or damage was caused by the negligence or willful misconduct of the CITY. Except as it relates to negligence by the DEVELOPER or its contractors and subcontractors, DEVELOPER'S duty pursuant to this subparagraph shall terminate once the storm drainage system is finalized and accepted by the CITY.
3. Major drainage improvements for the entire development shall be constructed during the FIRST ADDITION of the DEVELOPMENT including, but not limited to the BMP's, ditches and other structures for the conveyance of water therein, detention ponds, and necessary downstream improvements. Developer shall be responsible for creating or obtaining all necessary drainage easements as part of said construction.
4. The DEVELOPER agrees with and shall execute, simultaneous with this AGREEMENT, all provisions of a Stormwater Management Agreement, a copy of which is attached hereto as Exhibit E.

C. Ownership

The components of the Storm Drainage System in public rights of way and public easements shall be dedicated to the CITY. Additionally all stormwater ponds and other stormwater infrastructure shall be dedicated to the CITY, along with the outlots in which they are located. DEVELOPER agrees to dedicate to the CITY two drainage easements deemed necessary by the CITY and any infrastructure contained therein. When dedicated to the CITY upon approval and final acceptance by the CITY, system components shall become the property of the CITY and thereafter be maintained by the CITY. Notwithstanding the terms of this paragraph, the driveway culverts shall remain the property of the DEVELOPER and, upon sale of lots, the property owner. DEVELOPER agrees record standard covenants running with the land requiring property owners to properly maintain their property in such a manner so as to permit proper storm drainage throughout the PROPERTY.

D. Inspection

Oversight of all construction, maintenance, and material testing shall be performed by a certified inspector approved by the CITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.

E. Construction Standards

In addition to any standards set forth in this AGREEMENT, DEVELOPER shall be responsible for performing all work related to storm drainage in accordance with the City of Sheboygan Construction Standards, a copy of which is attached as Exhibit C.

F. Reimbursement for Stormwater Detention Ponds

Upon final inspection and approval by the CITY of the two stormwater detention ponds portion of the project, DEVELOPER shall be reimbursed for the engineering and construction of the two stormwater detention ponds to be constructed in Outlot 1 and 2 pursuant to a separate 2007 agreement between the parties made as part of a purchase and sale agreement. DEVELOPER shall provide the CITY with an invoice quantifying the cost to engineer and construct the stormwater detention ponds and CITY shall reimburse actual costs within 30 days, up to a maximum contribute of \$250,000, pursuant to said separate agreement. Final inspection and approval shall not be granted until DNR regulations and requirements related to sufficient establishment of vegetation to allow for release from the terms of required erosion control construction permits. Final inspection and approval shall not unreasonably withheld by the CITY.

VII. PUBLIC ROADWAYS

A. Location

Roadways shall be constructed in each and every road right-of-way platted, shall be built to the exterior lot line of the PROPERTY and constructed as directed by the CITY.

B. Construction

1. DEVELOPER shall provide the geotechnical data compiled during the design of the roadways to the City Engineer. Should the geotechnical data submitted to the CITY not be sufficient to reasonably satisfy the City Engineer, the DEVELOPER shall grant the CITY with a right of entry to obtain the required data. Costs associated with obtaining the required data shall be at the DEVELOPER's sole expense.
2. DEVELOPER shall install and/or improve the roadways per the approved plans.
3. The asphaltic binder course, which shall be at a depth of 1 ¾ inches, shall not be installed after September 15 without prior approval of the City Engineer.
4. At the direction of the City Engineer, DEVELOPER shall adjust all affected utilities prior to installing the final asphalt surface course at DEVELOPER's sole expense.
5. The DEVELOPER shall schedule and complete a walk-through of the street system with the CITY's Director of Public Works or his or her designee, who shall consent in writing prior to the installation of the final asphaltic surface course.
6. Prior to final asphaltic surface course construction, all repairs and restoration of damaged, broken or otherwise deficient asphaltic binder course, water system, sanitary system, and storm drainage system shall be completed at DEVELOPER's sole expense.

7. The final asphaltic surface course, which shall be at a depth of 2 ¼ inches, shall be installed between May 1 and July 31 in the calendar year following the installation of the binder course.
8. Material storage or stockpiling shall not be allowed on road surface after final surface course is installed.
9. DEVELOPER shall be responsible for any damage to the road system, including any damage resulting from plowing of snow, until final acceptance.
10. CITY shall not be responsible for any plowing of the road system until the aggregate base course is accepted pursuant to section XI.B.4, below.

C. Inspection

Oversight of all construction, maintenance, and material testing of public roadways and appurtenances shall be performed by a certified inspector approved by the CITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.

D. Street Signs

1. Street names and numbers shall be in conformance with the CITY's policies and in accord with Chapter 118 of the Sheboygan Municipal Code.
2. Street signs shall be installed by the CITY, at the DEVELOPER's sole expense and prior to placement of the binder course.

E. Street Lighting

DEVELOPER shall pay for the cost of purchase and installation of LED street lighting, including provision of any necessary easements, at the main entrances to the DEVELOPMENT (Business Drive/Highway OK and Moenning Road). The CITY shall approve the type and specifications of the street lighting. All street lighting shall be completed to the satisfaction of the CITY and not used until after the CITY's final acceptance. Upon the CITY's final acceptance of the street lighting system, those portions of the street lighting system located in the public right-of-way and/or public easement shall be dedicated by the DEVELOPER to the CITY and shall thereafter be maintained and serviced by the CITY, with the CITY to be responsible for the monthly costs from the utility company for the electric usage related to the street lighting. Other street light locations are allowed to be added later at the mutual agreement between the CITY and DEVELOPER.

F. Trees

The requirements for trees in the DEVELOPMENT are to be at the DEVELOPER's sole discretion, except as otherwise provided by law. The DEVELOPER has indicated its desire to apply for a variance from city ordinance requirements related to tree easements on local (minor) streets (Section 5.2(F)(1)(c), Subdivision Code). It shall be DEVELOPER'S responsibility to request said variance from the Plan Commission in writing, as provided in Section 2.5, Subdivision Code. The DEVELOPER acknowledges that the Plan Commission exercises to sole judgment to determine whether it would be inadvisable to literally apply a provision of this ordinance due of exceptional or undue hardship and to modify the provisions of the ordinance in a way that provides for substantial justice to be done and the public interest secured. The parties agree that should the Plan Commission not approve said variance related to the FIRST ADDITION, the DEVELOPER shall be permitted to withdraw from this AGREEMENT. The parties agree that should the Plan Commission approve said variance for the FIRST ADDITION but not for one or more later additions, the DEVELOPER shall remain bound to the provisions of this Agreement only for such additions as have been approved with the variance, and shall not be obligated to move forward with new additions.

G. Access Shoulder

DEVELOPER shall pay for the cost of installing asphalt paved access shoulder on both sides of Rim Rock Road and Stonebrook Drive, as set forth in the approved plan.

H. Relocation of Private Utilities

The DEVELOPER shall be responsible for any expense for private utilities to move its private infrastructure in the public right-of-way necessitated by the DEVELOPMENT.

I. Construction Standards

In addition to any standards set forth in this AGREEMENT, DEVELOPER shall be responsible for performing all work related to public roadways and appurtenances as described in this Section VII in accordance with the City of Sheboygan Construction Standards, a copy of which is attached as Exhibit C.

VIII. ADDITIONAL REQUIREMENTS OF DEVELOPER

A. Public Sites and Open Spaces

1. Dedication of Parkland

As part of FIRST ADDITION, DEVELOPER agrees to dedicate a 0.50 acre parcel of land for open spaces and sites for public use ("PARK"). The parcel shall be labeled as "Dedicated to the Public for Park Purposes" on the Final Plat. A legal description of the parcel is attached as Exhibit A. The dedication of land for open spaces and sites for public use shall be consistent with the CITY's Comprehensive Plan and/or Official Map unless the CITY agrees otherwise. The CITY agrees to quit claim the PARK upon (i) approval by the Parks and Forestry Commission and the Common Council pursuant to the provisions of the Sheboygan Municipal Code, (ii) dedication of the parcel of land for opens spaces and sites for public use provided in this paragraph, and (iii) final plat approval.

2. Waiver of Impact Fees

In consideration of the dedication of the 0.50 acre parcel of land, pursuant to Section 74-83, Sheboygan Municipal Code, the CITY waives all impact fees for park purposes for the DEVELOPMENT.

3. Additional Terms Related to Public Space

As part of FIRST ADDITION, at the DEVELOPER'S cost, DEVELOPER agrees to i) install a 2" water line, ii) install a 6" sanitary sewer lateral, and iii) install an electric pedestal to said public open space. DEVELOPER shall submit a grading plan for the parcel to the CITY for its review and approval. At the DEVELOPER'S cost, DEVELOPER shall grade the parcel, add a minimum of 4" of top soil, spread fertilizer, and plant grass seed. Upon the CITY's final acceptance of the PARK, those portions of the PARK shall be dedicated by the DEVELOPER to the CITY and shall thereafter be maintained and serviced by the CITY.

B. Shoreland

DEVELOPER shall comply with the shoreland requirements set forth in Appendix B of the City of Sheboygan Municipal Code. There are currently no known shoreland locations on the PROPERTY.

C. Floodplain

Buildings and structures shall not be situated within the floodway area of the 100-Year Floodplain as shown on the Final Plat. Any changes to property within the floodway area, including filling, grading, excavation, and planting of vegetation shall be limited in accord with Appendix A of the Sheboygan Municipal Code. There are currently no known floodplain locations on the PROPERTY.

D. Wetland Areas

The grading, filling, excavation of wetland areas as shown on the Final Plat shall be prohibited. Vegetation may be added to a wetland area per waterway regulations by the Wisconsin Department of Natural Resources. Any activity within wetland areas shall be in accord with Appendix B of the Sheboygan Municipal Code.

E. Miscellaneous and Fees

1. DEVELOPER shall be responsible for any items, as reasonably required in writing by the CITY, necessary to accomplish the intent of this AGREEMENT.
2. At the time of issuance of the a building permit, and except as otherwise provided in this AGREEMENT, the DEVELOPER or the respective landowner or building obtaining such building permit, hereby agrees to pay any fees or assessments that are required by City Ordinance or Resolution in effect at time of building permit per residential dwelling unit. Fees shall be charged pursuant to the provisions and authority within the Sheboygan Municipal Code. Further pursuant to Section 74-83(a), Sheboygan Municipal Code, and in light of the value of land dedicated by DEVELOPER to the CITY pursuant to Section VIII.A, above, the parties agree that the impact fee owed for park purposes by the developer is zero..

3. The Sewer Connection Fees for this DEVELOPMENT will be set as shown in Exhibit F for a period ten (10) years after the execution of this AGREEMENT. The CITY will not charge any fees related to the engineering review and approval of construction plans, calculations, and shop drawings.
4. The CITY and UTILITY is to provide all inspection services required for the DEVELOPMENT, including the hiring, approval and work of the certified inspector, as well as the documentation of as-built information per CITY standards. Upon commencement of inspection services, the CITY shall provide the DEVELOPER with an invoice payable within 30 days for a fixed fee of \$25,000 and the UTILITY shall provide the DEVELOPER with an invoice payable within 30 days for a fixed fee of \$6,000, to cover all costs of inspection services and as-built documentation for the DEVELOPMENT.

IX. PRIMARY FINANCIAL GUARANTEE

A. Satisfactory Financial Guarantee: Form

To assure compliance with DEVELOPER'S obligations under this Agreement, the DEVELOPER shall deposit with the City Clerk within five (5) days of the start of construction of each respective phase, a Financial Guarantee in the form of a Letter of Credit.

B. Amount of Guarantee

The Financial Guarantee required by this Article shall be in the amount of either (i) one hundred and ten percent (110%) of the total cost (based on the bid from DEVELOPER'S contractors for the Public Improvement work if deemed reasonable by the City Engineer) of the PUBLIC IMPROVEMENTS within each phase, or (ii) such lesser amount that the City Engineer determines is acceptable based on an estimate of the cost to make the CITY whole should it have to step in to complete or remove the PUBLIC IMPROVEMENTS should the DEVELOPER default on this AGREEMENT. The Financial Guarantee described herein shall only apply to the PUBLIC IMPROVEMENTS in the particular phase of the Development being constructed by DEVELOPER.

C. Terms of Guarantee

The Financial Guarantee shall: (i) run until fourteen (14) months following the installation of the binder course of asphalt for such respective phase, (ii) shall be irrevocable during said period, (iii) shall be in a form approved by the City Attorney, and (iv) shall be drawn upon the sole authorization of the City Administrator without any other approval or authorization, but subject to written notice given to DEVELOPER ten (10) days prior to any draw.

D. Reduction and Release of Guarantee

During the construction of any phase of the Development, the DEVELOPER may provide proof to the CITY of installation, payment to contractors, and partial lien releases for that portion of the PUBLIC IMPROVEMENTS installed. The City Engineer, upon written request from DEVELOPER made from time to time, is authorized to reduce the amount of the Financial Guarantee from the amount in Paragraph B of this Article as a result of portions of the PUBLIC IMPROVEMENTS being completed by the DEVELOPER. In determining the reduction, the City Engineer shall consider the costs paid by the DEVELOPER, the cost of any remaining work, and the reduction in the cost to make the CITY whole should it have to step in to complete the PUBLIC IMPROVEMENTS should the DEVELOPER default on this AGREEMENT. The City Engineer shall not unreasonably withhold consent to the supported, reasonable request by DEVELOPER for the Financial Guarantee reduction.

E. Additional Related Terms

Responsibility and direction for completion of contract shall remain the responsibility of the DEVELOPER. The CITY acknowledges and agrees that the PUBLIC IMPROVEMENTS described herein may be performed by DEVELOPER in phases, as approved by the CITY. Notwithstanding any other provision to the contrary, the DEVELOPER's obligation to maintain a letter of credit shall not extend beyond fourteen (14) months from the date of substantial completion of all improvements as defined in Section 236.13(2)(a)2, Wis. Stats.

X. DEED RESTRICTIONS

- A. This AGREEMENT or a memorandum of this AGREEMENT shall be recorded in the office of the Registrar of Deeds of Sheboygan County, Wisconsin by the DEVELOPER at the expense of the DEVELOPER. The use and occupancy of all lots therein shall be subject to the terms and provisions of this AGREEMENT. A copy shall be provided to the CITY.
- B. Any other restrictions desired by the DEVELOPER, but not required by the CITY may be recorded at the DEVELOPER's option. The CITY will not be responsible for the enforcement of those restrictions.

XI. ACCEPTANCE OF PUBLIC IMPROVEMENTS

- A. All PUBLIC IMPROVEMENTS required by the CITY within the DEVELOPMENT are the DEVELOPER's sole responsibility, except as otherwise provided in this AGREEMENT.
- B. PUBLIC IMPROVEMENTS for each addition of the DEVELOPMENT will be accepted by the CITY when the DEVELOPER has met and satisfied each of the terms and conditions of this AGREEMENT, permits, and applicable ordinances of the CITY.
 - 1. Preliminary acceptance of the Utility System(s) will be granted when system has been installed and all related punch list items have been corrected by the DEVELOPER and approved by the CITY and the UTILITY.
 - 2. Final acceptance of the Utility System(s) will be granted when all land disturbing activities have been completed, all related punch list items have been corrected by the DEVELOPER and approved by the CITY, and as-builts have been submitted and approved by the CITY.

3. Final acceptance of the PARK will be granted when grass seed has been planted and the grass fully established, as determined by the Director of Public Works, and all related punch list items have been corrected by the DEVELOPER and approved by the CITY. The Director of Public Works, in determining whether the grass is fully established shall consider the same factors as used by the Department of Natural Resources when determining whether vegetation is sufficiently established to release parties from the terms of Erosion Control Construction Permits.
4. Preliminary acceptance of the Roadway will be granted when the aggregate base course has been installed and all related punch list items have been corrected by the DEVELOPER and approved by the CITY.
5. The Road System will be considered substantially complete upon the installation of the asphaltic binder course on roads to be dedicated to the CITY.
6. Final acceptance of the Road System will be not granted until 14-months after substantial completion. The CITY will conduct an inspection of the Road System (including ditches, culverts and appurtenances) 12 months after substantial completion and prepare a punch list of items that need correction. After all punch list items have been completed by the DEVELOPER, and approved by the CITY, final acceptance will be granted. The final asphaltic surface course of all asphalt roadways and all punch list items shall be completed within 14 months of substantial completion.

XII. GENERAL CONDITIONS

- A. DEVELOPER further agrees to abide by such further orders or directions as may be reasonably given by the CITY and/or it's Boards and Commissions, as may be necessary to implement and carry out the terms and intent of this AGREEMENT, provided such further orders or directions are usually and customarily required of like developments similarly stated.
- B. It is expressly understood and agreed that the terms of this AGREEMENT are covenants running with the land and binding on DEVELOPER. The terms of the AGREEMENT regarding insurance, warranty and surety obligations shall survive the expiration of this AGREEMENT.
- C. The signatory DEVELOPER shall not dissolve its Corporation, LLC, or other business group designation, without written notification to the CITY, more specifically the City Engineer, and a minimum of 60 days prior to the dissolution. The written notification shall include a plan for meeting the requirements of the AGREEMENT and the identity and contact information for the person(s)/entity that will be the subsequent responsible party.
- D. DEVELOPER shall be responsible for the repair to existing roadways and infrastructure for damage caused as a result of its construction activities.
- E. DEVELOPER is required to have the public utilities (sanitary system, water system, & storm drainage system) located and marked in the field until the final record drawings for the utilities are approved by the CITY.

