



# **\*\*\*AMENDED\*\*\*NINETEENTH REGULAR COMMON COUNCIL MEETING AGENDA**

**January 04, 2022 at 6:00 PM**

**City Hall, 3rd Floor - Council Chambers, 828 Center Avenue,  
Sheboygan, WI**

"May the dawn of this New Year: Fill your heart with new hopes; Open up new horizons; And bring for you promises of brighter tomorrows. Have a wonderful year ahead!"

This meeting may be viewed LIVE on Charter Spectrum Channel 990, AT&T U-Verse Channel 99 and:  
[www.wcsssheboygan.com/vod](http://www.wcsssheboygan.com/vod).

Notice of the 19th Regular Meeting of the 2021-2022 Common Council at 6:00 PM, TUESDAY, January 4, 2022, in City Hall, 3rd Floor - Council Chambers, 828 Center Avenue, Sheboygan, WI. Persons with disabilities who need accommodations to attend the meeting should contact Meredith DeBruin at the City Clerk's Office, 828 Center Avenue, (920) 459-3361.

Members of the public who wish to participate in public forum remotely shall provide notice to the City Clerk at (920) 459-3361 at least 24 hours before the meeting so that the person may be provided a remote link for that purpose.

## **OPENING OF MEETING**

**1. Roll Call**

*Alderspersons Ackley, Dekker, Felde, Filicky-Peneski, Laster, Mitchell, Perrella, Salazar, Savaglio, Walton may attend meeting remotely*

**2. Pledge of Allegiance**

**3. Approval of Minutes**

*18th Regular Council Meeting held on December 20, 2021*

**4. Confirmation of Mayoral Appointments**

*Kim Meller to the Zoning Board of Appeals*

**5. Public Forum**

*Limit of five people having five minutes each with comments limited to items on this agenda.*

**6. Mayor's Announcements**

*Upcoming Community Events, Proclamations, Employee Recognitions*

## **CONSENT**

**7. Motion to Receive and File all R.O.'s, Receive all R.C.'s and Adopt all Resolutions and Ordinances**

**8. R. C. No. 196-21-22 by Public Works Committee to whom was referred Res. No. 114-21-22 by Alderspersons Dekker and Perrella authorizing City officials to accept the quote from Ovivo USA, LLC for the purchase of the components required to maintain the east influent screens at the Wastewater**

Treatment Plant and to make other expenditures relating to the maintenance of the east influent screens; recommends adopting the Resolution.

- [9.](#) R. C. No. 197-21-22 by Public Works Committee to whom was referred Res. No. 116-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to enter into a contract with Rebuild-it Services Group to replace two clarifier drive units at the Wastewater Treatment Facility, and to make related expenditures; recommends adopting the Resolution.
- [10.](#) R. C. No. 198-21-22 by Public Works Committee to whom was referred Res. No. 119-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to enter into a contract with August Winter & Sons, Inc. to install an aeration blower at the Wastewater Treatment Plant, and to make related expenditures; recommends adopting the Resolution.
- [11.](#) R. C. No. 199-21-22 by Public Works Committee to whom was referred Gen. Ord. No. 35-21-22 by Alderpersons Dekker and Perrella creating a no parking zone on the south side of S. Water Street just west of the intersection of S. Water Street and Virginia Avenue; recommends adopting the Ordinance.

## **REPORT OF OFFICERS**

- [12.](#) R. O. No. 112-21-22 by City Clerk submitting a notice of claim by Wisconsin Public Service Corporation for alleged damages and associated loss of gas service in the area of 1103 Mead Avenue on or about February 19, 2021. REFER TO FINANCE AND PERSONNEL COMMITTEE
- [13.](#) R. O. No. 113-21-22 by City Clerk Submitting a Notice of Claim from Patrick A. Gillette for alleged damages with regard to alleged misconduct by City employees. REFER TO FINANCE AND PERSONNEL COMMITTEE
- [14.](#) R. O. No. 114-21-22 by Finance Director, reporting that, pursuant to Res. No. 66-20-21 authorizing the City Administrator to negotiate settlement of certain claims made by the City of Sheboygan, City Invoice No. 8670, in the amount of \$5,323.34, billed to Vinton Construction Company, regarding damage to a street light pole located on N. 14<sup>th</sup> Street and St. Clair Avenue on July 20, 2021, has been settled with a payment to the City of Sheboygan in the amount of \$4,575.90. REFER TO FINANCE AND PERSONNEL COMMITTEE

## **RESOLUTIONS**

- [15.](#) Res. No. 120-21-22 by Alderpersons Felde and Ackley authorizing the appropriate City officials to enter into a Master Customer Agreement with Motorola Solutions, Inc. and authorizing the Police Chief to execute Ordering Documents under that Master Customer Agreement to the extent funds are appropriated. SUSPEND THE RULES AND ADOPT THE RESOLUTION
- [16.](#) Res. No. 121-21-22 by Alderpersons Felde and Filicky-Peneski authorizing the appropriate City officials to enter into a lease agreement for a replacement postage meter with terms that are acceptable to the City Attorney. SUSPEND THE RULES AND ADOPT THE RESOLUTION

## **REPORT OF COMMITTEES**

### **GENERAL ORDINANCES**

- [17.](#) Gen. Ord. No. 36-21-22 by Alderpersons Felde and Filicky-Peneski re-establishing the salary schedule for certain designated elected officials. REFER TO FINANCE AND PERSONNEL COMMITTEE

### **MATTERS LAID OVER**



18. Res. No. 118-21-22 by Alderpersons Mitchell and Filicky-Peneski establishing a debt service reserve account regarding the City of Sheboygan's Section 108 Loan to renovate 1817 N. 8th Street.

#### **OTHER MATTERS AUTHORIZED BY LAW**

#### **CLOSED SESSION**

- 19.** MOTION TO CONVENE IN CLOSED SESSION under the exemption provided in Sec. 19.85(1)(e), Wis. Stats., where competitive or bargaining reasons require a closed session for the purpose of negotiating with one or more property owners regarding the potential purchase of land on the City's southern border for residential housing.

#### **ADJOURN MEETING**

- 20.** Motion to Adjourn

***In compliance with Wisconsin's Open Meetings Law, this agenda was posted in the following locations more than 24 hours prior to the time of the meeting:***

*City Hall • Mead Public Library  
Sheboygan County Administration Building • City's website*

**CITY OF SHEBOYGAN****EIGHTEENTH REGULAR COMMON COUNCIL MEETING MINUTES****Monday, December 20, 2021**

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**OPENING OF MEETING**

## 1. Roll Call

*Alders Present: Ackley, Dekker, Felde, Filicky-Peneski, Laster, Mitchell, Perrella, Salazar, Savaglio, Walton – 10.*

## 2. Pledge of Allegiance

## 3. Approval of Minutes

*17th Regular Council Meeting held on December 6, 2021 and 3rd Special Council Meeting held on December 16, 2021*

**MOTION TO APPROVE MINUTES**

Motion made by Felde, Seconded by Ackley.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

## 4. Mayoral Appointment

*Kim Meller to the Zoning Board of Appeals – LAYS OVER*

## 5. Confirmation of Mayoral Appointments

*Election inspectors for the two-year term beginning January 1, 2022 and ending December 31, 2023.*

**MOTION TO CONFIRM**

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

## 6. Confirmation of Mayoral Appointments

*Harbor Centre Business Improvement District Board members*

**MOTION TO CONFIRM**

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

## 7. Public Forum

*Limit of five people having five minutes each with comments limited to items on this agenda.  
No one spoke.*

8. Presentation  
*VUEWorks Enterprise Asset Management System by Director of Public Works, David Biebel*
9. Mayor's Announcements  
*Upcoming Community Events, Proclamations, Employee Recognitions*

## CONSENT

10. Motion to Receive and File all R.O.'s, Receive all R.C.'s and Adopt all Resolutions and Ordinances  
Motion made by Felde, Seconded by Filicky-Peneski.  
Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

11. R. C. No. 178-21-22 by Finance and Personnel Committee to whom was referred DIRECT REFERRAL Res. No. 113-21-22 by Alderpersons Mitchell and Filicky-Peneski authorizing the expenditure of American Rescue Plan Act funds to address the room tax revenue losses experienced during 2020 compared to the baseline 2019 amounts; recommends adopting the Resolution.

### MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

12. R. C. No. 181-21-22 by Finance and Personnel Committee to whom was referred Res. No. 103-21-22 by Alderpersons Mitchell and Filicky-Peneski authorizing a transfer related to the 2021 Mayor's Training and Conferences remaining budget to support the City of Sheboygan's International Committee and Sister City program; recommends adopting the Resolution.

### MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

13. R. C. No. 184-21-22 by Public Works Committee to whom was referred Res. No. 107-21-22 by Alderpersons Dekker and Perrella authorizing accepting an easement for a mini-storm sewer (Molitor); recommends adopting the Resolution.

### MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

14. R. C. No. 185-21-22 by Public Works Committee to whom was referred Res. No. 108-21-22 by Alderpersons Dekker and Perrella authorizing executing an easement for a mini-storm sewer (Pilon); recommends adopting the Resolution.

### MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

15. R. C. No. 186-21-22 by Public Works Committee to whom was referred Res. No. 109-21-22 by Alderpersons Dekker and Perrella authorizing executing an easement for a mini-storm sewer (White); recommends adopting the Resolution.

MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

16. R. C. No. 187-21-22 by Public Works Committee to whom was referred Gen. Ord. No. 30-21-22 by Alderpersons Dekker and Perrella creating parking limits so as to add a two-hour parking limit – between 8:00 a.m. and 6:00 p.m., except Sundays and holidays – on a portion of the south side of Union Avenue between S. 14th Street and Henry Street; recommends adopting the Ordinance.

MOTION TO RECEIVE THE R. C. AND ADOPT THE ORDINANCE

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

17. R. C. No. 188-21-22 by Public Works Committee to whom was referred Gen. Ord. No. 31-21-22 by Alderpersons Dekker and Perrella creating a no parking zone on the north side of Union Avenue west of S. 25th Street; recommends adopting the Ordinance.

MOTION TO RECEIVE THE R. C. AND ADOPT THE ORDINANCE

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

18. R. C. No. 189-21-22 by Public Works Committee to whom was referred Gen. Ord. No. 32-21-22 by Alderpersons Dekker and Perrella creating a no parking zone in the vicinity of Greenfield Avenue and S. 9th Street; recommends adopting the Ordinance.

MOTION TO RECEIVE THE R. C. AND ADOPT THE ORDINANCE

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

19. R. C. No. 192-21-22 by Licensing, Hearings, and Public Safety Committee to whom was referred R. O. No. 108-21-22 by City Clerk submitting various license applications; recommends granting the applications.

MOTION TO RECEIVE THE R. C. AND GRANT THE APPLICATIONS

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

20. R. C. No. 193-21-22 by Licensing, Hearings, and Public Safety Committee to whom was referred Res. No. 106-21-22 by Alderpersons Felde and Ackley establishing polling locations for the City of Sheboygan beginning in 2022; recommends adopting the Resolution.

**MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION**

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

21. R. C. No. 194-21-22 by Licensing, Hearings, and Public Safety Committee to whom was referred Res. No. 110-21-22 by Alderpersons Felde and Ackley authorizing the Fire Chief to execute an Agreement with Andres Medical Billing, Ltd. for ambulance billing services on behalf of the City of Sheboygan Fire Department; recommends adopting the Resolution.

**MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION**

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

**REPORT OF OFFICERS**

22. R. O. No. 109-21-22 by City Clerk submitting a claim from Gabrielle McMullen for alleged damages to her vehicle when it was struck by a City plow while parked on Henry Street. REFER TO FINANCE AND PERSONNEL COMMITTEE
23. R. O. No. 110-21-22 by City Clerk submitting a Summons and Complaint in the matter of Kevin L. Siehr et al vs. American Family Insurance Company et al. REFER TO FINANCE AND PERSONNEL COMMITTEE
24. R. O. No. 111-21-22 by City Clerk submitting an application from Partners for Community Development and KG Development Group for a change in zoning classification for property on Erie Avenue (Parcel #59281204550 and Parcel #59281204560) from Class Urban Industrial (UI) to Urban Residential (UR-12) Classification. REFER TO CITY PLAN COMMISSION

**RESOLUTIONS**

25. Res. No. 118-21-22 by Alderpersons Mitchell and Filicky-Peneski establishing a debt service reserve account regarding the City of Sheboygan's Section 108 Loan to renovate 1817 N. 8th Street. LAYS OVER
26. Res. No. 114-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to accept the quote from Ovivo USA, LLC for the purchase of the components required to maintain the east influent screens at the Wastewater Treatment Plant and to make other expenditures relating to the maintenance of the east influent screens. REFER TO PUBLIC WORKS COMMITTEE

27. Res. No. 116-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to enter into a contract with Rebuild-it Services Group to replace two clarifier drive units at the Wastewater Treatment Facility, and to make related expenditures. REFER TO PUBLIC WORKS COMMITTEE

## REPORT OF COMMITTEES

28. R. C. No. 179-21-22 by Finance and Personnel Committee to whom was referred Res. No. 105-21-22 by Alderpersons Mitchell and Filicky-Peneski revising the fee schedule for the Sheboygan Fire Department's ambulance services; recommends adopting the Resolution.

### MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION

Motion made by Mitchell, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

29. R. C. No. 180-21-22 by Finance and Personnel Committee to whom was referred Res. No. 104-21-22 by Alderpersons Mitchell and Filicky-Peneski rescinding the 2019 real estate tax for Parcel No. 59281631523 and authorizing the issuance of a refund for excess property tax paid on Parcel No. 59281631523 to St. Nicholas Hospital Sisters of St. Francis; recommends adopting the Resolution.

### MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION

Motion made by Mitchell, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

30. R. C. No. 182-21-22 by Finance and Personnel Committee to whom was referred Res. No. 102-21-22 by Alderpersons Mitchell and Filicky-Peneski amending Res. No. 119-15-16, pertaining to the sick bank payout procedure set for employees transferred to Sheboygan County in 2016 as a result of the combined dispatch initiative; recommends adopting the Resolution.

### MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION

Motion made by Mitchell, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

31. R. C. No. 183-21-22 by Public Works Committee to whom was referred Res. No. 111-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to enter into a contract with J.H. Hassinger, Inc. for the renovation of 1817 N. 8th Street to be used as the new location for Uptown Social/the Sheboygan Senior Activity Center, and authorizing the appropriate City officials to make the necessary budget adjustments and appropriations to provide funding for this contract; recommends adopting the Resolution.

### MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION

Motion made by Dekker, Seconded by Perrella.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

32. R. C. No. 190-21-22 by Public Works Committee to whom was referred Res. No. 112-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to execute agreements with Ruekert & Mielke Inc. and Data Transfer Solutions, LLC regarding the purchase and implementation of the VUEWorks Enterprise Asset Management System, and authorizing the appropriate City officials to make the necessary budget adjustments and appropriations to provide funding for these agreements; recommends adopting the Resolution as amended.

**MOTION TO RECEIVE THE R. C. AND ADOPT THE SUBSTITUTE RESOLUTION**

Motion made by Dekker, Seconded by Perrella.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

33. R. C. No. 191-21-22 by Public Works Committee to whom was referred DIRECT REFERRAL Res. No. 115-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to enter into a contract with Specht Electric Co., Inc. to replace the generator and perform related electrical upgrades at the Municipal Service Building; recommends adopting the Resolution as amended.

**MOTION TO RECEIVE THE R. C. AND ADOPT THE SUBSTITUTE RESOLUTION**

Motion made by Dekker, Seconded by Perrella.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

34. R. C. No. 195-21-22 by Licensing, Hearings, and Public Safety Committee to whom was referred DIRECT REFERRAL Res. No. 117-21-22 by Alderpersons Felde and Ackley authorizing the appropriate City officials to execute the documents necessary to purchase an ambulance from American Response Vehicles, Inc. for the Sheboygan Fire Department and to make other purchases necessary to equip the new ambulance; recommends adopting the Resolution.

**MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION**

Motion made by Felde, Seconded by Ackley.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.

## **GENERAL ORDINANCES**

35. Charter Ord. No. 1-21-22 by Alderpersons Felde and Filicky-Peneski (being subject to the home rule provisions of § 66.0101 of the Wisconsin Statutes) to establish the office of Director of Senior Services as a position at the department head level and to permit the City Administrator to make interim appointments to fill vacancies in all department head level appointive offices where specific provisions for filling said vacancies is not otherwise provided by state law. REFER TO FINANCE AND PERSONNEL COMMITTEE
36. Gen. Ord. No. 33-21-22 by Alderperson Perrella amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Land Use Classification of property located on Erie Avenue - Parcel #59281204550 and Parcel #59281204560 from Employment to Multi-Family Residential Classification. REFER TO CITY PLAN COMMISSION



37. Gen. Ord. No. 34-21-22 by Alderperson Perrella amending the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located on Erie Avenue – Parcel #59281204550 and Parcel #59281204560 from Class Urban Industrial (UI) to Urban Residential (UR-12) Classification. REFER TO CITY PLAN COMMISSION

#### **OTHER MATTERS AUTHORIZED BY LAW**

38. Res. No. 119-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to enter into a contract with August Winter & Sons, Inc. to install an aeration blower at the Waste Water Treatment Plant, and to make related expenditures. REFER TO PUBLIC WORKS COMMITTEE
39. Gen. Ord. No. 35-21-22 by Alderpersons Dekker and Perrella creating a no parking zone on the south side of S. Water Street and just west of the intersection of S. Water Street and Virginia Avenue. REFER TO PUBLIC WORKS COMMITTEE

#### **ADJOURN MEETING**

40. Motion to Adjourn

MOTION TO ADJOURN AT 6:55 PM

Motion made by Felde, Seconded by Filicky-Peneski.

Voting Yea: Salazar, Walton, Felde, Ackley, Dekker, Perrella, Laster, Savaglio, Filicky-Peneski, Mitchell – 10.



December 15, 2021

HONORABLE MEMBERS OF THE COMMON COUNCIL:

I hereby submit the following appointment for your consideration:

**ZONING BOARD OF APPEALS**

NAME	TERM START	EXPIRES
Kim Meller	04/16/2019	04/18/2022

RYAN SORENSON, MAYOR

**MAYOR'S OFFICE**

CITY HALL  
828 CENTER AVE.  
SHEBOYGAN, WI 53081

920-459-3317  
[www.sheboyganwi.gov](http://www.sheboyganwi.gov)

VIII

R. C. No. 196 - 21 - 22. By PUBLIC WORKS COMMITTEE. January 4, 2022.

Your Committee to whom was referred Res. No. 114-21-22 by Alderpersons Dekker and Perrella authorizing City officials to accept the quote from Ovivo USA, LLC for the purchase of the components required to maintain the east influent screens at the Wastewater Treatment Plant and to make other expenditures relating to the maintenance of the east influent screens; recommends adopting the Resolution.

_____	_____
_____	_____
_____	_____
	Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

III

Res. No. 114 - 21 - 22. By Alderpersons Dekker and Perrella.  
December 20, 2021.

A RESOLUTION authorizing the appropriate City officials to accept the quote from Ovivo USA, LLC for the purchase of the components required to maintain the east influent screens at the Wastewater Treatment Plant and to make other expenditures relating to the maintenance of the east influent screens.

WHEREAS, the influent screens are an important component of the Wastewater Treatment Plant; and

WHEREAS, the influent screens are connected by chains on each edge; and

WHEREAS, these chains have a limited lifespan, and their replacement is contemplated as a part of the maintenance of the influent screen system; and

WHEREAS, the chains which connect the east influent screens have reached the end of their life, and must be replaced (the "Chain Replacement"); and

WHEREAS, because the Chain Replacement does not constitute public construction as that term is used in the Wisconsin Statutes, neither state law nor the City's Procurement Policy require bidding for the materials necessary for the Chain Replacement; and

WHEREAS, it is in the best interest of the City to obtain a new chain and related components from Ovivo USA, LLC ("Ovivo"), who is the original equipment manufacturer of the influent screen system; and

WHEREAS, a purchase order from Ovivo for the necessary components for the Chain Replacement is attached to this Resolution; and

WHEREAS, City Staff are able to install the new chain to complete the Chain Replacement.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City Officials are authorized to accept the quote from Ovivo to purchase the items identified in the quote for the Chain Replacement for \$60,177.64.

PKS  
adepth

BE IT FURTHER RESOLVED: That subject to the appropriation and availability of funds the appropriate City officials are authorized to draw funds, not to exceed \$68,177.64, from Account No. 60138300-631100 to pay for the items from Ovivo for the Chain Replacement and any other miscellaneous hardware or electrical supplies necessary to complete the Chain Replacement.

Dem Dabke  
Frank Pucillo

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



Ovivo USA, LLC  
 4246 Riverboat Road, Suite 300  
 Salt Lake City, UT 84123  
 Phone: (801) 931-3000 Fax: (801)931-3080

## Customer Quote

ATTENTION: Paul Schuette

PHONE NO: (224)629-4060

SOLD TO	CUSTOMER NUMBER 6509	SHIP TO
<b>DRYDON EQUIPMENT, INC.</b>		<b>Sheboygan Regional Wastewater Treatment</b>
<b>EM: accounting@drydon.com</b>		<b>Facility</b>
<b>2445 WESTFIELD DRIVE, SUITE 100</b>		<b>3333 Lakeshore Drive</b>
<b>ELGIN IL 60124-7840</b>		<b>Sheboygan WI 53081</b>
<b>USA</b>		<b>USA</b>

QUOTE #	DATE	TERMS	CUSTOMER RFQ	SALESPERSON	CURRENCY
QSSW105443	11/18/2021	Net 30 days		.DRYDON	USD

L#	Items	Quantity	U/M	Lead Time	Unit Price	Total Value
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Ovivo can also provide you with installation labor services.  
 Please contact us for additional turn-key pricing.