- F. DEVELOPER and subsequent owners of lots shall promptly remove all construction debris including, but not limited to, paper, plastic, insulation, packaging, etc. and will take adequate measures to keep all debris on the lot site to prevent littering adjoining properties.
- G. Streets shall be swept daily as needed to remove silt, stone, ground or other materials that have been tracked or eroded onto the streets by the DEVELOPER. The CITY may periodically inspect the streets for debris and determine if street sweeping is required. Reasonable efforts will be made to contact the responsible party to get the impacted streets swept. Should street sweeping not be completed in a timely manner to the CITY's reasonable satisfaction, the CITY shall have the authority to complete said work and charge all reasonable costs for the street sweeping to the responsible party. In the event that said costs are not promptly paid, the CITY may assess those charges against the property within this DEVELOPMENT as a special charge for current services pursuant to Wisconsin Statute Sec. 66.0627.
- H. DEVELOPER agrees, to the fullest extent permitted by law, to indemnify and hold the CITY harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the DEVELOPER's negligent or intentional acts, errors or omissions in the performance of its obligations under this AGREEMENT and those of its contractors/subcontractors or anyone for whom the DEVELOPER is legally liable. CITY agrees, to the fullest extent permitted by law, to indemnify and hold the DEVELOPER harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the CITY's negligent or intentional acts, errors or omissions in the performance of its obligations under this AGREEMENT and those of its contractors/subcontractors or anyone for whom the CITY is legally liable. Neither party will be responsible to the other for consequential damages including, but not limited to, loss of profit, loss of investment or business interruption.
- I. DEVELOPER or its successor or assignee shall be responsible for maintenance of rights-of-way up to the edge of the roadways adjoining the DEVELOPMENT to include grass cutting and any litter removal consistent with the landscaping of the DEVELOPMENT. Failure to maintain this area shall subject the DEVELOPMENT to charges by the CITY. The outlots dedicated to the CITY and the right-of-ways adjacent to these outlots are maintained by the CITY and the DEVELOPER is not responsible for any maintenance to include grass cutting and litter removal.
- J. Building setbacks, height restrictions, and locations of all structures shall be as regulated by the ZONING CODE.
- K. All conditions of approval for the DEVELOPMENT by the Plan Commission and/or Common Council shall be followed.
- L. Except for the specific responsibilities and obligations retained by the DEVELOPMENT hereunder, CITY shall provide to the DEVELOPMENT and its occupants the same governmental services, as are generally provided to other residents, residences, and citizens of the CITY.
- M. Neither the CITY's own inspection nor the CITY's acceptance of DEVELOPER's dedication to the CITY shall be deemed a waiver of the DEVELOPER's obligation to construct the Water, Sanitary, Storm Drainage, and Road Systems according to the approved plans and specifications and other regulatory agencies.

- N. The DEVELOPER, through information assembled by a Registered Land Surveyor, shall provide evidence that all monuments have been set per Wis. Stat. § 236.15, as amended. Only the exterior boundary monuments need be set at the time of the plat recording in the associated phase, with the condition of the CITY deferring placement of the interior monuments pursuant to Wis. Stat. § 236.15(1)(h), as amended, for a reasonable period of time determined by the CITY in order to allow for construction of DEVELOPER improvements that may otherwise interfere with monumentation.
- O. Building permits for new home construction are to be available at the time of substantial completion of the aggregate base course pursuant to section XI.B.4, above.
- P. The DEVELOPER is allowed to have a temporary use on-site real estate sales office located on the PROPERTY pursuant to the provisions of the ZONING CODE.
- Q. The DEVELOPER, at DEVELOPER's expense, may place temporary subdivision and builder marketing signage at the PROPERTY. The DEVELOPER, at DEVELOPER's expense, may place permanent subdivision monument sign(s) on the PROPERTY. All such placements shall be in compliance with the ZONING CODE and the Sheboygan Municipal Code.

XIII. SPECIAL CONDITIONS

- A. Fire or emergency protection services are available to the DEVELOPMENT.
- B. Snow and ice removal from private roadways, drives or parking lots shall not be placed in public roadways or rights-of-way.
- C. DEVELOPER shall be responsible for submitting a Stormwater Management Practice Maintenance Agreement. DEVELOPER shall also be responsible for recording the document, in a form that is acceptable to the CITY, at the Sheboygan County-Register of Deeds so that the Agreement is binding upon all subsequent owners of lands within the DEVELOPMENT. A copy of the recorded document shall be provided to the CITY.
- D. The Stormwater Management BMP's are to be maintained per the approved Stormwater Management Practice Maintenance Agreement referred to above.

<Signatures appear on next page>

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the Effective Date first printed above.

CITY OF SHEBOYGAN

STONEBROOK CROSSING LLC

BY: _____
Michael J. Vandersteen
Mayor

BY: _____
Robert J. Werner
President

ATTEST: _____
Meredith DeBruin
City Clerk

SHEBOYGAN WATER UTILITY

APPROVED AS TO FORM:

BY: _____
Joseph Trueblood
Director

BY: _____
Charles C. Adams
City Attorney

This document is authorized by and in accordance with Res. No. ____-20-21.

EXHIBIT A

LEGAL DESCRIPTIONS

DEVELOPMENT

Full Legal Description To Be Completed

FIRST ADDITION

Lots Fourteen (14) through Ninety-One (91) and Outlots One (1) through Three (3), Stonebrook Crossing Addition No. 1, all located in the City of Sheboygan, Sheboygan County, Wisconsin.

LAND TO BE DEDICATED AS OPEN SPACE FOR PUBLIC USE

Outlot Three (3), Stonebrook Crossing Addition No. 1, all located in the City of Sheboygan, Sheboygan County, Wisconsin

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Resolution authorizing entering into a Master Development Agreement with Stonebrook Crossing LLC.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: September 10, 2020

MEETING DATE: September 15, 2020

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS: This Master Development Agreement is a result of negotiations between the Department of Public Works and Stonebrook Crossing LLC. regarding the terms and understandings between the parties with regard to the location, construction, and fiscal responsibilities for infrastructure improvements associated with the development of the new subdivision.

STAFF COMMENTS: The City of Sheboygan Department of Public Works was given the lead role of reviewing and approving the public infrastructure improvements pursuant to the Master Development Agreement between the City of Sheboygan and the Stonebrook Crossing LLC. Officials. This agreement ensures that final improvements in the area will provide the most efficient and safe design for the new subdivision.

ACTION REQUESTED: Motion to recommend the Common Council adopt Res. No. 82-20-21 authorizing entering into a Master Development Agreement with Stonebrook Crossing LLC.

ATTACHMENTS:

- I. Res. No. 82-20-21
- II. Master Development Agreement

Master Development Agreement

This Master Development Agreement (this "AGREEMENT") is entered into this ___ day of _____, 2020, by and between STONEBROOK CROSSING LLC, a Wisconsin limited liability company, its successors, assigns and future owners of the PROPERTY, (the "DEVELOPER") and the CITY OF SHEBOYGAN, a Wisconsin municipal corporation (the "CITY").

RECITALS

WHEREAS, DEVELOPER is the owner of approximately 64 acres of land in the CITY, said land described on Exhibit A attached hereto (the "PROPERTY"); and,

WHEREAS, DEVELOPER desires to develop the PROPERTY as a subdivision for residential and commercial purposes (the "DEVELOPMENT"); and,

WHEREAS, said land consists of various parcels of land that are currently classified into three different zoning classifications: Mixed Residential (MR-8), Suburban Residential (SR-5) and Neighborhood Commercial (NC); and,

WHEREAS, DEVELOPER intends to develop the PROPERTY in multiple additions, and the parties have entered in to this AGREEMENT for the purpose of describing the general terms and conditions pursuant to the DEVELOPMENT and the specific terms and condition for the first addition. The parties further acknowledge subsequent additions may be subject to amendments to this AGREEMENT to include specific terms and conditions for subsequent additions, which amendments shall be not be generally applicable, but shall specifically relate to the subsequent additions identified. The first addition is named Stonebrook Crossing Addition No. 1 (the "FIRST ADDITION"); said land is described on Exhibit A attached hereto; and,

WHEREAS, it is now necessary that DEVELOPER and CITY enter into an AGREEMENT relative to the manner and method by which various public improvements upon the property described in this AGREEMENT ("PUBLIC IMPROVEMENTS") will be developed.

NOW, THEREFORE, DEVELOPER and CITY agree as follows:

I. GENERAL

- A. DEVELOPER shall submit Final Plats of the FIRST ADDITION, and of all future additions, to the City and the State of Wisconsin Department of Administration pursuant applicable state law and city ordinances.
- B. DEVELOPER shall prepare plans for the PUBLIC IMPROVEMENTS for each addition of the DEVELOPMENT, which plans are to be presented to and approved by the CITY.

THIS SPACE RESERVED FOR
RECORDING DATA

RETURN TO:

City of Sheboygan
City Clerk
828 Center Avenue, Suite 103
Sheboygan, WI 53081

PARCEL IDENTIFICATION NUMBER:

59281-471031*
59281-471051*
59281-471035*

** Current Parcel Identification Numbers for
2020. New numbers will be assigned later
in 2020.*

- C. DEVELOPER shall record, for each addition of the DEVELOPMENT, a Final Plat that substantially conforms to the design criteria, performance standards, and other specifications of Chapter 236, Wisconsin Statutes; Appendix C to the City of Sheboygan Municipal Code ("SUBDIVISION CODE"), and the City of Sheboygan Zoning Ordinance ("ZONING CODE").
- D. Prior to start of construction for each addition of the DEVELOPMENT, DEVELOPER shall provide certificates of insurance to the CITY with respect to the following forms of coverage and with limits not less than as stated hereunder: statutory limits for Workers Compensation; Commercial General Liability Insurance limits of \$5,000,000 for each occurrence and general aggregate; and Automotive Liability coverage with minimum limits of \$2,000,000 combined single limit per accident for bodily injury and property damage, provided on a Symbol 1-Any Auto basis. Coverages listed may be obtained with individual policies or in combination with excess or umbrella coverages. The policies shall be written by an insurance company licensed to do business in Wisconsin. DEVELOPER shall provide not less than 30 days written notice to the CITY prior to change modification or termination of said policy. Such notice provisions shall be in the unconditional affirmative, phrases such as "shall endeavor to notify" are unacceptable and shall be rejected. The requirements for insurance coverage for each addition terminate with final acceptance pursuant to section XI.B.6, below.

II. SEQUENCE OF DEVELOPMENT

It is anticipated that the sequence of activity related to each addition of the DEVELOPMENT shall be as follows, subject, however, to the SUBDIVISION CODE:

- A. Pre-application Conference
- B. Preliminary Plat Approval
- C. Final Plat Approval
- D. Development Agreement Approval
- E. Approval of Storm Sewer and Sanitary Sewer Utility Calculations, Water Main Calculations, and Shop Drawings
- F. Construction Plan Approvals
- G. Pre-Construction Meeting
- H. Erosion Control and Stormwater Best Management Practices
- I. Utility and Street Construction
- I. Private Utilities (Electric, Gas, Telephone, CATV, Etc.)
- J. Restoration
- K. Record Drawings and Certifications

III. GRADING AND EROSION CONTROL

- A. Compliance
 - 1. DEVELOPER shall abide by the provisions of the Sheboygan Municipal Code, including the Appendices thereto, and to all other federal and state statutes and regulations related to grading and to erosion control. Nothing in this AGREEMENT shall in any way be interpreted as superseding said provisions of law.
 - 2. DEVELOPER shall secure proper Erosion Control Permits to implement the approved Erosion Control Plan.

3. Erosion Control Methods shall be those required by the erosion control ordinances under the Sheboygan Municipal Code (including, but not limited to Appendix D related to Construction Site Erosion Control and Chapter 26 related to Drainage) or by the State of Wisconsin through the Department of Natural Resources. DEVELOPER shall be responsible for maintaining erosion control in accordance with the Erosion Control Permit during construction.
4. DEVELOPER shall be responsible for pre-grading and maintaining grades within the DEVELOPMENT in accordance with the approved DEVELOPER's Grading Plan until final acceptance by the CITY of improvements.
5. DEVELOPER shall be responsible for implementing the approved Master Grading Plan. This shall be achieved as part of the DEVELOPER's construction activities and by providing the approved Master Grading Plan to lot buyers for implementation during the building permit phase of the individual lots.

B. Inspection and Maintenance

1. Oversight of all construction, maintenance, and material testing shall be performed by a certified inspector approved by the CITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.
2. All erosion control measures shall be maintained in accordance with the Erosion Control Permits.
3. DEVELOPER, at its sole expense, shall be responsible for removing erosion control measures as directed by the CITY.
4. All costs connected with providing the CITY with as-built information per CITY standards shall be pursuant to section VIII.E.4, below.

C. Construction Standards

DEVELOPER shall be responsible for performing all work related to grading and erosion control in accordance with the City of Sheboygan Construction Standards, ~~a copy of which is attached as Exhibit~~ 6.

IV. SANITARY SYSTEM

A. Availability

1. Each building in the DEVELOPMENT shall be served by a sanitary sewer main and lateral at DEVELOPER's sole expense, except for expense reimbursement pursuant to IV.G, below, and connected to the appropriate sanitary system in accordance with determinations, plans, and specifications made or approved by the City Engineer and all other regulatory agencies, including the appropriate Sanitary District(s) serving the area of the DEVELOPMENT.
2. The sanitary sewer lateral shall be installed to five feet beyond the lot line at the DEVELOPER's sole expense. As individual buildings are being constructed, the property owner shall extend the sanitary sewer lateral from this point to the building.

3. All buildings or units in the DEVELOPMENT shall be individually served with private laterals. In the event it is later determined that the locations or size of such laterals are insufficient to service certain parcels or units of land within the project, the owner(s) of such parcel(s) may install laterals subject to CITY approval which will be paid for by the property owner.
4. DEVELOPER shall provide for the extension of the sanitary sewer system in accordance with the approved plans by the CITY by laying sanitary sewer mains in public right-of-way and/or public easement as directed by the CITY.

B. Capacity

The system shall conform to the Sheboygan Municipal Code and have a capacity sufficient to meet the needs of the DEVELOPMENT and each building therein, and as directed by the CITY.

C. Inspection

Oversight of all construction, maintenance, and material testing shall be performed by a certified inspector approved by the CITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.

D. Ownership

Upon CITY's final acceptance of the sanitary sewer system, those portions of the sanitary sewer system located in the public right-of-way and/or public easement shall be dedicated by the DEVELOPER to the CITY and shall thereafter be maintained and serviced by the CITY.

E. Sanitary Fees

All building sites and buildings in the DEVELOPMENT shall be subject to all sanitary fees at the time of connection and in the same amount and collected in the same manner as are sanitary fees for all other CITY parts served by the same wastewater treatment facilities.

F. Construction Standards

DEVELOPER shall be responsible for performing all work related to sanitary sewer service in accordance with the City of Sheboygan Construction Standards, ~~a copy of which is attached as Exhibit C.~~

G. Reimbursement for Sanitary Sewer Extension to Site Boundary

Upon inspection and approval by the CITY of the Moenning Road extension area, DEVELOPER shall be reimbursed for construction of the extension of the sanitary sewer on Moenning Road to the PROPERTY boundary pursuant to a separate 2007 agreement between the parties made as part of a purchase and sale agreement. DEVELOPER shall provide the CITY with an invoice quantifying the cost to extend the sewer. The City Engineer shall review the invoice, which shall contain sufficient information to allow him or her to determine whether or not the cost is reasonable and consistent with local construction costs. Upon approval of the City Engineer, the CITY shall reimburse actual costs within 30 days pursuant to said separate agreement.

V. WATER SYSTEM

A. Availability

1. Each building in the DEVELOPMENT shall be served by water main of at least eight inches in diameter and a lateral installed at DEVELOPER's sole expense, except for expense reimbursement pursuant to V.B, below, and connected to the Sheboygan Water Utility ("UTILITY") in accordance with plans and specifications approved by the CITY, the UTILITY, and all other agencies.
2. The water lateral shall be installed to ~~five feet beyond~~ the lot line at the DEVELOPER's sole expense. As individual buildings are being constructed, the property owner shall extend the water lateral from this point to the building.
3. All buildings or units in the DEVELOPMENT shall be individually served with private laterals. In the event it is later determined that the locations, pressure or size of such laterals are insufficient to service certain parcels or units of land within the project, the owner(s) of such parcel(s) may install laterals subject to UTILITY approval which will be paid for by the property owner.
4. In lieu of the UTILITY constructing water main extensions, the DEVELOPER shall provide for the extension and construction of the water system in accordance with the Site Development Plan approved by the CITY and the UTILITY by laying water mains in public right-of-way and/or public easement as directed by the CITY and shown on the plans.

B. Capacity of the System

The water system shall conform to the Sheboygan Municipal Code and have a capacity sufficient to meet the needs of the DEVELOPMENT and each building therein and as directed by the CITY and the UTILITY. However, the parties acknowledge that the water mains necessary to serve the DEVELOPMENT may need to be increased in size in order to serve areas which may develop in the future, or in order to serve areas currently outside of the territorial limits of the CITY that may, in the future, be annexed into the CITY. Should the UTILITY determine that it is in its best interest to increase the size of mains beyond an eight-inch diameter based on needs outside of the DEVELOPMENT (e.g. a 16-inch main when 8-inch is sufficient for the DEVELOPMENT) the parties agree that in lieu of the UTILITY constructing the water main extensions, the DEVELOPER shall construct the larger water mains required by the UTILITY within the PROPERTY, and the DEVELOPER shall be reimbursed by the UTILITY for the cost difference between an 8-inch main and the actual size of the larger main installed, including any necessary ancillary parts that change as a result of the larger main (for example, gate valves and box assemblies, lateral tee connections, and fire hydrant tee connections). In such a case, the DEVELOPER shall obtain no fewer than three acceptable bids for the installation of both sizes of main and necessary ancillary parts. The cost difference shall be calculated based on lowest of the acceptable bids received for both sizes of main and the necessary ancillary parts, using the difference in cost between the larger main and the 8-inch main, including necessary ancillary parts, multiplied by the lineal feet or units installed, as applicable. The UTILITY reserves the right to reject cost differences that do not reflect reasonable market pricing. DEVELOPER shall, after installation, provide the UTILITY with calculations quantifying the cost of the larger water mains and necessary ancillary parts per this agreement, and the UTILITY shall reimburse said costs within 30 days.

C. Inspection

Oversight of all construction, maintenance, and material testing shall be performed by a certified inspector approved by the CITY and UTILITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.

D. Ownership

Upon UTILITY's final acceptance of the water system, all water main extensions and those portions of the water system located in the public right-of-way and/or public easement shall be dedicated by the DEVELOPER to the UTILITY for public utility purposes and shall thereafter be maintained and serviced by the UTILITY. The parties agree to execute and deliver any additional documents as may be reasonably required to effectuate the dedication and transfer of the extensions of water mains contemplated by this AGREEMENT.

E. Water Utility Charges

Upon final acceptance of the water system by the UTILITY, all buildings, or building sites in the DEVELOPMENT shall be subject to all water service charges and/or assessments in the same amount and collected in the same manner, as are water service charges and/or assessments for all other parts of the CITY served by CITY water.

For the possible future water main extension along Moenning Road, the UTILITY and CITY have determined that since no privately owned residential lots would be able to exceed 220 feet of second side water main frontage, that pursuant to Section 122-98(c), Sheboygan Municipal Code, that no special assessment would apply to this PROPERTY for water main extensions along Moenning Road.

F. Construction Standards

In addition to any standards set forth in this AGREEMENT, DEVELOPER shall be responsible for performing all work related to water service in accordance with the City of Sheboygan Construction Standards, ~~a copy of which is attached as Exhibit C,~~ and the "Standard Specifications for Sewer and Water Construction in Wisconsin" (6th edition, dated December 22, 2003 with Addendum No. 1 dated December 22, 2004 and Addendum No. 2 dated April 22, 2008) as further modified by the Sheboygan Water Utility Special Provisions, ~~a copy of which is attached as Exhibit D.~~

VI. STORM DRAINAGE SYSTEM

A. Components

Storm drainage shall be provided by means of storm sewers, culverts, ditches, Stormwater Best Management Practices (BMP's), and appurtenances in the public right-of-way and/or in drainage easements where required and/or within natural areas (where applicable and permitted), all in accordance with storm drainage plans prepared by DEVELOPER and approved by the CITY and entirely at the DEVELOPER's sole expense, except for reimbursement pursuant to section VI.F, below. All storm drainage shall be in conformance with the requirements of the Sheboygan Municipal Code, including but not limited to the approved Stormwater Management Plan required pursuant to Chapter 26 of the Sheboygan Municipal Code and the Post-Construction Stormwater Management Zoning Ordinance contained in Appendix E to the Sheboygan Municipal Code.

B. Construction

1. The DEVELOPER shall be responsible for the planning, design, construction plan, and construction of facilities for storm drainage (the Storm Drainage System) until such stormwater exits the exterior perimeter line of the DEVELOPMENT or until it reaches a point, outside of and adjacent to the PROPERTY from which point such stormwater passes into, or through specified conduits or channels. Such design shall be reviewed and approved by the CITY prior to construction.
2. Nothing in this paragraph shall be deemed to limit the DEVELOPER's responsibility to adjacent owners for discharged water. Should any claim be made against the CITY for increased water discharge or altered drainage patterns from the project, DEVELOPER shall indemnify, defend and hold harmless the CITY paying all costs thereof (including but not limited to actual attorney fees) and further indemnify the CITY from any loss or damage based upon a claim arising from water allegedly discharged within or from the site, except if the loss or damage was caused by the negligence or willful misconduct of the CITY. Except as it relates to negligence by the DEVELOPER or its contractors and subcontractors, DEVELOPER'S duty pursuant to this subparagraph shall terminate once the storm drainage system is finalized and accepted by the CITY.
3. Major drainage improvements for the entire DEVELOPMENT shall be constructed during the FIRST ADDITION of the DEVELOPMENT including, but not limited to the BMP's, ditches and other structures for the conveyance of water therein, detention ponds, and necessary downstream improvements. Developer shall be responsible for creating or obtaining all necessary drainage easements as part of said construction.
4. The DEVELOPER agrees with and shall execute, simultaneous with this AGREEMENT, all provisions of a Stormwater Management Agreement, ~~a copy of which is attached hereto as Exhibit E.~~

C. Ownership

The components of the Storm Drainage System in public rights of way and public easements shall be dedicated to the CITY. Additionally all stormwater ponds and other stormwater infrastructure shall be dedicated to the CITY, along with the outlots in which they are located. DEVELOPER agrees to dedicate to the CITY ~~two-any~~ drainage easements deemed necessary by the CITY and any infrastructure contained therein. When dedicated to the CITY upon approval and final acceptance by the CITY, system components shall become the property of the CITY and thereafter be maintained by the CITY. Notwithstanding the terms of this paragraph, the driveway culverts shall remain the property of the DEVELOPER and, upon sale of lots, the property owner. DEVELOPER agrees to record standard covenants running with the land requiring property owners to properly maintain their property in such a manner so as to permit proper storm drainage throughout the PROPERTY.

D. Inspection

Oversight of all construction, maintenance, and material testing shall be performed by a certified inspector approved by the CITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.

E. Construction Standards

In addition to any standards set forth in this AGREEMENT, DEVELOPER shall be responsible for performing all work related to storm drainage in accordance with the City of Sheboygan Construction Standards, ~~a copy of which is attached as Exhibit C.~~

F. Reimbursement for Stormwater Detention Ponds

~~Upon final inspection and approval by the CITY of the two stormwater detention ponds portion of the project,~~ DEVELOPER shall be reimbursed for the engineering and construction of the two stormwater detention ponds to be constructed in Outlot 1 and 2 pursuant to a separate 2007 agreement between the parties made as part of a purchase and sale agreement. Reimbursement is to be of the actual cost up to a maximum contribution of \$250,000 pursuant to said separate agreement, with 90% to be reimbursed following preliminary inspection and approval, with the remaining 10% to be reimbursed following final inspection and approval. DEVELOPER shall provide the CITY with ~~an~~ invoices for each reimbursement, along with ~~quantification of~~ the cost to engineer and construct the stormwater detention ponds and CITY shall reimburse actual costs within 30 days of invoice receipt, up to a maximum contribute of \$250,000, pursuant to said separate agreement. Preliminary inspection and approval shall occur upon the completion of the ponds with the exception of establishment of vegetation. Final inspection and approval shall not be granted until DNR regulations and requirements related to sufficient establishment of vegetation to allow for release from the terms of required erosion control construction permits. Preliminary and ~~f~~Final inspection and approval shall not unreasonably withheld by the CITY.

VII. PUBLIC ROADWAYS

A. Location

Roadways shall be constructed in each and every road right-of-way platted, shall be built to the exterior lot line of the PROPERTY and constructed as directed by the CITY.

B. Construction

1. DEVELOPER shall provide the geotechnical data compiled during the design of the roadways to the City Engineer. Should the geotechnical data submitted to the CITY not be sufficient to reasonably satisfy the City Engineer, the DEVELOPER shall grant the CITY with a right of entry to obtain the required data. Costs associated with obtaining the required data shall be at the DEVELOPER's sole expense.
2. DEVELOPER shall install and/or improve the roadways per the approved plans.
3. The asphaltic binder course, which shall be at a depth of 1 ¾ inches, shall not be installed after September 15 without prior approval of the City Engineer.
4. At the direction of the City Engineer, DEVELOPER shall adjust all affected utilities prior to installing the final asphalt surface course at DEVELOPER's sole expense.

5. The DEVELOPER shall schedule and complete a walk-through of the street system with the CITY's Director of Public Works or his or her designee, who shall consent in writing prior to the installation of the final asphaltic surface course.
6. Prior to final asphaltic surface course construction, all repairs and restoration of damaged, broken or otherwise deficient asphaltic binder course, water system, sanitary system, and storm drainage system shall be completed at DEVELOPER's sole expense.
7. The final asphaltic surface course, which shall be at a depth of 2 ¼ inches, shall be installed between May 1 and July 31 in the calendar year following the installation of the binder course.
8. Material storage or stockpiling shall not be allowed on road surface after final surface course is installed.
9. DEVELOPER shall be responsible for any damage to the road system, including any damage resulting from plowing of snow, until final acceptance.
10. CITY shall not be responsible for any plowing of the road system until the aggregate base course is accepted pursuant to section XI.B.4, below.

C. Inspection

Oversight of all construction, maintenance, and material testing of public roadways and appurtenances shall be performed by a certified inspector approved by the CITY. All costs connected with the hiring, approval, and work of the certified inspector shall be pursuant to section VIII.E.4, below.

D. Street Signs

1. Street names and numbers shall be in conformance with the CITY's policies and in accord with Chapter 118 of the Sheboygan Municipal Code.
2. Street signs shall be installed by the CITY, at the DEVELOPER's sole expense and prior to placement of the binder course.

E. Street Lighting

DEVELOPER shall pay for the cost of purchase and installation of LED street lighting, including provision of any necessary easements, at the main entrances to the DEVELOPMENT (Business Drive/Highway OK and Moening Road). The CITY shall approve the type and specifications of the street lighting. All street lighting shall be completed to the satisfaction of the CITY and not used until after the CITY's final acceptance. Upon the CITY's final acceptance of the street lighting system, those portions of the street lighting system located in the public right-of-way and/or public easement shall be dedicated by the DEVELOPER to the CITY and shall thereafter be maintained and serviced by the CITY, with the CITY to be responsible for the monthly costs from the utility company for the electric usage related to the street lighting. Other street light locations are allowed to be added later at the mutual agreement between the CITY and DEVELOPER.

F. Trees

The requirements for trees in the DEVELOPMENT are to be at the DEVELOPER's sole discretion, except as otherwise provided by law. The DEVELOPER has indicated its desire to apply for a variance from city ordinance requirements related to tree easements on local (minor) streets (Section 5.2(F)(1)(c), Subdivision Code). It shall be DEVELOPER'S responsibility to request said variance from the Plan Commission in writing, as provided in Section 2.5, Subdivision Code. The DEVELOPER acknowledges that the Plan Commission exercises to sole judgment to determine whether it would be inadvisable to literally apply a provision of this ordinance due of exceptional or undue hardship and to modify the provisions of the ordinance in a way that provides for substantial justice to be done and the public interest secured. The parties agree that should the Plan Commission not approve said variance related to the FIRST ADDITION, the DEVELOPER shall be permitted to withdraw from this AGREEMENT. The parties agree that should the Plan Commission approve said variance for the FIRST ADDITION but not for one or more later additions, the DEVELOPER shall remain bound to the provisions of this Agreement only for such additions as have been approved with the variance, and shall not be obligated to move forward with new additions.

G. Access Shoulder

DEVELOPER shall pay for the cost of installing asphalt paved access shoulder on both sides of Rim Rock Road and Stonebrook Drive, as set forth in the approved plan.

H. Relocation of Private Utilities

The DEVELOPER shall be responsible for any expense for private utilities to move its private infrastructure in the public right-of-way necessitated by the DEVELOPMENT.

I. Construction Standards

In addition to any standards set forth in this AGREEMENT, DEVELOPER shall be responsible for performing all work related to public roadways and appurtenances as described in this Section VII in accordance with the City of Sheboygan Construction Standards, ~~a copy of which is attached as Exhibit C.~~

VIII. ADDITIONAL REQUIREMENTS OF DEVELOPER

A. Public Sites and Open Spaces

1. Dedication of Parkland

As part of FIRST ADDITION, DEVELOPER agrees to dedicate a 0.50 acre parcel of land for open spaces and sites for public use ("PARK"). The parcel shall be labeled as "Dedicated to the Public for Park Purposes" on the Final Plat. A legal description of the parcel is attached as Exhibit A. The dedication of land for open spaces and sites for public use shall be consistent with the CITY's Comprehensive Plan and/or Official Map unless the CITY agrees otherwise. The CITY agrees to quit claim the PARK upon (i) approval by the Parks and Forestry Commission and the Common Council pursuant to the provisions of the Sheboygan Municipal Code, (ii) dedication of the parcel of land for opens spaces and sites for public use provided in this paragraph, and (iii) final plat approval.

2. Waiver of Impact Fees

In consideration of the dedication of the 0.50 acre parcel of land, pursuant to Section 74-83, Sheboygan Municipal Code, the CITY waives all impact fees for park purposes for the DEVELOPMENT.

3. Additional Terms Related to Public Space

As part of FIRST ADDITION, at the DEVELOPER'S cost, DEVELOPER agrees to i) install a 2" water line, ii) install a 6" sanitary sewer lateral, and iii) install an electric pedestal to said public open space. DEVELOPER shall submit a grading plan for the parcel to the CITY for its review and approval. At the DEVELOPER'S cost, DEVELOPER shall grade the parcel, add a minimum of 4" of top soil, spread fertilizer, and plant grass seed. Upon the CITY's final acceptance of the PARK, those portions of the PARK shall be dedicated by the DEVELOPER to the CITY and shall thereafter be maintained and serviced by the CITY.

B. Shoreland

DEVELOPER shall comply with the shoreland requirements set forth in Appendix B of the City of Sheboygan Municipal Code. There are currently no known shoreland locations on the PROPERTY.

C. Floodplain

Buildings and structures shall not be situated within the floodway area of the 100-Year Floodplain as shown on the Final Plat. Any changes to property within the floodway area, including filling, grading, excavation, and planting of vegetation shall be limited in accord with Appendix A of the Sheboygan Municipal Code. There are currently no known floodplain locations on the PROPERTY.

D. Wetland Areas

The grading, filling, excavation of wetland areas as shown on the Final Plat shall be prohibited. Vegetation may be added to a wetland area per waterway regulations by the Wisconsin Department of Natural Resources. Any activity within wetland areas shall be in accord with Appendix B of the Sheboygan Municipal Code.

E. Miscellaneous and Fees

1. DEVELOPER shall be responsible for any items, as reasonably required in writing by the CITY, necessary to accomplish the intent of this AGREEMENT.
2. At the time of issuance of the a building permit, and except as otherwise provided in this AGREEMENT, the DEVELOPER or the respective landowner or building obtaining such building permit, hereby agrees to pay any fees or assessments that are required by City Ordinance or Resolution in effect at time of building permit per residential dwelling unit. Fees shall be charged pursuant to the provisions and authority within the Sheboygan Municipal Code. Further pursuant to Section 74-83(a), Sheboygan Municipal Code, and in light of the value of land dedicated by DEVELOPER to the CITY pursuant to Section VIII.A, above, the parties agree that the impact fee owed for park purposes by the developer is zero..

3. The Sewer Connection Fees for this DEVELOPMENT will be set ~~as shown in Exhibit F~~ for a period ten (10) years after the execution of this AGREEMENT. The CITY will not charge any fees related to the engineering review and approval of construction plans, calculations, and shop drawings.
4. The CITY and UTILITY is to provide all inspection services required for the DEVELOPMENT, including the hiring, approval and work of the certified inspector, as well as the documentation of as-built information per CITY standards. Upon commencement of inspection services, the CITY shall provide the DEVELOPER with an invoice payable within 30 days for a fixed fee of \$25,000 and the UTILITY shall provide the DEVELOPER with an invoice payable within 30 days for a fixed fee of \$6,000, to cover all costs of inspection services and as-built documentation for the DEVELOPMENT.

IX. PRIMARY FINANCIAL GUARANTEE

A. Satisfactory Financial Guarantee: Form

To assure compliance with DEVELOPER'S obligations under this Agreement, the DEVELOPER shall deposit with the City Clerk within five (5) days of the start of construction of each respective phase, a Financial Guarantee in the form of a Letter of Credit.

B. Amount of Guarantee

The Financial Guarantee required by this Article shall be in the amount of either (i) one hundred and ten percent (110%) of the total cost (based on the bid from DEVELOPER'S contractors for the PUBLIC IMPROVEMENT work if deemed reasonable by the City Engineer) of the PUBLIC IMPROVEMENTS within each phase, or (ii) such lesser amount that the City Engineer determines is acceptable based on an estimate of the cost to make the CITY whole should it have to step in to complete or remove the PUBLIC IMPROVEMENTS should the DEVELOPER default on this AGREEMENT. The Financial Guarantee described herein shall only apply to the PUBLIC IMPROVEMENTS in the particular phase of the Development being constructed by DEVELOPER. For the purpose of quantifying PUBLIC IMPROVEMENTS for the Financial Guarantee, the costs shall be the sanitary system, water system (using the cost for eight-inch diameter mains), storm drainage, and aggregate base course.

Comment [A1]: This is an addition to Developer's proposal recommended by DFW.

C. Terms of Guarantee

The Financial Guarantee shall: (i) run until preliminary acceptance of the roadway pursuant to section XI.B.4 below, fourteen (14) months following the installation of the binder course of asphalt for such respective phase, (ii) shall be irrevocable during said period, (iii) shall be in a form approved by the City Attorney, and (iv) shall be drawn upon the sole authorization of the City Administrator without any other approval or authorization for the purposes of completion or removal of PUBLIC IMPROVEMENTS, but subject to written notice given to DEVELOPER ten (10) days prior to any draw.

D. Reduction and Release of Guarantee

During the construction of any phase of the Development, the DEVELOPER may provide proof to the CITY of installation, payment to contractors, and partial lien releases for that portion of the PUBLIC IMPROVEMENTS installed. The City Engineer, upon written request from DEVELOPER made from time to time, is authorized to reduce the amount of the Financial Guarantee from the amount in Paragraph B of this Article as a result of portions of the PUBLIC IMPROVEMENTS being completed by the DEVELOPER. In determining the reduction, the City Engineer shall consider the costs paid by the DEVELOPER, the cost of any remaining work, and the reduction in the cost to make the CITY whole should it have to step in to complete the PUBLIC IMPROVEMENTS should the DEVELOPER default on this AGREEMENT. The City Engineer shall not unreasonably withhold consent to the supported, reasonable request by DEVELOPER for the Financial Guarantee reduction.