1. Shipment: Approximately 10-11 WEEKS after receipt of purchase order and any required data. Lead times can vary depending on time of order placement and current inventory levels.
2. Quantities: The prices are based on the quantities shown and are subject to increase if a lesser quantity is required.
3. FCA: shipping point
4. Freight: ALLOWED, standard ground shipping only.
5. Packing: Made ready for standard transport.
6. Items quoted per customer provided part numbers.
7. This quote is valid for 30 Days. However, stainless steel parts pricing is valid for 10 days.
8. \$100.00 Minimum Order
9. All sales are final.

DATE: 11/18/2021





Ovivo USA, LLC  
 4246 Riverboat Road, Suite 300  
 Salt Lake City, UT 84123  
 Phone: (801) 931-3000 Fax: (801)931-3080

## Customer Quote

ATTENTION: Paul Schuette

PHONE NO: (224)629-4060

SOLD TO	CUSTOMER NUMBER 6509	SHIP TO
<b>DRYDON EQUIPMENT, INC.</b>		<b>Sheboygan Regional Wastewater Treatment</b>
<b>EM: accounting@drydon.com</b>		<b>Facility</b>
<b>2445 WESTFIELD DRIVE, SUITE 100</b>		<b>3333 Lakeshore Drive</b>
<b>ELGIN IL 60124-7840</b>		<b>Sheboygan WI 53081</b>
<b>USA</b>		<b>USA</b>

QUOTE #	DATE	TERMS	CUSTOMER RFQ	SALESPERSON	CURRENCY
QSSW105443	11/18/2021	Net 30 days		.DRYDON	USD

L#	Items	Quantity	U/M	Lead Time	Unit Price	Total Value
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Ovivo can also provide you with installation labor services.  
 Please contact us for additional turn-key pricing.

1	<b>PART # 696510C</b> ASSY,CHAIN OUTER LINK** Drawing: 696510 REV C	26	EA		756.42	19,666.92
2	<b>PART # 696510A</b> ASSY, CHAIN INNER LINK** Drawing: 696510 REV C	26	EA		1,051.29	27,333.54
3	<b>PART # F10468</b> CAPSCREW,HX HD,316SS, 3/8-16x2-1/2 Drawing: N/A REV _ +	58	EA		1.54	89.32
4	<b>PART # F10466</b> CAPSCREW,HX HD,316SS, 3/8-16x2 Drawing: N/A REV _ +	58	EA		1.16	67.28
5	<b>PART # F12750</b> NUT,HX,NYLOCK,316SS, 3/8-16 (620) Drawing: N/A	116	EA		0.39	45.24
6	<b>PART # F11207</b> WASHER PLN TYPE A-N 3/8 316SS Drawing: N/A	232	EA		0.21	48.72
7	<b>PART # 581584</b> WIPER BLADE NEOPRENE 60 DUR	2	EA		50.98	101.96

DATE: 11/18/2021





Ovivo USA, LLC  
 4246 Riverboat Road, Suite 300  
 Salt Lake City, UT 84123  
 Phone: (801) 931-3000 Fax: (801)931-3080

## Customer Quote

ATTENTION: Paul Schuette

PHONE NO: (224)629-4060

SOLD TO	CUSTOMER NUMBER 6509	SHIP TO
<b>DRYDON EQUIPMENT, INC.</b>		<b>Sheboygan Regional Wastewater Treatment</b>
<b>EM: accounting@drydon.com</b>		<b>Facility</b>
<b>2445 WESTFIELD DRIVE, SUITE 100</b>		<b>3333 Lakeshore Drive</b>
<b>ELGIN IL 60124-7840</b>		<b>Sheboygan WI 53081</b>
<b>USA</b>		<b>USA</b>

QUOTE #	DATE	TERMS	CUSTOMER RFQ	SALESPERSON	CURRENCY
QSSW105443	11/18/2021	Net 30 days		.DRYDON	USD

L#	Items	Quantity	U/M	Lead Time	Unit Price	Total Value
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Drawing: 581584 REV A +

8	<b>PART # 584569</b> MAINCHAIN SEALING PLATE, BLK UHMW Drawing: 584569 REV A	52	EA		43.13	2,242.76
9	<b>PART # 550445</b> CHAIN SPACER UHMW Drawing: 550445 REV B	26	EA		30.77	800.02
10	<b>PART # 553653</b> BASKET PANEL SEAL NEOPRENE Drawing: 553653 REV A	26	EA		21.00	546.00
11	<b>PART # 548550</b> MAIN CHAIN SEAL A NEOPRENE ^ Drawing: 548550 REV A	2	EA		828.11	1,656.22
12	<b>PART # 548547</b> MAIN CHAIN SEAL B NEOPRENE  Drawing: 548547 REV A	4	EA		882.59	3,530.36
13	<b>PART # 553652</b> SCREEN,PROPAPANEL,REMOVE,POLYURETHANE	5	EA		401.93	2,009.65

DATE: 11/18/2021



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<b>EM: accounting@drydon.com</b>		<b>Facility</b>
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<b>ELGIN IL 60124-7840</b>		<b>Sheboygan WI 53081</b>
<b>USA</b>		<b>USA</b>

QUOTE #	DATE	TERMS	CUSTOMER RFQ	SALESPERSON	CURRENCY
QSSW105443	11/18/2021	Net 30 days		.DRYDON	USD

L#	Items	Quantity	U/M	Lead Time	Unit Price	Total Value
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Ovivo can also provide you with installation labor services.  
 Please contact us for additional turn-key pricing.

Drawing: 553652 REV B

14	<b>PART # 553651</b>	5	EA		407.93	2,039.65
	PANEL,SCREEN,PROPAPANEL,POLYURETHANE					

Please submit purchase order to:

Your point of contact is:

Ben Dansie

Aftermarket Parts and Rebuild Specialist  
 Inlet Works  
 Email: benjamin.dansie@ovivowater.com  
 Cell:385-290-9841  
 Fax: 801-931-3080

Drawing: 553651 REV A

DATE: 11/18/2021



Ovivo USA, LLC  
 4246 Riverboat Road, Suite 300  
 Salt Lake City, UT 84123  
 Phone: (801) 931-3000 Fax: (801)931-3080

## Customer Quote

ATTENTION: Paul Schuette

PHONE NO: (224)629-4060

SOLD TO CUSTOMER NUMBER 6509 <b>DRYDON EQUIPMENT, INC.</b> EM: <a href="mailto:accounting@drydon.com">accounting@drydon.com</a> 2445 WESTFIELD DRIVE, SUITE 100 ELGIN IL 60124-7840 USA	SHIP TO <b>Sheboygan Regional Wastewater Treatment Facility</b> 3333 Lakeshore Drive Sheboygan WI 53081 USA
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QUOTE #	DATE	TERMS	CUSTOMER RFQ	SALESPERSON	CURRENCY
QSSW105443	11/18/2021	Net 30 days		.DRYDON	USD