E. Additional Related Terms

Responsibility and direction for completion of contract shall remain the responsibility of the DEVELOPER. The CITY acknowledges and agrees that the PUBLIC IMPROVEMENTS described herein may be performed by DEVELOPER in phases, as approved by the CITY. Notwithstanding any other provision to the contrary, the DEVELOPER's obligation to maintain a letter of credit shall not extend beyond fourteen (14) months from the date of substantial completion of all improvements as defined in Section 236.13(2)(a)2, Wis. Stats.

X. DEED RESTRICTIONS

- A. This AGREEMENT or a memorandum of this AGREEMENT shall be recorded in the office of the Registrar of Deeds of Sheboygan County, Wisconsin by the DEVELOPER at the expense of the DEVELOPER. The use and occupancy of all lots therein shall be subject to the terms and provisions of this AGREEMENT. A copy shall be provided to the CITY.
- B. Any other restrictions desired by the DEVELOPER, but not required by the CITY may be recorded at the DEVELOPER's option. The CITY will not be responsible for the enforcement of those restrictions.

XI. ACCEPTANCE OF PUBLIC IMPROVEMENTS

- A. All PUBLIC IMPROVEMENTS required by the CITY within the DEVELOPMENT are the DEVELOPER's sole responsibility, except as otherwise provided in this AGREEMENT.
- B. PUBLIC IMPROVEMENTS for each addition of the DEVELOPMENT will be accepted by the CITY when the DEVELOPER has met and satisfied each of the terms and conditions of this AGREEMENT, permits, and applicable ordinances of the CITY.
 - 1. Preliminary acceptance of the Utility System(s) will be granted when system has been installed and all related punch list items have been corrected by the DEVELOPER and approved by the CITY and the UTILITY.
 - 2. Final acceptance of the Utility System(s) will be granted when all land disturbing activities have been completed, all related punch list items have been corrected by the DEVELOPER and approved by the CITY, and as-builts have been submitted and approved by the CITY.

3. Final acceptance of the PARK will be granted when grass seed has been planted and the grass fully established, as determined by the Director of Public Works, and all related punch list items have been corrected by the DEVELOPER and approved by the CITY. The Director of Public Works, in determining whether the grass is fully established shall consider the same factors as used by the Department of Natural Resources when determining whether vegetation is sufficiently established to release parties from the terms of Erosion Control Construction Permits.
4. Preliminary acceptance of the Roadway will be granted when the aggregate base course has been installed and all related punch list items have been corrected by the DEVELOPER and approved by the CITY.
5. The Road System will be considered substantially complete upon the installation of the asphaltic binder course on roads to be dedicated to the CITY.
6. Final acceptance of the Road System will be not granted until 14-months after substantial completion. The CITY will conduct an inspection of the Road System (including ditches, culverts and appurtenances) 12 months after substantial completion and prepare a punch list of items that need correction. After all punch list items have been completed by the DEVELOPER, and approved by the CITY, final acceptance will be granted. The final asphaltic surface course of all asphalt roadways and all punch list items shall be completed within 14 months of substantial completion.

XII. GENERAL CONDITIONS

- A. DEVELOPER further agrees to abide by such further orders or directions as may be reasonably given by the CITY and/or it's Boards and Commissions, as may be necessary to implement and carry out the terms and intent of this AGREEMENT, provided such further orders or directions are usually and customarily required of like developments similarly stated.
- B. It is expressly understood and agreed that the terms of this AGREEMENT are covenants running with the land and binding on DEVELOPER. The terms of the AGREEMENT regarding insurance, warranty and surety obligations shall survive the expiration of this AGREEMENT.
- C. The signatory DEVELOPER shall not dissolve its Corporation, LLC, or other business group designation, without written notification to the CITY, more specifically the City Engineer, and a minimum of 60 days prior to the dissolution. The written notification shall include a plan for meeting the requirements of the AGREEMENT and the identity and contact information for the person(s)/entity that will be the subsequent responsible party.
- D. DEVELOPER shall be responsible for the repair to existing roadways and infrastructure for damage caused as a result of its construction activities.
- E. DEVELOPER is required to have the public utilities (sanitary system, water system, & storm drainage system) located and marked in the field until the final record drawings for the utilities are approved by the CITY.

- F. DEVELOPER and subsequent owners of lots shall promptly remove all construction debris including, but not limited to, paper, plastic, insulation, packaging, etc. and will take adequate measures to keep all debris on the lot site to prevent littering adjoining properties.
- G. Streets shall be swept daily as needed to remove silt, stone, ground or other materials that have been tracked or eroded onto the streets by the DEVELOPER. The CITY may periodically inspect the streets for debris and determine if street sweeping is required. Reasonable efforts will be made to contact the responsible party to get the impacted streets swept. Should street sweeping not be completed in a timely manner to the CITY's reasonable satisfaction, the CITY shall have the authority to complete said work and charge all reasonable costs for the street sweeping to the responsible party. In the event that said costs are not promptly paid, the CITY may assess those charges against the property within this DEVELOPMENT as a special charge for current services pursuant to Wisconsin Statute Sec. 66.0627.
- H. DEVELOPER agrees, to the fullest extent permitted by law, to indemnify and hold the CITY harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the DEVELOPER's negligent or intentional acts, errors or omissions in the performance of its obligations under this AGREEMENT and those of its contractors/subcontractors or anyone for whom the DEVELOPER is legally liable. CITY agrees, to the fullest extent permitted by law, to indemnify and hold the DEVELOPER harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the CITY's negligent or intentional acts, errors or omissions in the performance of its obligations under this AGREEMENT and those of its contractors/subcontractors or anyone for whom the CITY is legally liable. Neither party will be responsible to the other for consequential damages including, but not limited to, loss of profit, loss of investment or business interruption.
- I. DEVELOPER or its successor or assignee shall be responsible for maintenance of rights-of-way up to the edge of the roadways adjoining the DEVELOPMENT to include grass cutting and any litter removal consistent with the landscaping of the DEVELOPMENT. Failure to maintain this area shall subject the DEVELOPMENT to charges by the CITY. The outlots dedicated to the CITY and the right-of-ways adjacent to these outlots are maintained by the CITY and the DEVELOPER is not responsible for any maintenance to include grass cutting and litter removal.
- J. Building setbacks, height restrictions, and locations of all structures shall be as regulated by the ZONING CODE.
- K. All conditions of approval for the DEVELOPMENT by the Plan Commission and/or Common Council shall be followed.
- L. Except for the specific responsibilities and obligations retained by the DEVELOPMENT hereunder, CITY shall provide to the DEVELOPMENT and its occupants the same governmental services, as are generally provided to other residents, residences, and citizens of the CITY.
- M. Neither the CITY's own inspection nor the CITY's acceptance of DEVELOPER's dedication to the CITY shall be deemed a waiver of the DEVELOPER's obligation to construct the Water, Sanitary, Storm Drainage, and Road Systems according to the approved plans and specifications and other regulatory agencies.

- N. The DEVELOPER, through information assembled by a Registered Land Surveyor, shall provide evidence that all monuments have been set per Wis. Stat. § 236.15, as amended. Only the exterior boundary monuments need be set at the time of the plat recording in the associated phase, with the condition of the CITY deferring placement of the interior monuments pursuant to Wis. Stat. § 236.15(1)(h), as amended, for a reasonable period of time determined by the CITY in order to allow for construction of DEVELOPER improvements that may otherwise interfere with monumentation.
- O. Building permits for new home construction are to be available at the time of substantial completion of the aggregate base course pursuant to section XI.B.4, above.
- P. The DEVELOPER is allowed to have a temporary use on-site real estate sales office located on the PROPERTY pursuant to the provisions of the ZONING CODE.
- Q. The DEVELOPER, at DEVELOPER's expense, may place temporary subdivision and builder marketing signage at the PROPERTY. The DEVELOPER, at DEVELOPER's expense, may place permanent subdivision monument sign(s) on the PROPERTY. All such placements shall be in compliance with the ZONING CODE and the Sheboygan Municipal Code.

XIII. SPECIAL CONDITIONS

- A. Fire or emergency protection services are available to the DEVELOPMENT.
- B. Snow and ice removal from private roadways, drives or parking lots shall not be placed in public roadways or rights-of-way.
- C. DEVELOPER shall be responsible for submitting a Stormwater Management Practice Maintenance Agreement. DEVELOPER shall also be responsible for recording the document, in a form that is acceptable to the CITY, at the Sheboygan County-Register of Deeds so that the Agreement is binding upon all subsequent owners of lands within the DEVELOPMENT. A copy of the recorded document shall be provided to the CITY.
- D. The Stormwater Management BMP's are to be maintained per the approved Stormwater Management Practice Maintenance Agreement referred to above.

<Signatures appear on next page>

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the Effective Date first printed above.

CITY OF SHEBOYGAN

STONEBROOK CROSSING LLC

BY: _____
Michael J. Vandersteen
Mayor

BY: _____
Robert J. Werner
President

ATTEST: _____
Meredith DeBruin
City Clerk

SHEBOYGAN WATER UTILITY

APPROVED AS TO FORM:

BY: _____
Joseph Trueblood
Director

BY: _____
Charles C. Adams
City Attorney

This document is authorized by and in accordance with Res. No. ____-20-21.

EXHIBIT A

LEGAL DESCRIPTIONS

DEVELOPMENT

Part of the NE 1/4 and NW 1/4 of the SE 1/4 and part of the SE 1/4 and SW 1/4 of the NE 1/4 of Section 9, Township 14 North, Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin, which is bounded and described as follows:

Commencing at the east quarter corner of said Section 9; thence S 00°10'44" W, along the east line of said SE 1/4, 298.63 feet to the most southeast corner of Certified Survey Map recorded in the Sheboygan County Register of Deeds Office in Volume 24 on pages 214-216, as Document No. 1897215, being the point of beginning of lands herein described; thence continuing, S 00°10'44" W, along said east line of the SE 1/4, 524.52 feet; thence N 90°00'00" W, 374.52 feet; thence S 00°00'00" E, at right angles, 296.33 feet; thence S 02°00'00" W, 124.68 feet to a point in the north line of Rammer Pond Estates, a recorded subdivision in said SE 1/4; feet to a point in the easterly extension of the north line of Rammer Pond Estates, a recorded subdivision in said SE 1/4; thence N 86°54'22" W, along said north line of Rammer Pond Estates and along the north line of Rammer Pond Estates 1st Addition and its westerly extension which is along the north line of Certified Survey Map recorded in Volume 19 on pages 130A-130E, as Document No. 1669866, 2074.31 feet to a point in the southeasterly right of way line of S. Business Drive (C.T.H. "OK"); thence N 17°38'02" E, along said southeasterly right of way line, 16.53 feet; thence N 27°26'46" E, continuing along said southeasterly right of way line, 101.17 feet; thence N 17°59'00" E, continuing along said southeasterly right of way line, 272.10 feet; thence N 17°45'46" E, continuing along said southeasterly right of way line, 808.38 feet to the southeast corner of lands described in Document No. 2033437 as recorded in said Sheboygan County Register of Deeds Office; thence S 87°24'29" E, along the easterly extension of the south line of said lands described in Document No. 2033437 and along the south line of lands described in Volume 1061, page 876-877, as Document No. 1157964, 412.97 feet to the southeast corner of said lands; thence N 12°30'01" E, along the east line of said lands described in Volume 1061 on pages 876-877, 191.38 feet to the northeast corner of said lands; thence N 87°24'29" W, along the south line of said lands described in Volume 1061, page 876-877, 342.98 feet to a point in the said southeasterly right of way line, being the northeasterly corner of lands described in Document No. 2033437; thence N 17°45'46" E, along said southeasterly right of way line, 124.38 feet; thence N 03°07'08" E, continuing along said southeasterly right of way line, 77.52 feet; thence N 17°49'26" E, continuing along said southeasterly right of way line, 6.52 feet to the southeast corner of lands described in Document No. 2030991 as recorded in the Sheboygan County Register of Deeds Office; thence S 87°52'12" E, along the easterly extension of the south line of said lands described in Document No. 2030991 and along the south line of lands described in Document No. 2083381, 651.62 feet to a point in the westerly extension of the south line of Fox Meadows Addition No. 6, a recorded subdivision in said NE 1/4; thence S 87°37'57" E, continuing along said south line of lands described in Document No. 2083381, along said westerly extension and along the south line of said Fox Meadows Addition No. 6, 411.26 feet to the northwest corner of Lot 6 of Stonebrook Crossing, a recorded subdivision in said part of the SE 1/4 of the NE 1/4 and part of the NE 1/4 of the SE 1/4 of Section 9; thence S 35°17'00" E, along the southwesterly line of said Lot 6 and along the southwesterly line of Lots 7 and 8, 472.24 feet to the most southwesterly corner of said Lot 8;

Comment [A2]: Per email discussion after Developer's last proposal, the parties are including the description here rather than using the preliminary plat image Developer proposed to insert into Exhibit A.

thence S 39°59'56" E, along the westerly line of said Certified Survey Map recorded in Volume 24 on pages 214-217, 145.00 feet; thence S 79°36'23" E, along a meander line, along the south side of a stream, 203.26 feet; thence S 20°51'48" E, continuing along said meander line, along the west side of said stream, 205.86 feet; thence N 89°20'56" E, continuing along said meander line, along the south side of said stream, 231.26 feet to a point in the west right of way line of Moenning Road; thence N 00°10'44" E, along said west right of way line, 75.43 feet; thence East, 33.00 feet to the point of beginning.

Containing 2,798,431 square feet (64.243 acres) more or less.

FIRST ADDITION

Lots Fourteen (14) through Ninety-One (91) and Outlots One (1) through Three (3), Stonebrook Crossing Addition No. 1, all located in the City of Sheboygan, Sheboygan County, Wisconsin.

LAND TO BE DEDICATED AS OPEN SPACE FOR PUBLIC USE

Outlot Three (3), Stonebrook Crossing Addition No. 1, all located in the City of Sheboygan, Sheboygan County, Wisconsin

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Resolution authorizing entering into an Agreement with Making Spirits Bright, Inc. for use of Evergreen Park and the Quarryview Center for the annual Making Spirits Bright drive-through holiday lights display.

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

REPORT DATE: September 8, 2020

MEETING DATE: September 15, 2020

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS: Making Spirits Bright was initiated in 2012 by the Sheboygan County Rotary Clubs to provide a quality, exciting, family event and to collect much needed food pantry items. This event is held in the City of Sheboygan's Evergreen Park and Quarryview Center.

The proposed new agreement addresses 11 changes:

1. Payment: 1(a) and (b) sets a \$1,500 fee for the use of Evergreen Park and the Quarryview Center to be paid prior to October 5, 2020 and then before March 1 before each preceding calendar year per this agreement.
2. Making Spirits Bright shall complete all event forms requested by the City.
3. Making Spirits Bright shall ensure its volunteers are following all applicable public health guidelines.
4. As identified in Exhibit B, a practice ski Area shall be left open in area #3.
5. Best efforts will be made to allow for a 10 foot wide ski trail around the south side of the Area #4 parking lot beginning on January 3 of each year. The past agreement stated the northwest, west and south side.
6. Making Spirits Bright's term of agreement will start on the first Monday in October and end at 5:00 p.m. on January 16th. The Director of Public Works may allow them to start at an earlier date then specified in the agreement.

The past agreement term started in mid-October and ended January 10.

7. The City will be recognized as an in-kind donor in any written materials distributed at Making Spirits Bright.
8. Term: The agreement will automatically renew through January 16, 2026 for the use of Evergreen Park and December 31, 2025 for the Quarryview Center.

This agreement was approved by the Marina, Parks and Forestry Board on November 12, 2019 and recommended to the Public Works Committee for consideration on November 12, 2020. There was a proposal to change the term of the agreement to end on the second Monday of January. The agreement passed with the change and was recommended to the Common Council on November 18, 2019. The Common Council ultimately sent it back to the Public Works Committee asking the Making Spirits Bright group and the Ski group to try and work out an agreement that works for both sides.

STAFF COMMENTS: It was determined after the November 18, 2019 Common Council meeting that Making Spirits Bright members would invite the Ski group to a meeting to discuss the agreement but it would have to be after the event was over for the year. Because of Covid-19 a meeting was never set at a later time but Making Spirits Bright did reach out to the Ski group by email with a proposal but there was no response.

The Department of Public Works staff is in full support of this agreement.

ACTION REQUESTED: Motion to recommend the Common Council adopt Res. No. 83-20-21 authorizing entering into an Agreement with Making Spirits Bright, Inc. for use of Evergreen Park and the Quarryview Center for the annual Making Spirits Bright drive-through holiday lights display.

ATTACHMENTS:

- I. Res. No. 83-20-21
- II. Making Spirits Bright Agreement with the City

III

Res. No. 83 - 20 - 21. By Alderpersons Dekker and Sorenson.
September 8, 2020.

A RESOLUTION authorizing entering into an Agreement with Making Spirits Bright, Inc. for use of Evergreen Park and the Quarryview Center for the annual Making Spirits Bright drive-through holiday lights display.

RESOLVED: That the appropriate City officials are hereby authorized to enter into the attached Agreement with Making Spirits Bright, Inc. for use of Evergreen Park and the Quarryview Center for the annual Making Spirits Bright drive-through holiday lights display.

Public
works

Deun Dekker

Ben Sorenson

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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

**AGREEMENT
BETWEEN
CITY OF SHEBOYGAN
AND
MAKING SPIRITS BRIGHT, INC.
FOR USE OF EVERGREEN PARK**

THIS AGREEMENT, hereinafter referred to as the "Agreement," is entered into this _____ day of _____, 2020 (the "Effective Date"), by and between the City of Sheboygan, a municipal corporation existing under the laws of the State of Wisconsin (the "City"), and Making Spirits Bright, Inc., ("MSB") a Wisconsin non-stock corporation with its principal office at 3034 N. 20th Street, Sheboygan, Wisconsin 53081.

RECITALS

(i) For over 100 years, Rotary Clubs have recognized the needs of families in Sheboygan County and have been contributors to, and supporters of, organizations who address those concerns. The motto of Service Above Self is exemplified annually by the projects that the Rotarians support and the grants provided to individuals and organizations as a result of successful fundraisers.

(ii) The Sheboygan County Rotary Clubs have combined their efforts in developing and providing the Making Spirits Bright annual drive-through holiday lights display in Evergreen Park and the Quarryview Center during the holiday season.

(iii) The Sheboygan County Rotary Clubs are partnering with the Sheboygan County Food Bank by asking all who attend this family fun event to bring food pantry items as their admission to the park.

(iv) The Sheboygan County Rotary Clubs have established MSB as a non-stock not for profit corporation for the purposes of developing, promoting, organizing, planning and staging the annual event.

(v) The Sheboygan County Rotary Clubs, through MSB, are again requesting permission to utilize Evergreen Park and the Quarryview Center for the holiday light display event and asking that the parks be closed to vehicular traffic (other than light display patrons) to ensure safety for the event.

(vi) The City is willing to grant such permission subject to certain terms and conditions.

(vii) The parties recognize and understand that Evergreen Park is also utilized in the wintertime for cross country skiing, and that a system of ski trails has been established for outdoor winter recreation by the public.

(viii) This Agreement is intended to authorize MSB to successfully set up, operate and take down their holiday light display while minimizing to the extent possible, impact upon cross country skiing in the park and the grooming of the ski trail system.

NOW, THEREFORE, in consideration of the recitals and mutual agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The City agrees to make Evergreen Park available to MSB for its drive-through holiday light display between October 5, 2020 and January 16, 2021¹ and the Quarryview Center available to MSB between November 5, 2020 and December 31, 2020, subject to the following:

- (a) Prior to October 5, 2020, MSB shall remit \$1,500 to the City for the use of Evergreen Park and the Quarryview Center for the 2020-2021 administration of the holiday light display event. If MSB does not remit the payment to the City prior to October 5, 2020, MSB's access to Evergreen Park and the Quarryview Center shall be delayed until the payment is made.
- (b) For the avoidance of doubt, for all future administrations of the holiday light display covered by this Agreement, MSB shall remit payment of \$1,500 per year for the use of Evergreen Park and the Quarryview Center on or before the March 1 preceding the event commencing in that calendar year.

¹ This time period shall include the setup and removal of all lights and other elements included in the holiday light display.

- (c) MSB shall complete all event forms reasonably requested by the City's Department of Public Works, pursuant to the deadlines set forth.
- (d) MSB shall indemnify, defend, and hold harmless the City from all claims, actions and suits brought against the City on account of any injuries or damages received or sustained by any party or parties by or from the MSB, its employees, agents, or volunteers, arising from the exercise of the rights and privileges granted herein or on account of any act or omission of the MSB or its employees, agents, or volunteers.
- (d) MSB agrees to provide the City with a certificate of insurance illustrating the existence of a commercial general liability insurance policy providing at least \$2,000,000 in coverage, naming the City as an additional insured.
- (e) MSB agrees to reimburse the City for damages to the park and the Quarryview Center caused by or arising as a result of the use of said parks and park facilities under this Agreement.
- (f) MSB agrees to strictly abide by all rules established by the Department of Public Works for its use of the parks.
- (g) MSB shall comply, and shall ensure its volunteers using the park for purposes related to the holiday light display, with all applicable public health guidance in effect at the time of the rental. This includes - but is not limited to - guidance issued by the Sheboygan County Health Officer, the State of Wisconsin, and the federal government (including, but not limited to, the Centers for Disease Control).
- (h) MSB shall work with the City Parks Department to provide room for groomed trails as shown on the map attached to this Agreement as **Exhibit A** throughout its use of Evergreen Park.
- (i) MSB shall leave the area identified as Practice Ski Area on **Exhibit B** available for use by cross

country skiers at all times during its occupancy of Evergreen Park.

- (j) MSB shall make best efforts to allow for a 10 foot wide ski trail around the south side of the Area #4 parking lot beginning on January 3 of each year.
- (k) MSB shall have all ski trail areas in Evergreen Park available for grooming by January 17 of each year.
- (l) In recognition of the City's support of MSB, MSB shall recognize the City of Sheboygan as an in-kind donor in any written materials distributed at Making Spirits Bright, including a City logo on the map of Evergreen Park included in the written materials and any other recognition provided to other in-kind donors to MSB.

2. As set forth above, this Agreement shall be for an initial term commencing October 5, 2020 and ending January 16, 2021. It shall automatically renew to allow use of Evergreen Park and Quarryview Center on the following schedule, unless notice is provided by either party to the other no later than May 31 of each year:

Evergreen Park

October 5, 2020 through January 16, 2021 at 5:00 p.m.
October 4, 2021 through January 16, 2022 at 5:00 p.m.
October 3, 2022 through January 16, 2023 at 5:00 p.m.
October 2, 2023 through January 16, 2024 at 5:00 p.m.
October 7, 2024 through January 16, 2025 at 5:00 p.m.
October 6, 2025 through January 16, 2026 at 5:00 p.m.

Quarryview Center

November 5, 2020 through December 31, 2020
November 4, 2021 through December 31, 2021
November 3, 2022 through December 31, 2022
November 2, 2023 through December 31, 2023
November 7, 2024 through December 31, 2024
November 6, 2025 through December 31, 2025

In no event shall this Agreement be automatically renewed beyond January 16, 2026. The Director of Public Works may, subject to

the availability of Evergreen Park, allow MSB to start on an earlier date than that specified in this Section. If the Director of Public Works allows MSB to start on an earlier date, no additional payment shall be required by MSB.

3. Termination.

In the event that MSB breaches its obligations under this Agreement, the Director of Public Works may provide a Notice of Intent to Terminate to:

Kenneth R. King
730 S. 8th Street, Unit 506
Sheboygan, WI 53082

Such Notice of Intent to Terminate shall become effective upon ratification by the Common Council of the City.

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

MAKING SPIRITS BRIGHT, INC.

CITY OF SHEBOYGAN

By: _____

By: _____
Michael J. Vandersteen
Mayor

Date: _____

Date: _____

ATTEST:

Meredith DeBruin
City Clerk

Date: _____

EXHIBIT A

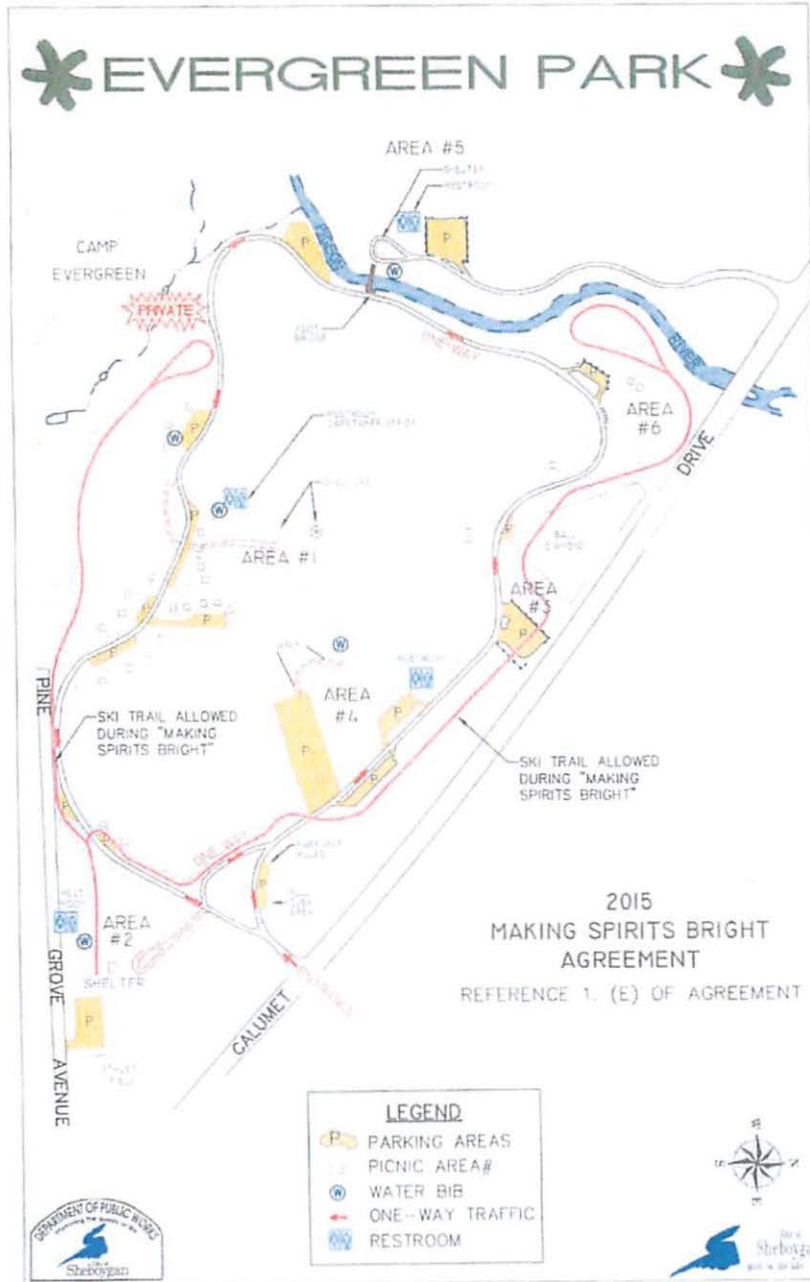


EXHIBIT B



CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Resolution authorizing the appropriate City officials to extend the existing contract with Kiel Sand & Gravel, Inc. for the transportation and disposition of Class A biosolids from the Wastewater Treatment Plant

REPORT PREPARED BY: Steve Jossart, Wastewater

REPORT DATE: September 4, 2020

MEETING DATE: September 19, 2020

FISCAL SUMMARY:

Budget Line Item: 60138300-444700
Budget Summary: N/A
Budget Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS: Since 2018, the wastewater treatment facility has been drying 100% of its wastewater biosolids to produce a Class “A” biosolids product. In March of 2018 we entered into a 3-year contract with Kiel Sand & Gravel to purchase all of the biosolids product the facility produces and manage the dried biosolids silo inventory so that the operation of the dryer can be maintained on a consistent basis. We would like to extend the contract with Kiel Sand & Gravel for an additional three years, with an annual renewal clause that would run through 2030. The contract also provides for the city to retain up to 50 tons of product per year for city use.

STAFF COMMENTS: The wastewater staff has been happy with the performance of Kiel Sand & Gravel, as they have managed the inventory and are responsive to our needs. The new contract will pay the city \$5.00/ton for the material, which will result in approximately \$7,500 of revenue annually.

ACTION REQUESTED: Motion to recommend the Common Council adopt Res. No. 84-20-21, authorizing the appropriate City Officials to enter into Contract with Kiel Sand & Gravel to purchase biosolids from the wastewater plant and manage the inventory for three years with an automatic annual renewal through 2030.

ATTACHMENTS:

- I. Res. No. 84-20-21
- II. Kiel Sand & Gravel Contract Extension

III

4.8

Res. No. 84 - 20 - 21. By Alderpersons Dekker and Sorenson.
September 8, 2020.

A RESOLUTION authorizing the appropriate City officials to extend the existing contract with Kiel Sand & Gravel, Inc. for the transportation and disposition of Class A biosolids from the Wastewater Treatment Plant.

WHEREAS, in 2018, the City entered into an agreement with Kiel Sand & Gravel, Inc. ("Kiel Sand & Gravel") for the transportation and disposition of Class A biosolids from the Wastewater Treatment Plant; and

WHEREAS, the original agreement with Kiel Sand & Gravel is set to expire at the end of 2020; and

WHEREAS, it is in the best interest of the City to extend its relationship with Kiel Sand & Gravel under the terms set forth in the attached Extension.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to execute the attached Extension with Kiel Sand & Gravel.

Public Works

Dean Dekker

Ben Seeger

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

**EXTENSION OF
CONTRACT REGARDING TRANSPORTATION AND DISPOSITION OF CLASS A
BIOSOLIDS**

In March 2018, the City of Sheboygan (the “City”) and Kiel Sand & Gravel, Inc. (“Contractor”) entered into a Contract for “transportation and disposition of Bio solids having a designation of Class A by the Wisconsin Department of Natural Resources” (the “Contract”). This Extension extends the Contract as described below.

Section 1. Background

In 2018, the City issued a Request for Proposals for Transport and Disposition of Dried Biosolids (Bid # 1941-18). The Request for Proposals indicated the City would entertain proposals for up to a three year initial agreement, and that the City reserved the right to extend the relationship at its discretion, pending mutual agreement and acceptance between the parties.

Contractor was the selected vendor of the necessary transport and disposition services and, in March 2018, the City and Contractor entered into the Contract. The initial term of the Contract is calendar years 2018, 2019, and 2020.

The City desires, and Contractor agrees, to extend this contractual relationship as set forth in this Extension.

Section 2. Term

This Extension shall be for calendar years 2021, 2022, and 2023 (“Initial Extension Term”). This Extension shall automatically renew for seven subsequent one year terms (covering calendar years 2024, 2025, 2026, 2027, 2028, 2029, and 2030) (“Subsequent One Year Terms”) on the same terms as the Initial Extension Term, unless either party provides written notice to the other party at least 270 days before the start of a Subsequent One Year Term.

In the event that Contractor defaults in its obligations under the Contract and this Extension, the City may provide written notice to Contractor of its default which sets forth a reasonable amount of time to cure the default. If Contractor fails to remedy the default within that time period, the City may terminate the Extension and seek damages incurred as a result of Contractor’s default.

Section 3. Price

The City shall not be charged for the removal and disposition of the products. Instead, Contractor agrees to reimburse the City for the product as follows: During the Initial Extension Term and each Subsequent One Year Term, Contractor shall remove from the City's premises all Dried Bio solids having a designation of "Class A", less any product retained by the City for its own use (which shall not exceed 50 tons per year), and shall reimburse the City at a rate of \$5.00 per ton.

Section 4. Written Notice

Written notice required under this Extension shall be provided to:

City:

City Clerk
828 Center Ave.
Sheboygan, WI 53081

Contractor:

Mark Teunissen
Kiel Sand & Gravel, Inc.
21434 State Road 57
Kiel, Wisconsin 53042

Section 5. Other Terms

Except as set forth in this Extension, the terms and conditions in the Contract remain in full force and effect.

IN WITNESS WHEREOF, this Extension is executed as of this ____ day of _____, 2020.

CITY OF SHEBOYGAN

KIEL SAND AND GRAVEL, INC.

By: _____
Michael J. Vandersteen, Mayor

By: _____

Attest: _____
Meredith DeBruin, City Clerk

Attest: _____

Date: _____

Date: _____

This Document is authorized by and in accordance with Res. No. _____.

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Resolution authorizing the appropriate City officials to enter into a contract with J & H Controls, Inc. to upgrade the automatic temperature controls system at the Sheboygan Police Department.

REPORT PREPARED BY: Bernard R. Rammer Purchasing Agent

REPORT DATE: September 11, 2020

MEETING DATE: September 15, 2020

FISCAL SUMMARY:

Budget Line Item: 47922100-621200
Budget Summary: Capital Improvements
Budget Expenditure: \$ 148,000
Budgeted Revenue: N/A

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS: The Sheboygan Police Department was constructed in 2008. At the time the systems to control Heating, Ventilating and Air Conditioning was installed as part of a larger system which also included door access control, Intercom systems and a connection to the security camera network. The systems are beginning to demonstrate a need for replacement. The systems will be upgraded on an individual, stand-alone basis.

STAFF COMMENTS: The new system is compatible with similar systems in other city owned buildings thereby providing the ability for several buildings to be “linked” together on the City’s Network. The access control and intercom upgrades are being put to bid as a separate project.

ACTION REQUESTED: Motion to recommend that the Council adopt Res. No. 85- 20-21 authorizing the appropriate City officials to enter into a contract with J & H Controls, Inc. to upgrade the automatic temperature controls system at the Sheboygan Police Department.

ATTACHMENTS:

- I. Res. No. 85-20-21

III

DIRECT REFERRAL TO PUBLIC WORKS COMMITTEE

Res. No. 85 - 20 - 21. By Alderpersons Dekker and Sorenson.
September 15, 2020.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with J & H Controls, Inc. to upgrade the automatic temperature controls system at the Sheboygan Police Department.

WHEREAS, funding to upgrade the automatic temperature controls system and a number of related critical components (the "Automatic Temperature Controls System Upgrade") at the Sheboygan Police Department was included in the 2020 Capital Improvements Budget; and

WHEREAS, City Staff has obtained and reviewed competitive bids for the Automatic Temperature Controls System Upgrade, and determined that the only bid - from J & H Controls, Inc. - meets all of the requirements from the bid documents and is within the amount budgeted; and

WHEREAS, the Common Council of the City of Sheboygan believes that it is in the best interest in the City to award a contract to J & H Controls, Inc. for the Automatic Temperature Controls System Upgrade.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are authorized to enter into a contract with J & H Controls Inc., a copy of which is attached hereto and incorporated herein, for the Automatic Temperature Controls System Update.

BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw funds for the work in the amount of \$146,715.00 from Account #47922100-621200 (Capital Improvements) for the Automatic Temperature Controls System Upgrade.

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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

**AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND
J & H CONTROLS, INC.**

**TO UPGRADE THE AUTOMATIC TEMPERATURE CONTROLS SYSTEM AT THE
SHEBOYGAN POLICE DEPARTMENT**

This Agreement (“Agreement”) is made and entered into effective this ____ day of _____, 2020 (the “Effective Date”), by and between the City of Sheboygan (the “City”), a municipal corporation, and J & H Controls, Inc. (“Contractor”).