<b>Sale Amount:</b>	<b>60,177.64</b>
<b>Total Amount:</b>	<b>60,177.64</b> USD

- A) The Ovivo USA, LLC Terms and Conditions of Sale are attached and made essential parts of the Ovivo USA, LLC proposal or purchase order confirmation. These terms and conditions replace and supersede any terms and conditions or warranty included in Buyer's or Owner's purchase order, requests for quotation or specifications and cannot be changed without written approval from an authorized representative of Ovivo USA, LLC.
- B) GST and all other taxes are extra, if applicable.
- C) Pricing valid for acceptance 30 days from date of the proposal document, and will be subject to change thereafter.
- D) Shipping shall be (FCA) Free Carrier at point of manufacture unless otherwise stated above. Insurance is the responsibility of Buyer.
- E) Payment terms are stated above.
- F) Duty, freight and brokerage costs are for Buyer's account unless stated otherwise herein.
- G) Minimum billing of \$100 per order.
- H) Notwithstanding any liabilities or responsibilities it has assumed hereunder, Ovivo USA, LLC shall in no event be responsible to Buyer or any third party in contract or in tort, or otherwise, for loss or damage sustained as a result of the operation of the equipment, loss of use, expenses involved in loss of capital claims or Buyer's or Owner's loss of profit or revenues, or any other indirect, incidental, special or consequential loss or damage, whether arising from defects, delay, or any other cause whatsoever.
- I) Current Ovivo USA, LLC paint specifications shall apply unless otherwise specified.
- J) Any and all stock or "off the shelf" parts returned to Ovivo USA, LLC are subject to a re-stocking fee equal to 25% of their respective invoice price. All other parts, including but not limited to customized and special manufactured parts, shall, at the sole discretion of Ovivo USA, LLC be (i) subject to a restocking fee of 45% of their respective invoice price or (ii) non-refundable.

**PLEASE ADDRESS AND SUBMIT YOUR PURCHASE ORDER TO THE ADDRESS INDICATED ABOVE.**





## Terms & Conditions of Sale

**1. ACCEPTANCE.** The proposal of Ovivo USA, LLC ("SELLER"), as well as these terms and conditions of sale (collectively the "Agreement"), constitutes SELLER's contractual offer of goods and associated services, and PURCHASER's acceptance of this offer is expressly limited to the terms of the Agreement. The scope and terms and conditions of this Agreement represent the entire offer by SELLER and supersede all other solicitations, discussions, agreements, understandings and representations between the parties. Any scope or terms and conditions included in PURCHASER's acceptance/purchase order that are in addition to or different from this Agreement are hereby rejected.

**2. DELIVERY.** Any statements relating to the date of shipment of the Products (as defined below) represent SELLER's best estimate, but is not guaranteed, and SELLER shall not be liable for any damages due to late delivery. The Products shall be delivered to the delivery point or points in accordance with the delivery terms stated in SELLER's proposal. If such delivery is prevented or postponed by reason of Force Majeure (as defined below), SELLER shall be entitled at its option to tender delivery to PURCHASER at the point or points of manufacture, and in default of PURCHASER's acceptance of delivery to cause the Products to be stored at such a point or points of manufacture at PURCHASER's expense. Such tender, if accepted or such storage, shall constitute delivery for all purposes of this agreement. If shipment is postponed at request of PURCHASER, or due to delay in receipt of shipping instructions, payment of the purchase price shall be due on notice from SELLER that the Products are ready for shipment. Handling, moving, storage, insurance and other charges thereafter incurred by SELLER with respect to the Products shall be for the account of PURCHASER and shall be paid by PURCHASER when invoiced. Delivery by SELLER of the Products shall constitute acceptance of the Products by PURCHASER, unless written notice of defect or nonconformity is received by SELLER within thirty (30) days of SELLER's delivery of the Products.

**3. TITLE AND RISK OF LOSS.** SELLER shall retain the fullest right, title, and interest in the Products to the extent permitted by applicable law, including a security interest in the Products, until the full purchase price has been paid to SELLER. The giving and accepting of drafts, notes and/or trade acceptances to evidence the payments due shall not constitute or be construed as payment so as to pass SELLER's interests until said drafts, notes and/or trade acceptances are paid in full. Risk of loss shall pass to PURCHASER at the delivery point.

**4. PAYMENT TERMS.** SELLER reserves the right to ship the Products and be paid for such on a pro rata basis, as shipped. If payments are not made by the due date, interest at a rate of two percent (2%) per month, calculated daily, shall apply from the due date for payment. PURCHASER is liable to pay SELLER's legal fees and all other expenses in respect of enforcing or attempting to enforce any of SELLER's rights relating to a breach or threatened breach of the payment terms by PURCHASER. In the event of nonpayment SELLER reserves the further right to seek compensation from any third party in possession of the Products.

**5. TAXES.** Unless otherwise specifically provided in SELLER's quotation/proposal, PURCHASER shall pay and/or reimburse SELLER, in addition to the price, for all sales, use and other taxes, excises and charges, which SELLER may pay or be required to pay to any government directly or indirectly in connection with the production, sale, transportation, and/or use by SELLER or PURCHASER, of any of the Products or services dealt with herein (whether the same may be regarded as personal or real property). PURCHASER agrees to pay all property and other taxes which may be levied, assessed or charged against or upon any of the Products on or after the date of actual shipment, or placing into storage for PURCHASER's account.

**6. MECHANICAL WARRANTY.** Solely for the benefit of PURCHASER, SELLER warrants that new equipment and parts manufactured by it and provided to PURCHASER (collectively, "Products") shall be free from defects in material and workmanship. The warranty period shall be twelve (12) months from startup of the equipment not to exceed eighteen (18) months from the earliest of the notice of readiness to ship or the actual shipment. If any of SELLER's Products fail to comply with the foregoing warranty, SELLER shall repair or replace free of charge to PURCHASER, EX WORKS SELLER'S FACTORIES or other location that SELLER designates, any Product or parts thereof returned to SELLER, which examination shall show to have failed under normal use and service operation by PURCHASER within the Warranty Period, provided that if it would be impracticable for the Product or part thereof to be returned to SELLER, SELLER will send a representative to PURCHASER's job site to inspect the Product. If it is determined after inspection that SELLER is liable under this warranty to repair or replace the Product or part thereof, SELLER shall bear the transportation costs of (a) returning the Product to SELLER for inspection or sending its representative to the job site and (b) returning the repaired or replaced Products to PURCHASER; however, if it is determined after inspection that SELLER is not liable under this warranty, PURCHASER shall pay those costs. For SELLER to be liable with respect to this warranty, PURCHASER must make its claims to SELLER with respect to this warranty in writing no later than thirty (30) days after the date PURCHASER discovers the basis for its warranty claim and in no event more than thirty (30) days after the expiration of the Warranty Period. In addition to any other limitation or disclaimer with respect to this warranty, SELLER shall have no liability with respect to any of the following: (i) failure of the Products, or damages to them, due to PURCHASER's negligence or willful misconduct, abuse or improper storage, installation, application or maintenance (as specified in any manuals or written instructions that SELLER provides to the PURCHASER); (ii) any Products that have been altered or repaired in any way without SELLER's prior written authorization; (iii) The costs of dismantling and reinstallation of the Products; (iv) any Products damaged while in transit or otherwise by accident; (v) decomposition of Products by chemical action, erosion or corrosion or wear to Products or due to conditions of temperature, moisture and dirt; or (vi) claims with respect to parts that are consumable and normally replaced during maintenance such as filter media, filter drainage belts and the like, except where such parts are not performing to SELLER's estimate of normal service life, in which case, SELLER shall only be liable for the pro rata cost of replacement of those parts based on SELLER's estimate of what the remaining service life of those parts should have been, provided, that failure of those parts did not result from any of the matters listed in clauses (i) through (v) above. With regard to third-party parts, equipment, accessories or components not of SELLER's design, SELLER's liability shall be limited solely to the assignment of available third-party warranties. THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW. All warranties and obligations of SELLER shall terminate if PURCHASER fails to perform its obligations under this Agreement including but not limited to any failure to pay any charges due to SELLER. SELLER's quoted price for the Products is based upon this warranty. Any increase in warranty obligation may be subject to an increase in price.