WITNESSETH:

WHEREAS, the City is the owner of the Sheboygan Police Station at 1315 N. 23rd Street (the “Police Station”); and

WHEREAS, the City wishes to upgrade the existing building automation system at the Police Station with a Cylon Auto Matrix Aspect automatic temperature control system; and

WHEREAS, the City issued Request for Bids # 1982-20 to obtain bids from qualified providers of the materials and services needed to complete the upgrade (the “Services”); and

WHEREAS, the City has opened the bids, and determined that the bid from Contractor (“Bid”) is the lowest responsive and responsible bid for the Services; and

WHEREAS, a copy of the Bid is attached to this Agreement as Exhibit 1; and

WHEREAS, Contractor desires to provide the City with the necessary Services under the terms set forth in this Agreement.

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

Article 1. Scope of Services

The Sheboygan Police Department was completed in 2008. The original BAS System, Schneider Electric I-Net 7, was designed and installed by Kain Energy Systems.

Contractor shall provide all labor, equipment, and materials necessary to furnish and install a Cylon Auto Matrix Aspect automatic temperature control system at the Police Station (the “System”) which will upgrade the original BAS System (the “Services”). This includes commissioning and training.

Contractor is also responsible for the provision of all necessary hardware, software, graphics, programming, and labor to allow for onsite and off-site monitoring, alarm, and adjustment of the System by City Staff.

Contractor is also responsible for the provision of all licenses and permits¹ and for paying all legitimate costs required by private utility and communication companies as part of the Services.

The System will control, monitor, and alarm approximately 390² discrete input and output points serving the following heating, ventilating, and air conditioning equipment:

- Rooftop air handling units and associated isolation dampers
- Energy recovery ventilator and associated isolation dampers
- Smoke dampers
- Make-up air units
- Heating Hot Water Plant
- Variable air volume (VAV) boxes with re-heat coils
- Fin-pipe radiation zone which is controlled through the associated VAV box controller
- Powered Roof Ventilators
- Exhaust fans
- Convectors
- Cabinet Unit Heaters

The System will also:

- Have an HTML 5 Graphical User Interface which includes dynamic web pages that accurately depict floor plans, HVAC equipment, and data and alarm dashboards.
- Have the ability to address and handle alarms locally and remotely.
- Demonstrate trend logging and charting.
- Employ the Aspect FT Facilitating Technology (or equal) and be fully compatible with an Aspect-Enterprise Server.

It is the responsibility of the Contractor to determine the equipment needed to replace/upgrade all of the equipment associated with existing BAS System.

For the avoidance of doubt, equipment currently controlled through conventional temperature controls (as opposed to automatic temperature controls) will remain as is, and will not be controlled by the System.

¹ Contractor shall be responsible for obtaining any and all applicable City permits and paying any and all applicable permit fees prior to beginning work.

² This quantity is based on existing drawings, site observation, and input from maintenance staff. Determination of the exact quantities for all HVAC related equipment and devices that require upgrading and providing the necessary equipment shall be the responsibility of Contractor.

Contractor's Services under this Agreement include the following:

- Specify, design, and propose a system which has the capability to control the equipment identified above. This System must be able to be completely compatible and seamlessly integrated with the City's existing American Auto Matrix Building Automation Systems.
- Demolish and lawfully dispose of all existing digital controls associated with the HVAC equipment that are not being reused.
- Provide and install a Main controller that has the capability to directly interface with the American Auto Matrix Building Automation System.
- Provide and install a sufficient quantity of programmable controllers as needed to operate the system.
- Provide and install a suitable quantity of expansion modules as needed to operate the system.
- Provide and install controllers for the new VAV boxes.
- Provide and install leaving air temperature sensors in the VAV boxes discharge airstream as required for optimum system functionality.
- Provide a suitable quantity of new room temperature modules to assure proper temperature controls and maintenance.
- Replace any and all temperature sensors (including space, ductwork, and piping) with new temperature sensors suitable for the System.
- Replace three existing Carbon Monoxide Sensors / Transmitters and three existing Nitrogen Dioxide Sensors / Transmitters with new units suitable for the System.
- Clean, calibrate, and inspect the condition, verify the operation, and document the results for any and all components to be reused in the System, including:
 - Automatic Control Valves
 - Automatic Control Dampers
 - Actuators
 - Enclosures
 - Transformers
 - Power Supplies
 - Current Relays
 - Pilot Relays
 - Pressure Transmitters
 - Humidity Transmitters
 - Existing Wire and Cable
 - Any Other Existing Components
- Provide all labor necessary to procure, deliver, inspect, test, calibrate, and install all of the components – both new and existing that will be reused – to assure the System results in a complete turnkey controls system that is able to be seamlessly integrated with the City's existing American Auto Matrix Building Automation Systems.
- Program, test, and commission the System, including any filing of warranty documentation with the manufacturer.
- Provide at least 8 hours of end user training in the operation of the System.
- Provide all mechanical, electrical, structural, or plumbing modifications required to complete the System.

Contractor shall comply with the following best practices when installing new cabling or wiring associated with the installation of the System, including the replacement of existing cabling found to be unsuitable for re-use:

- Any low voltage cable installed above ceilings shall be plenum rated.
- Any cable that passes through walls shall be sleeved and fire-caulked.
- Any conduit that passes through walls shall be fire-caulked.
- Any low voltage cable installed above suspended ceilings shall be installed using j-hooks.
- Any exposed low voltage wiring (any voltage less than 120 V) shall be enclosed in conduit.
- Any 120 V wiring shall be enclosed in EMT conduit.

For the avoidance of doubt, the System shall not include retrofitting or upgrading the following systems, some of which are integrated into the current Schneider Electric I-Net Seven DDC System:

- Fire Alarm System
- Security System
- Access Control System
- CCTV System
- Intercom and Overhead Paging System

Contractor's Services shall be performed in accordance with the General Conditions, a copy of which are attached to this Agreement as Exhibit 2.

Article 2. Standard of Care

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

Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under this Agreement.

Article 3. City's Representative

The City designates Bernie Rammer and Mike Willmas as its Representatives for purposes of this Agreement. If the City's Representatives deem it appropriate, the City's Representatives may consult with other employees of the City, or may retain an appropriate outside expert to assist with the management of this Project.

If the City's Representatives observe any work performed by the Contractor to not be in conformity with the Agreement, the City's Representatives will report that to the Contractor. The City's

Representative will have authority to stop any portion of the work not in conformity with the Agreement until the City has investigated and decided upon an appropriate procedure.

Article 4. Compensation

The City shall pay Contractor for the Services an amount not to exceed \$146,715.00 (“Contract Amount”).

Within 10 days of receipt of the City’s Notice to Proceed, the Contractor shall submit a complete breakdown of the Contract Amount, showing the value assigned to each part of the work, including an allowance for profit and overhead (the “Schedule of Values”). Upon approval of the breakdown of the Contract Amount by the City’s Representative, it shall be used as the basis for all Requests for Payment.

Contractor may submit periodically, but not more than once each month, a Request for Payment of work done on the site. The Contractor shall furnish the City’s Representative with information reasonably requested regarding the progress and execution of the work in order for the City’s Representative to review the Request for Payment. Each Request for Payment shall be computed from the work completed on all items listed in the Schedule of Values, less 10% to be retained until Final Acceptance. No payment will be made for material merely stored at the job site.

Payment will be made to Contractor within 45 days of receipt of the Request for Payment. The Request for Payment shall be sent to:

**Michael Willmas
City of Sheboygan
2026 New Jersey Avenue
Sheboygan, Wisconsin 53081**

Contractor shall be required to file waivers of lien from all suppliers and subcontractors with the Owner prior to receiving payment. The submission of any Request for Payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

Contractor shall deliver to the City a complete release of all liens arising out of this Agreement before the retained percentage or the Final Payment is paid. If any lien remains unsatisfied after the retained percentage or the Final Payment is paid, Contractor shall refund to the City such amounts as the City may have been compelled to pay in discharging such liens (including any costs and reasonable legal fees).

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

The City may – in addition to the retained percentage – withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following (“Withheld Amounts”):

- Payments that may be earned or due for just claims for labor or materials furnished in and about the work.
- Defective work.
- The probable filing of claims by other parties against Contractor which may adversely affect the City.
- Failure of Contractor to make payments due to subcontractors, material suppliers, or employees.
- Damage to the City or a third party.
- Reasonable doubt that the Agreement can be completed for the balance then unpaid.

The City will disburse, and shall have the right to act as agent for Contractor in disbursing the Withheld Amounts to the party or parties who are entitled to payment. The City will provide the Contractor with a proper accounting of all such funds disbursed on behalf of the Contractor.

The City also reserves the right to refuse payment of the final 10% due to Contractor until the City’s Representative is satisfied that all subcontractors, material suppliers, and employees of the Contractor have been paid in full.

Partial payment made under this Agreement is not evidence of the proper performance by Contractor either in whole or in part, and no payment made by the City shall be construed to be an acceptance of defective or improper work. Acceptance of the work by the City shall occur only upon Final Payment by the City which will occur after Final Acceptance. The Parties recognize that more than 45 days may elapse between the submission of the last invoice and Final Acceptance or Final Payment. The City agrees to make reasonable efforts to schedule its Final Inspection in a timely manner and to process the Final Payment in a timely manner upon Final Acceptance. (For the avoidance of doubt, the warranties and guarantees in this Agreement shall continue to apply even after Final Payment by the City.)

Article 5. Appropriation of Funds

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty.

Article 6. Performance and Payment Bond

Contractor shall, within 10 days of the approval of this Agreement by the Common Council of the City of Sheboygan, provide the City with a Performance Bond and a Payment Bond in a format acceptable to the City’s Representative, in the amount of 100% of the contract amount.

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

If the Surety on any bond furnished by Contractor becomes a party to supervision or liquidation, or its right to do business in the State of Wisconsin is terminated, Contractor shall, within 30 calendar days thereafter, substitute another bond or surety, both of which must be acceptable to the City.

Article 7. Schedule

Contractor shall commence work after receiving a Notice to Proceed from the City's Representative. At that point, Contractor shall commence work promptly, and shall continue the prosecution of the Services as quickly as is practicable until the Services are completed.

Contractor shall complete the services by December 30, 2020, or within such extra time as may have been allowed by a mutually agreed extension (the "Deadline"). The City's Representative shall have the authority to consent to an extension of the Deadline on behalf of the City.

Failure of the Contractor to adhere to the schedule as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs and other costs attributable to the delay.

No work aside from that performed during the regular work week will be allowed unless prior notice is given to the City's Representative and the City's Representative consents to the work being performed during that time. Any work performed without prior notice and approval to do so may be required to be removed for inspection at Contractor's expense.

Article 8. Workmanship and Quality of Materials

Contractor shall ensure that the System has the following warranties, which begin after Final Acceptance and completion of the 8 hours of end user training:

- All equipment purchased as a result of this Agreement shall include the equipment manufacturer's standard warranty.
- Contractor shall provide a two year warranty against defects for parts and labor.

All material shall be new, newest model year, and free from defects. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval of the City's Representative.

Whenever, in any document, an article, material, or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vendor, the term "or equal" or the term "the equivalent" if not inserted, shall be implied, and it is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting competition. Whenever material or equipment is submitted for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to all contractual requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by the City's Representative. The approval by the City's Representative of alternate material or equipment as being equivalent to that specified

shall not in any way relieve Contractor of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the contract documents. The City's Representative shall be the sole and final judge of equivalency.

Article 9. Safety Requirements

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

Contractor shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. Contractor shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state, or local.

Contractor shall provide the necessary safeguards including, but not limited to, warning signs and barricades, to avoid all necessary hazards and protect the public, the work, and the property at all times, including on days when no work is being done. The City shall not be responsible for any loss or damage to the project materials prior to their installation or to Contractor's tools and equipment from any cause whatsoever.

Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

Article 10. Access to Records and Construction Site

Both parties understand that the City is bound by the Wisconsin Public Records Law and, as such, this contract is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records related to the contract, and that the failure to do so shall constitute a material breach of the contract, in which case Contractor must defend and hold the City harmless from liability under that law.

Contractor shall maintain all records related to this contract for a period of not less than 7 years after receipt of Final Payment under the Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

Article 11. Termination

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

If the City fails to make payment through no fault of the Contractor for a period of 30 days after such payment is due in accordance with the Contract Documents, the Contractor may, upon 7 days written notice to the City, terminate the Agreement and recover from the City payment for all work

executed and for any proven loss sustained upon any materials, equipment, tools, and construction equipment and machinery, including reasonable profit and damages.

If Contractor defaults or fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement, the City may, 10 days after written notice has been delivered to Contractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to Contractor. In the alternative the City may, at its option, terminate this Agreement and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor, and may finish the project by whatever method it may deem expedient. In case the expenses incurred by the City (including payments previously made to Contractor) shall be less than the sum which would have been payable under the Agreement if it had been completed by Contractor, Contractor shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Agreement, Contractor will be liable and shall pay to the City the amount of said excess. By taking over prosecution of the work, the City does not forfeit the right to recover damages from Contractor or its surety, for failure to complete the work or for defects in the work.

For the avoidance of doubt, the specific remedies identified in this Article 11 are not exclusive. In other words, the City may pursue any remedy in law or equity in the event that Contractor defaults under this Agreement.

Article 12. Default

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

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

The City shall send Contractor a written notice of default. If Contractor, within a period of 10 days after such notice, fails to remedy the default, then the City shall have full power and authority, without violation of the Agreement, to take the prosecution of the work out of the hands of Contractor, as set forth in this Agreement.

Article 13. Identity of Contractor

Contractor acknowledges that one of the primary reasons for its selection by the City to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services

to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the City³. The City's Representative shall have the ability to provide this written permission. The City reserves the right to reject any of the Contractor's personnel or proposed outside professional sub-consultants, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 14. Independent Contractor Status

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

Article 15. Indemnification

Contractor is responsible to the City for the acts and omissions of its employees, subcontractors, and any other persons performing any of the work under a contract with Contractor.

As such, to the extent permitted by law, Contractor shall defend and hold the City—including its Officials, Agents, and Employees—harmless from all liability, including, but not limited to, losses, damages, costs, legal fees, expenses, causes of action, claims, or judgments resulting from claimed injury, death, damage to property, or loss of use of property or any person or legal entity arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

For the avoidance of doubt, this obligation to defend and hold the City harmless applies—among other instances—if the claimed liability arises out of:

- A violation of any law, ordinance, regulation, order, or decree by the Contractor, its employees, subcontractors, or any other person performing any of the work under a contract with Contractor.
- The failure on the part of Contractor, its employees, subcontractors, or any other person performing any of the work under a contract with Contractor, to complete any of the covenants, acts, matters, or things assigned to them under this Agreement.

Contractor shall reimburse the City for any costs, expenses, judgments, and legal fees paid or incurred, by or on behalf of the City, its Officials, Agents, or Employees, or paid for on behalf of the City, its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City.

³ In the event that the City allows part of the Services to be subcontracted, Contractor shall still be fully responsible to the City for the acts or omissions of any subcontractor and anyone employed directly or indirectly by the subcontractor. This is in addition to any liability imposed by law upon the Contractor.

For the avoidance of doubt, Contractor shall further hold the City, its Officials, Agents, and Employees harmless from liability or claims for any injuries to or death of Contractor's employees (or the employees of any authorized subcontractor) arising out of or in any way connected with the work or work to be performed under this Agreement, including protection against any claim of the contractor or subcontractor for any payments under any worker's compensation law or any expenses of or any payments made by any worker's compensation insurance carrier on behalf of said contractor or sub-contractor, and the contractor shall hold the City harmless from any costs, expenses, judgments, and attorney's fees with respect to any above referenced workers' compensation claims incurred or paid by the City or paid on its behalf or on behalf of its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City.

Article 16. Insurance

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

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

- a. Workers' Compensation Insurance – Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements.
- b. Commercial General Liability and Property Damage Insurance – Contractor shall acquire and maintain, for the duration of this Agreement, Commercial General Liability Insurance with a policy limit of at least \$2,000,000 per occurrence and \$2,000,000 in the aggregate. The Commercial General Liability Insurance shall include operations, contractor's protective insurance, products coverage, completed operations, contractual coverage, underground coverage, and blasting, explosion, and collapse.
- c. Comprehensive Automobile Liability and Property Damage – Contractor shall acquire and maintain, for the duration of this Agreement, Comprehensive Automobile Liability and Property Damage Insurance that covers the operation of owned, hired, and non-owned motor vehicles with a policy limit – for liability, bodily injury, and property damage – of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate.

The proof of insurance referenced above shall require the insurance company to notify the City at least 30 days prior to the expiration, cancellation, non-renewal, or material change in the coverage. The Certificate Holder on the proof of insurance should be listed as:

City of Sheboygan, Wisconsin
828 Center Ave., Suite 110
Sheboygan, Wisconsin 53081

The proof of insurance must contain an original signature.

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

Article 17. Conflict of Interest

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

Article 18. Waiver

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

Article 19. Severability

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

Article 20. Assignment

Neither the City nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Such written approval by the City shall not relieve the Contractor of the obligations incurred by the Contractor under the terms of this Agreement.

Article 21. Third Party Rights

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

Nothing in this Agreement shall create any contractual relationship between any subcontractor and the City. Contractor agrees to bind every approved subcontractor (and every subcontractor of a subcontractor) by the terms of this Agreement as far as applicable to that subcontractor's work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the

City. The City's Representative shall have the authority to consent to a subcontract as being adequate.

Article 22. Governing Law and Venue

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

Article 23. Non-Discrimination and Equal Opportunity

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

Contractor further agrees to take affirmative action to ensure equal employment opportunities.

Article 24. Compliance with Laws

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

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

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

Article 25. Notices

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

City:

Contractor:

City Clerk	Mr. Mark Hawley
City of Sheboygan	J & H Controls Inc.
828 Center Ave.	490 N. Rolling Meadows Dr.
Sheboygan, Wisconsin 53083	North Fond du Lac, WI 54937

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

Article 26. Intent to be Bound

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

Article 27. Force Majeure

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

Article 28. Integration and Modification

This Agreement may be modified only by a written amendment signed by both parties hereto.

This Agreement consists of the following parts, each of which is as fully a part of this Agreement as if fully set out herein:

1. This Agreement and its Exhibits
2. Any Written Amendment to the Agreement which may be delivered or issued after the Effective Date of the Agreement (including Change Orders)
3. The Request for Bids (including all attachments)
4. All Addenda to the Request for Bids
5. All Other Submittals by Contractor
6. The Performance and Payment Bonds

(collectively “the Contract”).

This Contract is the entire and integrated agreement between the City and Contractor regarding the subject matter of this Contract. It supersedes all prior and contemporaneous communications, representations and agreements that are not part of this Contract.

In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by Contractor, the document expressing the greater quantity, quality, or other scope of work in question, or imposing the greater obligation upon Contractor and affording the greater right or remedy to the City shall govern. Otherwise, the documents shall be given precedence in the order set forth above.

Article 29. Non-Collusion

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

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

Article 30. Other Provisions

1. Material Safety Data Sheet. If any item(s) on an order(s) resulting from this Agreement is a hazardous chemical, as defined under 29 C.F.R. 1910.1200, Contractor shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
2. Advertising and News Releases. Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City's Representative. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City's Representative.
3. Foreign Corporation. A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Wis. Stat. 180 relating to a foreign corporation, and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority.
4. Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.
5. Authorized Representative of Equipment Manufacturer. Contractor represents and warrants that it is an authorized representative of the control Equipment Manufacturer, and has the ability to provide engineering, installation, programming, commissioning, and ongoing maintenance of the System.
6. Intellectual Property. Contractor shall pay for any royalties and license fees associated with intellectual property used in the completion of the Services. Contractor shall defend any suits or claims for infringement of any intellectual property rights related to the completion

of the Services, and shall hold the City harmless from any liability associated with any such suit or claim.

7. Intent of Contract Documents.

- a. The intent of this Agreement is to include in the contract price the cost of all labor and materials, water, fuel, tools, plants, equipment, light, transportation, and any other expenses that may be necessary for the proper execution and completion of the work included in the Agreement.
- b. In interpreting the Agreement, words describing materials that have a well-known technical or trade meaning shall be construed in accordance with such well known meanings unless otherwise specifically defined.

8. Definitions.

- a. Final Acceptance: The event that occurs when Contractor issues to the City or the City issues to Contractor a written statement that Contractor has completed all Punch List items, has made all necessary submittals to the City, and has satisfied all of its obligations under the Agreement.
- b. Final Inspection: The inspection conducted by the City to determine what work must still be completed by Contractor in order for Completion of the Services to occur. After the Final Inspection, the City shall provide Contractor with a Punch List that Contractor must complete in order for Completion of the Services to occur.
- c. Final Payment: Payment by the City to Contractor after Completion of the Services the result of which is Contractor receiving all payments due under the terms of the Agreement for performing and completing the Services.

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

CITY OF SHEBOYGAN, WISCONSIN

CONTRACTOR

BY: _____
Michael J. Vandersteen, Mayor

BY: _____

ATTEST: _____
Meredith DeBruin, City Clerk

ATTEST: _____

DATE: _____

DATE: _____

EXHIBIT 2

GENERAL CONDITIONS

1. Adjacent Property

Personnel in the employ of the Contractor or any subcontractor shall not use any existing facilities on adjacent property, or trespass in or about adjacent facilities.

2. Changes in the Work

The City, without invalidating the Agreement, may order changes in the work consisting of additions, deletions, or modifications. In such instance, the Contract Sum and the Contract Time shall be adjusted accordingly. Any such changes in the work shall be authorized by written Change Order. The only individual authorized by the City to sign a written Change Order is the City's Representative.

The Contract Sum and the Contract Time may be changed only by Change Order or an Amendment to this Agreement.

The cost or credit to the City from a change in the work shall be determined by mutual agreement before executing the work involved.

If the City's Representative considers the cost or time in a proposal submitted by Contractor to be excessive or unreasonable, the City may request a proposal for the same change from other contractors. The City reserves the right to make an award of such work to another contractor, unless Contractor agrees to do the added or changed work for the price named by the other contractor.

3. Cleaning Up and Final Inspection

At all times, the Contractor shall keep the work site free from the accumulation of waste material or rubbish caused by its employees. At the completion of the work, Contractor shall remove all rubbish from and about the work, as well as all tools, equipment, scaffolding, and surplus materials. The completed work shall be left clean and ready for use.

4. Codes and Standards

All materials and workmanship shall comply with all applicable codes, specifications, state laws, local ordinances, industry standards, and utility company regulations.

In case of difference between codes, specifications, state laws, local ordinances, industry standards, and utility company regulations and the Agreement, the most stringent shall govern.

Should Contractor perform any work that does not comply with the requirements of the applicable codes, specifications, state laws, local ordinances, industry standards, and utility company regulations, Contractor shall bear all costs arising in correcting the deficiency.

Applicable Codes and Standards shall include all state laws, local ordinances, utility company regulations, and the applicable requirements of the following nationally accepted Codes and Standards:

1. Building Codes
 - a. ICC Codes
 - b. National Electric Code
 - c. Wisconsin Administrative Code
 - d. National Fire Code
2. Industry Standards, Codes, and Specifications
 - a. AIEE – American Institute of Electrical Engineers
 - b. ANSI – American National Standards Institute
 - c. ASHRAE – American Society of Heating, Refrigeration, and Air Conditioning Engineers
 - d. ASME – American Society of Mechanical Engineers
 - e. ASTM – American Society of Testing Materials
 - f. IPCEA – Insulated Power Cable Engineers Association
 - g. NBS – National Bureau of Standards
 - h. NEMA – National Electrical Manufacturers Association
 - i. NFPA – National Fire Protection Association
 - j. OSHA – Occupational Safety and Health Act
 - k. UL – Underwriters Laboratories
 - l. MSS – Manufacturers Standardization Society
 - m. AISC – American Institute of Steel Construction
 - n. AWS – American Welding Society
 - o. SMACNA – Sheet Metal and Air Conditioning Contractors National Association

5. Completion of Work

The Contractor is fully responsible for seeing that no work necessary to complete the project is inadvertently left out.

6. Correction of Work

Contractor shall correct any work that fails to conform to the requirements of the Agreement where such failure to conform appears during the progress of the work. Contractor shall also remedy any defects due to faulty materials, equipment, or workmanship which appear within a period of one year from the date of Final Payment to the Contractor or within such longer period of time as may be prescribed by law or by the terms of the Agreement with the City.

This requirement applies to work done by subcontractors and direct employees of the Contractor.

7. Correction of Work After Final Payment

Neither the Final Payment on this Agreement by the City nor any other provision in this Agreement shall relieve the Contractor or its Surety of the responsibility for the furnishing and installation of faulty materials or for faulty workmanship which shows up within the period provided by this Agreement, or of the responsibility of remedying such faulty workmanship and materials.

8. Cutting and Patching

The Contractor shall be responsible for all required cutting, and shall make all required repairs thereafter to the satisfaction of the City's Representative. In no case shall the Contractor cut into any major structural element, beam, or column without the written approval of the City's Representative.

9. Deduction for Uncorrected Work

If the City deems it expedient to accept work damaged or not done in accordance with the Agreement, an appropriate deduction from the contract price will be made to reflect the unsatisfactory work.

10. Delays

If the work of Contractor is delayed for any reason, Contractor shall have no claim against the City on that account other than an extension of time.

11. Fire Protection

The Contractor shall provide and maintain an adequate number of hand fire extinguishers and take all other precautions necessary to prevent fires, and shall conform to local Fire Department regulations.

12. Labor

Contractor shall employ none but competent and skilled workmen and foremen in the prosecution of work on this Agreement. The City's Representative shall have the authority to order the removal from the work any Contractor's employee who refuses to or neglects to obey any of its instructions relating to the carrying out of the provisions and intent of the provisions of the Agreement, or who is incompetent, unfaithful, abusive, threatening, or disorderly in his conduct, and any such person shall not again be employed on this project.

13. Other Contracts

The City may award other contracts for additional work at the site of the project. Contractor shall fully cooperate with such other Contractors and carefully fit its own work to that provided under

other contracts as may be directed by the City. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

14. Public Safety and Convenience

The Contractor shall conduct its work as to ensure the least possible inconvenience to the general public and to the employees of the City.

15. Sanitary Convenience

Contractor shall have access to the use of sanitary facilities available to the general public.

16. Superintendence

The Contractor will give personal superintendence to the work, or have at the site of the work, at all times, a competent foreman, superintendent, or other representative satisfactory to the City having the authority to act for the Contractor.

Insofar as is practicable, and except in the event of discharge by the Contractor or in the event of proven incompetence, the individual who has been accepted by the City's Representative to represent the Contractor shall so act, and shall follow without delay the instructions of the City's Representative in the prosecution of the work in conformity with the Agreement.

17. Use of Job Site

The Contractor shall confine its equipment, apparatus, the storage of materials, and operations of his workman to the limits indicated by the law, ordinances, permit, or directions of the City's Representative, and shall not encumber the premises with its equipment, apparatus, or materials.

The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety. The Contractor shall observe and enforce the City Representative's instructions regarding signs, advertisements, fires, and smoke.

BID
FORMSheboygan Police Department
Automatic Temperature Controls
Upgrade

Bids Due: 1:15 PM, Thursday August 27, 2020

To: City of Sheboygan Finance Department
Attn: Bernard Rammer
828 Center Ave., Suite 110
Sheboygan, WI 53081Company J & H Controls, Inc.Address 490 N. Rolling Meadows Drive City North Fond Du Lac Zip 54937

hereby agrees to provide all labor and materials as required for a complete, turn-key automated temperature control system that is fully and completely compatible and able to be seamlessly integrated with those systems manufactured by Cylon Auto Matrix at the pricing herein set forth.

BASE BIDFor the sum of One hundred forty-six thousand seven hundred fifteen dollars and zero cents\$ 146,715.00**RECEIPT OF ADDENDA**The undersigned acknowledges receipt of Addenda numbers N/A**COMMENCEMENT AND COMPLETION OF CONTRACT WORK**

The undersigned agrees, if awarded the contract, to commence the contract work on or before a date to be specified in a written notice to proceed, and to complete the work within the time stated in the Instructions to Bidders.

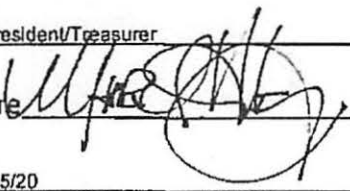
(Firm Name) J & H Controls, Inc.

(Telephone) 920.322.8470

(Email) mhawley@jhcontrols.com

(Name of person signing) Mark S. Hawley

(Title) President/Treasurer

Signature 

Date 8/25/20

(Seal, if bid is by a Corporation)

Date: NO SEAL

End

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Ordinance amending Section 2-397(c)(1) regarding the duties and powers of the director of public works.

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

REPORT DATE: September 9, 2020

MEETING DATE: September 15, 2020

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

Wisconsin Statutes: Wis. Stat. §§ 62.14,
62.15
Municipal Code: 2-397(c)(1)

BACKGROUND / ANALYSIS: State law provides that all cities have a board of public works. The board of public works is charged with two main duties:

1. To “superintend all public works and keep the streets, alleys, sewers and public works and places in repair.” (This includes the approval of certain “unusual uses” of streets.)
2. To prepare and issue bid packets.

Although the name “board of public works” implies that it will be multiple people, state law provides that the duties and powers of the board of public works may be held by a single person.

When the City transitioned from having a board of public works that consisted of multiple people to its current Public Works Committee, the Sheboygan Municipal Code explicitly provided that the director of public works was to perform the duties prescribed by state statute for the board of public works.

The explicit reference to the duties prescribed by state statute *for the board of public works* was removed from the director of public works’ duties around 1975. Instead, the director of public works was instructed to perform the duties “prescribed by state statute” without further clarification.

STAFF COMMENTS: This proposed amendment would explicitly add the statutory duties of the board of public works back to the director of public works’ duties, clarifying what is meant by “duties prescribed by state statute”. Many of the duties assigned to the

board of public works are, pursuant to the City's Municipal Code, already being done by the director of public works.

The purpose of this amendment is to allow the director of public works to approve the issuance of bid documents without separate approval of the Public Works Committee. This will allow the Public Works Department to better time when projects go out to bid, which will provide the best opportunity for the most competitive bid results. This amendment does not change the approval process for the Capital Improvement Plan or for any contract related to public construction.

ACTION REQUESTED: Motion to recommend the Common Council adopt Gen. Ord. No. 20-20-21 amending Section 2-397(c)(1) regarding the duties and powers of the director of public works.

ATTACHMENTS:

- I. Gen. Ord. 20-20-21

~~X~~

6.2

Gen. Ord. No. 20 - 20 - 21. By Alderpersons Dekker and Sorenson.
September 8, 2020.

AN ORDINANCE amending Section 2-397(c)(1) regarding the duties and powers of the director of public works.

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

Section 1. Section 2-397(c)(1) of the Municipal Code entitled "Director" is hereby amended to read as follows:

"Sec. 2-397. *Director*

. . .

(c) *Duties and powers.*

(1) The director of public works shall perform the duties and shall have the authority and powers prescribed by the council and prescribed by state statute for the board of public works.

. . ."

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

Public Works

Dean Dekker

Ben Sorenson

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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: An Ordinance amending Section 134-178 of the Municipal Code to more clearly identify the 8th Street Boat Launch.

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

REPORT DATE: September 10, 2020

MEETING DATE: September 15, 2020

FISCAL SUMMARY:

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

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: 134-178

BACKGROUND / ANALYSIS: The current “launching sites” ordinance does not include the 8th Street Launch located at 807 Riverfront Drive. The current launching sites ordinance also includes a launch at the 1300 block of Niagara Avenue that is no longer owned by the city, and a launch at Kiwanis Park that is now a kayak and canoe launch that can be used at no cost.

STAFF COMMENTS: The two dedicated city launch sites are fee based.

ACTION REQUESTED: Motion to recommend the Common Council adopt Res. 21-20-21 amending Section 134 -178 of the Municipal Code to more clearly identify the 8th Street Boat Launch.

ATTACHMENTS:

- I. Res. No. 21-20-21
- II. Current Launching sites Ordinance, Sec. 134-178.

I

6.3

Gen. Ord. No. 21 - 20 - 21. By Alderpersons Dekker and Sorenson.
September 8, 2020.

AN ORDINANCE amending Section 134-178 of the Municipal Code to more clearly identify the 8th Street Boat Launch.

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

Section 1. Section 134-178 of the Municipal Code entitled, "Launching sites," is hereby amended to read as follows:

"Sec. 134-178. *Launching sites.*

The sites included in this article are located at Deland Park parking lot, 8th Street Launch (at the intersection of S. 8th Street and Riverfront Drive), and the 1300 block of Niagara Avenue, which is the Old Tool House site."

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.