**8. SURFACE COATING.** Any Product coating provided by SELLER shall be in accordance with SELLER's standard practice, unless otherwise agreed in writing.

**9. DRAWINGS AND TECHNICAL DOCUMENTATION.** When PURCHASER requests to approve drawings before commencement of manufacture, shipment may be delayed if approved drawings are not returned to SELLER within fourteen (14) days of receipt by PURCHASER of such drawings for approval. SELLER will furnish only general arrangement, general assembly, and if required, wiring diagrams, erection drawings, installation and operation-maintenance manuals for SELLER's equipment (in English language). SELLER will supply six (6) complete sets of drawings and operating instructions. Additional sets will be paid for by PURCHASER. Electronic files, if requested from SELLER, will be provided in pdf, jpg or tif format only.

**10. SET OFF.** This Agreement shall be completely independent of all other contracts between the parties and all payments due to SELLER hereunder shall be paid when due and shall not be set off or applied against any money due or claimed to be due from SELLER to PURCHASER on account of any other transaction or claim.

**11. SOFTWARE.** PURCHASER shall have a nonexclusive and nontransferable license to use any information processing program supplied by SELLER with the Products. PURCHASER acknowledges that such programs and the information contained therein is Confidential Information and agrees: a) not to copy or duplicate the program except for archival or security purposes, b) not to use the program on any computer other than the computer with which it is supplied, and c) to limit access to the program to those of its employees who are necessary to permit authorized use of the program. PURCHASER agrees to execute and be bound by the terms of any software license applicable to the Products supplied.

**12. PATENT INDEMNITY.** SELLER will defend at its own expense any suit instituted against PURCHASER based upon claims that SELLER's Product hereunder in and of itself constitutes an infringement of any valid

apparatus claims of any United States patent issued and existing as of the date of this Agreement, if notified promptly in writing and given all information, assistance, and sole authority to defend and settle the same, and SELLER shall indemnify the PURCHASER against such claims of infringement. Furthermore, in case the use of the Products is enjoined in such suit or in case SELLER otherwise deems it advisable, SELLER shall, at its own expense and discretion, (a) procure for the PURCHASER the right to continue using the Products, (b) replace the same with non-infringing Products, (c) modify the Product so it becomes non-infringing, or (d) remove the Products and refund the purchase price less freight charges and depreciation. SELLER shall not be liable for, and PURCHASER shall indemnify SELLER for, any claim of infringement related to (a) the use of the Products for any purpose other than that for which it was furnished by SELLER, (b) compliance with equipment designs not furnished by SELLER or (c) use of the Products in combination with any other equipment. The foregoing states the sole liability of SELLER for patent infringement with respect to the Products.

**13. GENERAL INDEMNITY.** Subject to the limitations of liabilities of the parties set forth in this Agreement, each party shall protect and indemnify the other party, its parent and their respective officers, directors, employees and agents from and against all claims, demands and causes of action asserted by or in favor of, if the Products to the extent of the indemnifying party's negligence or willful misconduct in connection with the performance of this agreement.

**14. DEFAULT, TERMINATION.** In the event that PURCHASER becomes insolvent, commits an act of bankruptcy or defaults in the performance of any term or condition of this Agreement, the entire unpaid portion of the purchase price shall, without notice or demand, become immediately due and payable. SELLER at its option, without notice or demand, shall be entitled to sue for said balance and for reasonable legal fees, plus out-of-pocket expenses and interest, and/or to enter any place where the Products are located and to take immediate possession of and remove the Products, with or without legal process, and/or retain all payments made as compensation for the use of the Products; and/or resell the Products, without notice or demand, for and on behalf of the PURCHASER, and to apply the net proceeds from such sale (after deduction from the sale price of all expenses of such sale and all expenses of retaking possession, repairs necessary to put the Products in saleable condition, storage charges, taxes, liens, collection and legal fees and all other expenses in connection therewith) to the balance then due to SELLER for the Products and to receive from the PURCHASER the deficiency between such net proceeds of sale and such balance. PURCHASER hereby waives all trespass, damage and claims resulting from any such entry, repossession, removal, retention, repair, alteration and sale. The remedies provided in this paragraph are in addition to and not limitations of any other rights of SELLER.

**15. CANCELLATION.** PURCHASER may terminate this Agreement for convenience upon giving SELLER thirty (30) days prior written notice of such fact and paying SELLER for all costs and expenses (including overhead) incurred by it in performing its work and closing out the same plus a reasonable profit thereon. All such costs and expenses shall be paid to SELLER within ten (10) days of the termination of the Agreement, or be subject to an additional late payment penalty of five percent (5%) of the total amount of costs and expenses owed.

**16. REMEDIES.** The rights and remedies of the PURCHASER in connection with the goods and services provided by SELLER hereunder are exclusive and limited to the rights and remedies expressly stated in this Agreement.

**17. INSPECTION.** PURCHASER is entitled to make reasonable inspection of Products at SELLER's facility. SELLER reserves the right to determine the reasonableness of the request and to select an appropriate time for such inspection. All costs of inspections not expressly included as an itemized part of the quoted price of the Products in this Agreement shall be paid by PURCHASER.

**18. WAIVER.** Any failure by SELLER to enforce PURCHASER's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

**19. COMPLIANCE WITH LAWS.** If applicable laws, ordinances, regulations or conditions require anything different from, or in addition to that called for by this Agreement, SELLER will satisfy such requirements at PURCHASER's written request and expense.

**20. FORCE MAJEURE.** If SELLER is rendered unable, wholly or in material part, directly or indirectly, by reason of Force Majeure, to carry out any of its obligations hereunder, then on SELLER's notice in writing to PURCHASER within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include, but not be limited to, acts of God, epidemics and pandemics, acts of or delays caused by governmental authorities, changes in laws and regulations, strikes, civil disobedience or unrest, lightning, fire, flood, washout, storm, communication lines failure, delays of the PURCHASER or PURCHASER's subcontractors, breakage or accident to equipment or machinery, wars, police actions, terrorism, embargos, and any other causes that are not reasonably within the control of the SELLER. If the delay is the result of PURCHASER's action or inaction, then in addition to an adjustment in time, SELLER shall be entitled to reimbursement of costs incurred to maintain its schedule. For the avoidance of doubt, if the cause relied upon has commenced prior to the Parties entered into a contracting relationship, it shall not render the cause void and/or not capable of being included within the definitions of Force Majeure, as listed within this Article 20.

**21. INDEPENDENT CONTRACTOR.** It is expressly understood that SELLER is an independent contractor, and that neither SELLER nor its principals, partners, parents, subsidiaries, affiliates, employees or subcontractors are servants, agents, partners, joint ventures or employees of PURCHASER in any way whatsoever.