Dean Dekker

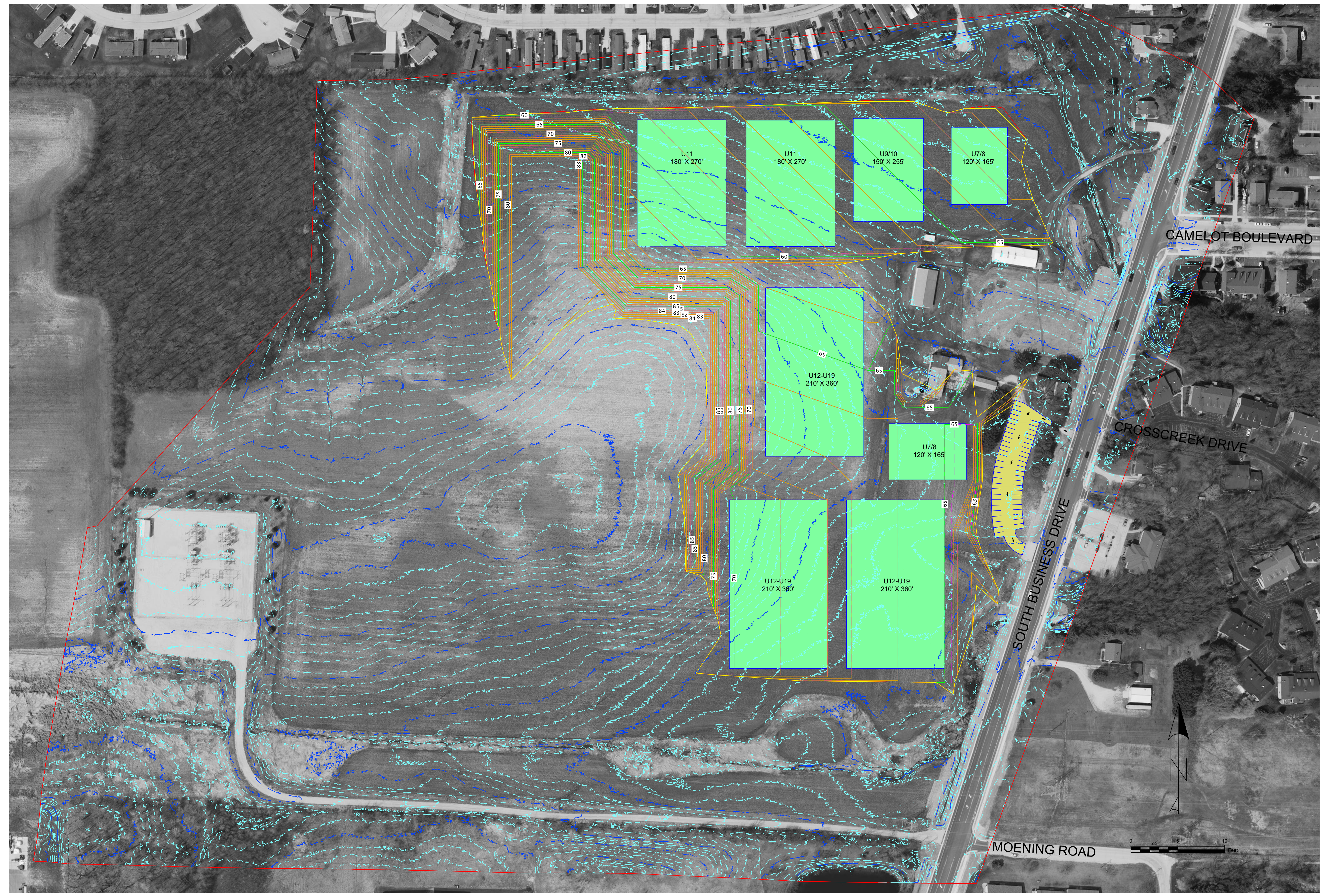
Ben Jones

Public works

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



Revision Number	Revision Description	Drawn By	Date

EARTHWORK LAYOUT
BUTZEN FARM

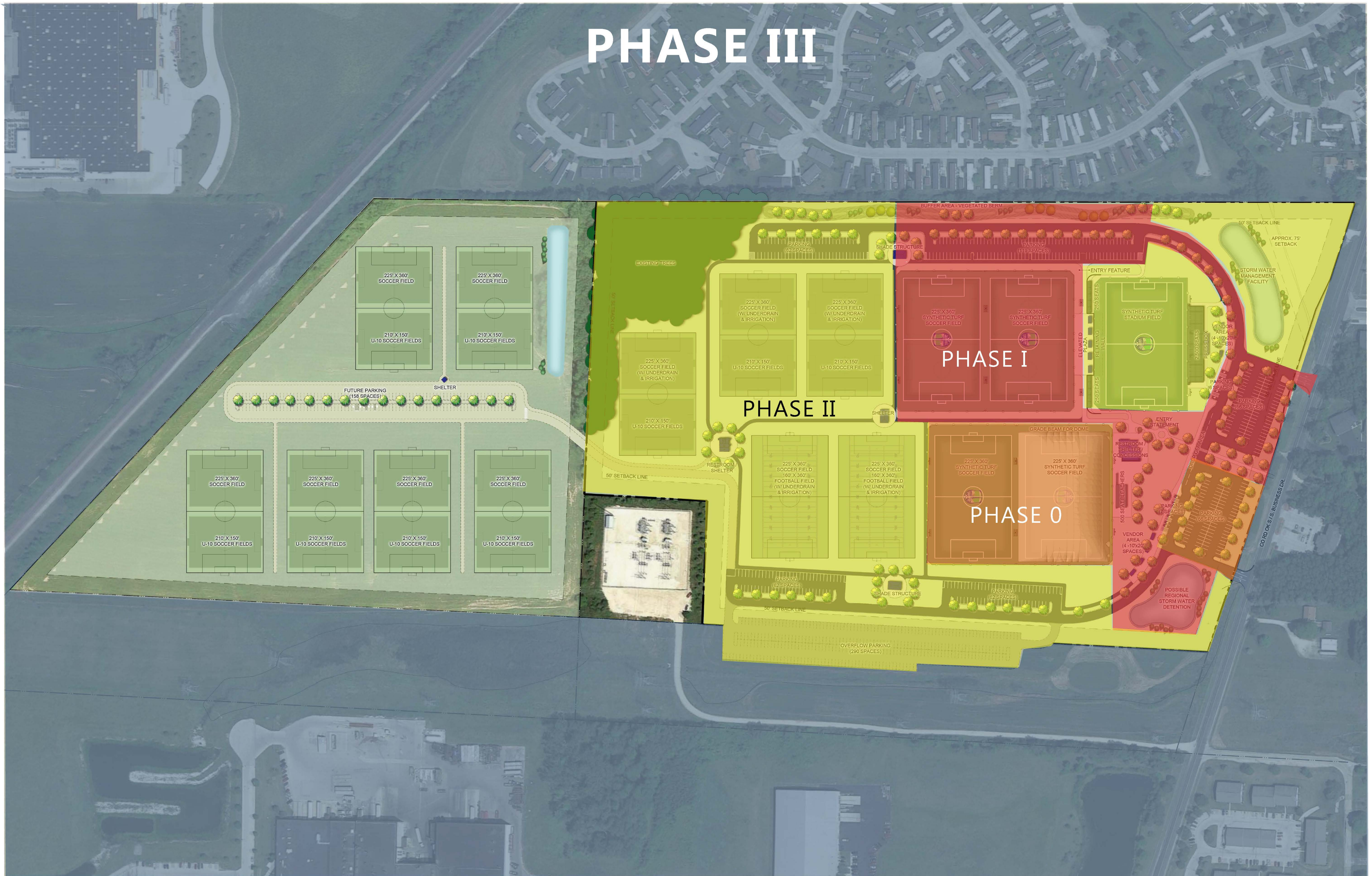


City of Sheboygan
Department of Public Works
Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

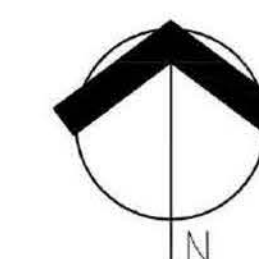
Ryan Sazama, PE - City Engineer

Designed By	EDM
Drawn By	EDM
Checked By	EDIT
Plot Date	9/8/2020
Bid No.	EDIT
Project Date	EDIT
Sheet No.	EDIT
Drawing No.	EDIT

PHASE III



SHEBOYGAN BUTZEN RECREATION CAMPUS
 ATHLETIC FACILITY RENOVATION PROJECT ■ LAKESHORE UNITED FC
 OVERALL MASTER PLAN ■ SHEBOYGAN, WI



0' 100' 200' 300'
 RETTLER CORP. PROJECT # ■ 14.072
 DATE ■ 02.01.2019



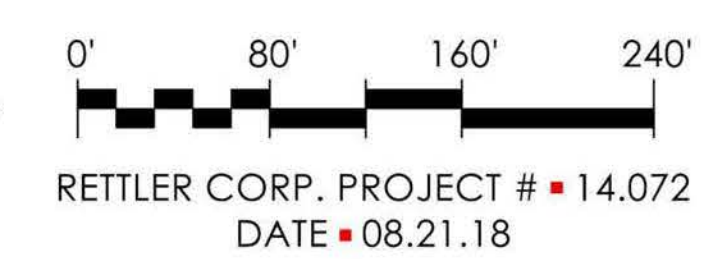
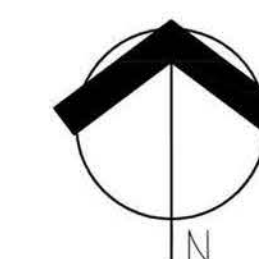
■ 3317 BUSINESS PARK DRIVE, STEVENS POINT, WI 54481
 ■ TELEPHONE ■ 715 - 341 - 2633, FAX ■ 715 - 341 - 0431
 ■ EMAIL ■ INFO @ RETTLER.COM, WEBSITE ■ WWW.RETTLER.COM

PHASE II



SHEBOYGAN BUTZEN RECREATION CAMPUS

ATHLETIC FACILITY RENOVATION PROJECT ■ LAKESHORE UNITED FC
OVERALL MASTER PLAN ■ SHEBOYGAN, WI



3317 BUSINESS PARK DRIVE, STEVENS POINT, WI 54481
TELEPHONE 715-341-2633, FAX 715-341-0431
EMAIL INFO@RETTLER.COM, WEBSITE WWW.RETTLER.COM

Butzen Fields Sports Complex
Conceptual Project Plan Summary
May 2020

Project Overview

The Butzen Fields Sports Complex, although created with soccer in mind, is intended to be a multi-sport facility comprised of 16 competition fields that can be used for leagues and tournaments for soccer, football, lacrosse, field hockey, frisbee, or any other traditional sport requiring green space. Additionally, it would be available to local high schools to assist with their sporting events as well as a myriad of other 'non-traditional' sports such as college quidditch. For those wondering, quidditch *is* a college 'club' sport played at most of our country's largest universities, and continually looking for quality space to hold their regional tournaments.

Although many may view soccer and these other sports as summer activities, the reality is that this park is intended to supplement our current local tourism activities and not supplant any of them or the summer tourists our economy has come to enjoy.

While there would likely be summer activity at the complex, the bulk of the youth focused activity would be in the months of late August through May. Turf fields provide opportunities to hold a significant level of outdoor levels late into October/November as well as early as February/March/April when our traditional activity is indoors due to lack of usable fields, not necessarily due to lower temperatures.

Two domes provide year-round activity for all the sports mentioned above, as well as well as other activities such as an indoor golf driving range. Currently, it is not uncommon for regional soccer teams to travel to the Twin Cities or beyond to play full field tournaments throughout the winter.

The complex central building is intended to be multi-purpose. It can assist with our administrative (office) and hosting activities (meetings, concessions, rest rooms, etc.) but more importantly, provide our youth participants with a place to socialize or complete their homework in anticipation of their other sports related activities.

A junior level professional soccer team and concerts are intended to help round out the summer activities for this multi-purpose park, utilizing the stadium showcase field at the front of the park.

Conceptual Project Plan

Phased Approach

The complex is intended to be built in four segments, allowing for a structured approach to phase in levels of activity related to fund raising, financing, construction, and activity.

	<u>Budget</u>	<u>Summary Activity</u>
Phase 0	\$690,000	2 grass fields planted; prep work for city financing; engage capital campaign consultant
Phase 1	\$13.7 million	Fundraising/sponsors/grants; 16 fields (4 turf & 1 dome)
Phase 2	\$4.7 million	Fundraising/sponsors/grants/private financing; 2 converted turf fields and 2 nd dome
Phase 3	\$3.5 Million	Fundraising/sponsors/grants/private financing; stadium completed

A detailed timeline through 2037 is attached to help understand the overall project timing as well as each phase's budget, non-development planning, construction and field usability considerations. Summary financing information is included for reference.

Additionally, a proforma financial forecast through 2037 is also included to help detail the project phasing of fields and activities in support of ongoing operations and debt repayment.

Architectural renderings of the four phases are attached in support of this summary and projections.

Overall Financing Summary

Overall, upon completion of the park as currently planned, overall financing would be comprised of the following components:

Total Project Cost	\$22.59 million
City: Bond (phase 1)	\$ 8.5 million
Initial Budget Money (phase 0)	\$ 0.59
In-Kind (phase 1, 2 & 3)	<u>\$ 0.80</u>
	\$9.89 million or 43.8% of total projected cost
Public Fundraising (Capital/other)	\$ 3.7 million
Sponsorship	\$ 1.55
Private Financing	\$ 3.0
Grants	\$ 2.0
Pro Partner Assistance	\$ 1.0
Other In-Kind	\$ 0.75
Kohler Land Donation	\$ 0.70

Additionally, bond repayment based on a maximum estimate of 1% from the hotel room tax. The bond offering is anticipated to include an initial interest only period at the beginning of the repayment period.

Overall Anticipated Project Plan Steps

Meet with City Leadership to discuss merits of plans/financing/action steps

Complete Phase 0 work in conjunction with the following activities

Complete final feasibility studies (economic and capital campaign)

Meet with Hoteliers and Tourism representatives individually

Meet with RDA and Council members individually

Secure Capital Campaign/Sponsorship/Land/Grant Commitments

Secure Bond Financing

Complete Phase 1

Continue work on Phase 2 and Phase 3 Projects

Summary by Phase

Phase 0 Utilize City funding to finish planning overall project and start limited scope property use (\$690,000 Phase cost):

- Scope: 2 grass fields and parking
- City: \$590,000 (budgeted)
- Timing: 2020 project start; early 2021 completion with field use at beginning of 2022
- Secure Sports Park/Operations Expert
- Work with Kohler Company to secure additional land/assistance
- Secure City Commitment for phased funding contingent on Capital Campaign

Phase 0 Budget

Engage Rettler to Finish Phase 0 Construction Plans	\$32,000
Engage Consultant to Conduct Activity Feasibility Study	50,000
Engage McDonald Schaefer to conduct Capital Campaign Feasibility Study	20,000
Other Planning Consultants (EIS, Project Mktg, etc.)	45,000
Park Equipment	30,000
Phase 0 Construction (2 fields & parking)	<u>513,000</u>
Total Budget	<u>690,000</u>

Phase 1 Conduct capital and sponsorship campaigns; Work with Rettler to complete phased plans and construction (\$13.7 Phase cost):

- Scope: 4 turf fields with lights and 10 additional grass fields (16 total); 1 dome positioned on a turf field
- Operations Building (offices/restrooms/concessions/etc) and parking
- Construction start contingent on completion of LUFC Secured Funding
- Construction start - Spring 2022
- Turf field usage - Fall 2022
- Grass field usage – Fall 2023

LUFC Secured Funding

\$2.2 Million in Fundraising
\$0.7 Million in Sponsorships
\$0.8 Million in Grants
\$0.7 Million in Kohler Land Donation
\$0.6 In-Kind

City Funding

\$8.5 Million Bond
\$0.2 Million In-Kind

Phase 2 Convert two grass fields to turf and add 2nd dome (\$4.7 Million Project)

- Scope: Convert Two Grass Fields to Turf and add additional (1) dome
- Construction start contingent on completion of LUFC Secured Funding
- Anticipated construction start - Fall 2024
- Dome usage – Winter 2024
- Turf field usage - Spring 2025

LUFC Secured Funding

\$1.5 Million in Fundraising
\$1.0 Million in Grants
\$0.4 Million in Sponsorship
\$0.1 Million in In-Kind
\$1.5 Million in Private Financing

City Funding

\$0.2 Million In-Kind

Phase 3 Construct stadium field with related buildings and facilities (\$3.5 Million Project)

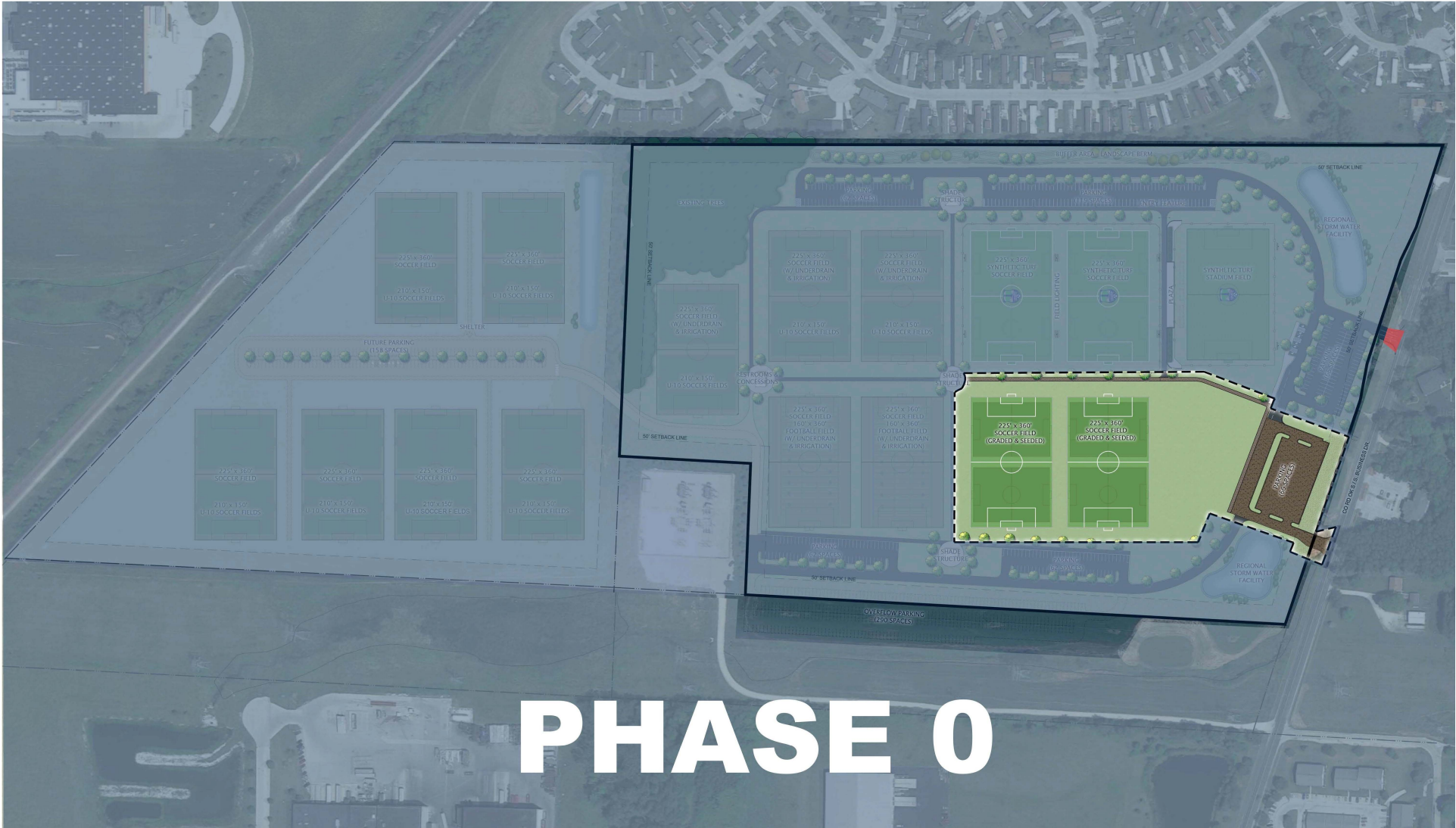
- Scope: Construct stadium field and facilities
- Construction start contingent on completion of LUFC Secured Funding and securing professional team relationship
- Anticipated construction start – Summer 2025
- Stadium usage - Spring 2026

LUFC Secured Funding

\$0.2 Million in Grants
\$0.4 Million in Sponsorship
\$1.5 Million in Private Financing
\$1.0 Million in Professional Partnership/Fundraising

City Funding

\$0.4 Million In-Kind



PHASE 0