**22. SEVERABILITY.** Should any portion of this Agreement, be held to be invalid or unenforceable under applicable law then the validity of the remaining portions thereof shall not be affected by such invalidity or unenforceability and shall remain in full force and effect. Furthermore, any invalid or unenforceable provision shall be modified accordingly within the confines of applicable law, giving maximum permissible effect to the parties' intentions expressed herein.

**23. CHOICE OF LAW, CHOICE OF VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Utah, without regard to its rules regarding conflicts or choice of law. The parties submit to the exclusive jurisdiction and venue of the state and federal courts located in Salt Lake City, Utah.

**24. ASSIGNMENT.** PURCHASER shall not assign or transfer this Agreement without the prior written consent of SELLER. Any attempt to make such an assignment or transfer shall be null and void. SELLER shall have the authority to assign, or otherwise transfer, its rights and obligations in connection with this Agreement, in whole or in part, upon prior written notice to PURCHASER.

**25. LIMITATION ON LIABILITY.** To the extent permissible by law, SELLER shall HAVE NO FURTHER LIABILITY IN CONNECTION WITH THIS AGREEMENT in excess of the amount paid by purchaser for the products giving rise to such liability. Notwithstanding any liabilities or responsibilities assumed by SELLER hereunder, SELLER shall in no event be responsible to PURCHASER or any third party, whether arising under contract, tort (including negligence), strict liability, or otherwise, for loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, loss of data, service interruptions, cost of purchased or replacement power, cost of money, loss of use of capital or revenue or any other indirect, incidental, special, punitive, exemplary, or consequential loss or damage, whether arising from defects, delay, or from any other cause whatsoever.

**26. PRIVACY AND DATA PROTECTION.** Seller has put in place rigorous safeguards and procedures regarding privacy and data protection, notably the Ovivo Privacy Policy ([ovivowater.com/privacy-policy](http://ovivowater.com/privacy-policy)), and requires that Purchaser adhere to its data protection principles to the extent applicable to Purchaser.

**27. DATA COLLECTION.** PURCHASER consents to the collection of the Products operational data and to the use of such data for the purpose of improving the Products and other purposes stated herein. PURCHASER further agrees that such data collection does not constitute a performance monitoring service or duty by SELLER.

**28. INSURANCE.** SELLER shall maintain that its current levels of insurance for the duration of the Project, as set forth in its standard certificate of insurance, available upon request.

**29. BONDS.** If PURCHASER deems it necessary, and within ten (10) days of PURCHASER's request, SELLER shall provide one or more Bonds in favor of PURCHASER, at PURCHASER's expense, by an institution, and in form approved in advance by SELLER.

**30. PERMITS.** PURCHASER shall be solely responsible to obtain and maintain in force all necessary permits with respect to any products to be provided by SELLER hereunder and any intended use by PURCHASER.

REVISED - March 2020



VIII

R. C. No. 197 - 21 - 22. By PUBLIC WORKS COMMITTEE. January 4, 2022.

Your Committee to whom was referred Res. No. 116-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to enter into a contract with Rebuild-it Services Group to replace two clarifier drive units at the Wastewater Treatment Facility, and to make related expenditures; recommends adopting the Resolution.

_____	_____
_____	_____
_____	_____
	Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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



Res. No. 116 - 21 - 22. By Alderpersons Dekker and Perrella.  
December 20, 2021.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with Rebuild-it Services Group to replace two clarifier drive units at the Wastewater Treatment Facility, and to make related expenditures.

WHEREAS, Primary Clarifier #3 and Final Clarifier #1 are important components of the Wastewater Treatment Facility and, due to age and other factors, the drive units in these clarifiers are near end of life; and

WHEREAS, the replacement of these drive units is planned as part of the Capital Improvements Plan; and

WHEREAS, Staff proposes to replace the current drive units with rebuilt OEM drives (the "Project"); and

WHEREAS, because this Project does not constitute public construction as that term is used in the Wisconsin Statutes, neither state law nor the City's Procurement Policy require bidding for this Project; and

WHEREAS, based on Staff's experience, expertise, and recommendation, contracting with Rebuild-it Services Group for the Project is in the best interest of the City; and

WHEREAS, in order to complete the Project, it is necessary to drain the clarifier basins, which provides an opportunity to do other maintenance items on Primary Clarifier #3 and Final Clarifier #1 (the "Related Work"); and

WHEREAS, while the clarifier basins are drained, Staff anticipates issuing a purchase order to Crane Engineering - pursuant to its authority under the City's Procurement Policy - in the amount of approximately \$33,000 for maintenance work related to the walls and floors of the clarifier basins; and

WHEREAS, while the clarifier basins are drained, City Staff also anticipates performing preventative maintenance, which may necessitate some amount of expenditure for materials and contracted services; and

WHEREAS, the estimated total cost of the Related Work, including the work done by Crane Engineering, and contingency for the Project is \$64,900.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into the attached contract with Rebuild-it Services Group for the Project in the amount of \$131,530.00.

PRO  
adopt

BE IT FURTHER RESOLVED: That the appropriate City officials are authorized to draw funds, not to exceed \$196,430.00 (which includes the contract amount with Rebuild-it Services Group, the estimated cost of the Related Work, and a contingency for the Project), from Account No. 60138300-631100.

*Dean Dohke*

*Grant P. Puck*

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  
REBUILD-IT SERVICES GROUP, LLC**

**TO REBUILD AND INSTALL TWO DRIVE UNITS AT THE WASTEWATER  
TREATMENT PLANT**

This Agreement ("Agreement") is made and entered into effective this 8<sup>th</sup> day of December, 2021 (the "Effective Date"), by and between the City of Sheboygan (the "City"), a municipal corporation, and Rebuild-it Services Group, LLC ("Contractor").

WITNESSETH:

WHEREAS, the City has determined that the drive unit of Primary Clarifier #3 at the Wastewater Treatment Plant is in need of replacement; and

WHEREAS, the City has determined that the drive unit of Final Clarifier #1 at the Wastewater Treatment Plant is in need of replacement; and

WHEREAS, Contractor is willing and able to provide the City with the necessary parts and services in order to replace the drive units of Primary Clarifier #3 and Final Clarifier #1 pursuant to 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**

Contractor shall provide all services, materials, labor, and tools necessary to: (1) replace the current C54 Drive Unit on Primary Clarifier #3 with a refurbished C54 drive unit, and (2) replace the current C40 Drive Unit on Final Clarifier #1 with a refurbished C40 drive unit (collectively the "Project"). The Project shall be done pursuant to Contractor's Proposal No. Q123599-A. The Scope of Work for Proposal No. Q123599-A (pages 1-4) is attached to this Agreement as Exhibit A.

The Pricing and Payment Terms, Warranty & Terms and Conditions, and Terms and Conditions from Proposal No. Q123599-A are explicitly not incorporated into this Agreement. The operative Pricing, Payment, Warranty, and other Terms and Conditions are found in this Agreement.

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

Contractor shall promptly make payment to each and every person or entity entitled to payment for work or labor performed or materials furnished in the performance of this Agreement.

## **Article 2. Standard of Care**

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

Contractor shall be responsible to repair any damage incurred during the Project.

## **Article 3. Warranty**

Contractor warrants all new parts and equipment sold or rebuilt by Contractor to be free from defects in material and workmanship, and will replace or repair, F.O.B. its factories or other location designated by Contractor, any part or parts returned to it which Contractor's examination shall show to have failed under normal use and service by the City within the earlier of: (1) two years following Final Acceptance of the Project and (2) two years and six months following the shipment of the parts and equipment to the City.

Warranty repair or replacement shall be free of charge for all items, except for those items—such as resin, filter media, and the like—that are consumable and normally replaced during maintenance, with respect to which, repair or replacement shall be subject to a pro-rata charge based on Contractor's estimate of the percentage of normal service life realized from the part. Contractor's obligation under this warranty is conditioned upon its receiving prompt notice of claimed defects, which shall in no event be later than thirty (30) days following expiration of the warranty period, and is limited to repair or replacement as aforesaid.

This warranty is expressly made by Contractor and accepted by the City in lieu of all other warranties, including warranties of merchantability and fitness for particular purpose, whether written, oral, express, implied, or statutory. Contractor shall not be liable for normal wear and tear, corrosion, or any contingent, incidental, or consequential damage or expense due to partial or complete interoperability of its equipment for any reason whatsoever.

This warranty shall not apply to equipment or parts which are altered or repaired outside of Contractor's factory, or damaged by improper maintenance, or subjected to misuse, abuse, neglect, accident, or incomplete adherence to all manufacturer's requirements, including, but not limited to, Operations & Maintenance Manual guidelines & procedures.

For the avoidance of doubt, Contractor makes no warranty with respect to parts, accessories, or components purchased by the customer from others.

## **Article 4. Responsibilities of the City**

The City designates Steve Jossart as its designated project manager for purposes of this Agreement.

The City's project manager shall be responsible for final acceptance of the Project. The Project will be deemed accepted unless written notice of non-acceptance is received by Contractor within seven (7) days of Contractor representing that the Project is complete.

**Article 5. Compensation**

The City shall pay Contractor for all fees and expenses related to the Project in an amount not to exceed \$131,530.00, not to exceed the categories set forth below:

C54 Rebuilt Drive Unit, as described in Exhibit A	\$28,862.00
Worm Gear	\$ 4,792.00
Worm Shaft	\$ 3,156.00
C40 Rebuilt Drive Unit, as described in Exhibit A	\$25,958.00
Labor for Installation of Drive Units and Skimming Mechanism / Scum Box	\$60,136.00

Upon completion of the Project, Contractor shall submit an invoice to the City.

Unless additional services are added to the Project, pursuant to the process set forth in this Article, in no event shall the invoiced amount exceed the not to exceed amount.

The invoice shall be sent to:

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

Payment will be remitted to Contractor within sixty (60) days of receipt of invoice.

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

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

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



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

**Article 6. 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 7. Schedule**

The Project shall proceed according to the schedule agreed to by the City's Project Manager and the Contractor.

Unless the City's Project Manager and the Contractor agree in writing to the contrary, the Project, and all invoices related to the Project, shall be complete by July 1, 2022. Completion of the Project shall mean all necessary steps have been performed and are satisfactory to the City. Therefore, any "punch list" items shall also be complete by July 1, 2022.

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

**Article 8. Quality of Materials**

The City expressly recognizes that the rebuilt drive unit consists of new and used components. Used components have been refurbished to like new condition.

**Article 9. Safety Requirements**

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

**Article 10. Open Records**

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 that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those

records shall be maintained for a period of seven (7) years after receipt of final payment under the Agreement.

#### **Article 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. Contractor shall terminate or suspend performance of the Project on a schedule acceptable to the City and the City shall pay Contractor for all the Project 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 the Project.

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

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

The City shall send Contractor a written notice of default. If Contractor, within a period of seven (7) days after such notice, fails to remedy the default, then the City shall have full power and



authority, without violation of the Agreement, to take the prosecution of the work out of the hands of Contractor, as set forth in this Agreement.

**Article 13. Identity of Contractor**

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

**Article 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 sub-contractors be construed to be, or represent themselves to be, employees of the City. Contractor shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of its employees.

**Article 15. Indemnification**

To the extent permitted by law, Contractor shall indemnify, defend, and hold the City—including its Officials, Agents, and Employees—free and harmless from all liability, including, but not limited to, losses, damages, costs, attorney's 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.

Contractor shall reimburse the City for any costs, expenses, judgments, and attorney's 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 arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall further indemnify, defend, and 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.

**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 the Project pursuant to this Agreement, Contractor shall maintain the following insurance in full force and effect, and shall provide proof of insurance to the Purchasing Agent listing the City of Sheboygan as an additional insured:

a. Workers' Compensation Insurance — Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements. In the event this Agreement authorizes any work to be sublet, Contractor shall require any subcontractor to similarly provide Workers' Compensation Insurance in accordance with all statutory requirements.

b. Commercial General Liability Insurance — Contractor shall acquire and maintain, for the duration of the Agreement, Commercial General Liability Insurance with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

All insurance must be primary and non-contributory to any insurance or self-insurance carried by the City.

Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor's provision of the Project 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 the Project pursuant to 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 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 to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**Article 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.

**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.

**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**

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

**Article 24. Compliance with Laws**

In performing the Project pursuant to this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans, and regulations which in any manner affect the work or its conduct.

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	Terry A. Reyburn
City of Sheboygan	Rebuild-it Services Group, LLC
828 Center Ave.	<del>6810 South 300 West, Suite 8</del> 4188 W NIKE DRIVE
Sheboygan, Wisconsin 53083	<del>Midvale, Utah 84047</del> West Jordan, UT 84088

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

**Article 29. Non-Collusion**

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

- a. The prices in its proposal, as incorporated into this Agreement, were arrived at independently, without collusion, consultation, communication, or agreement, for the

purpose of restricting competition as to any other matter relating to such prices with any other bidder, or with any other competitor.

- b. The prices quoted in its proposal were not knowingly disclosed—directly or indirectly—by Contractor to any other competitor prior to submission of the proposal.
- c. No attempt was made to induce any other person, partnership, or corporation to submit or not submit a proposal for the purpose of restricting competition.

### **Article 30. Other Provisions**

- a. 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).
- b. Advertising and News Releases. Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City.
- c. 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.
- d. Neither Party the Drafter. Despite the possibility that one party or its representatives may have prepared the initial draft of this Agreement (or any provision thereof), or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them shall be deemed the drafter of this Agreement.
- e. 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.

- f. Solvency. Contractor warrants that it is financially solvent, and agrees to provide any documents reasonably requested by the City in order to confirm that Contractor is financially solvent.

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

**CITY OF SHEBOYGAN, WISCONSIN**

**BY:** \_\_\_\_\_  
Ryan Sorenson, Mayor

**ATTEST:** \_\_\_\_\_  
Meredith DeBruin, City Clerk

**DATE:** \_\_\_\_\_

**CONTRACTOR**

**BY:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_

**DATE:** 12/3/2021

Authorized by Resolution No. \_\_\_\_-21-22.



**AGREEMENT  
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND  
AUGUST WINTER & SONS, INC.**

**REGARDING INSTALLATION OF AN AERATION BLOWER  
AT THE SHEBOYGAN WASTEWATER TREATMENT FACILITY**

This Agreement ("Agreement") is made and entered into effective this 11<sup>th</sup> day of January, 2022 (the "Effective Date"), by and between the City of Sheboygan (the "City"), a municipal corporation, and August Winter & Sons, Inc. ("Contractor").

WITNESSETH:

WHEREAS, the City is the owner of the Wastewater Treatment Facility at 3333 Lakeshore Drive, Sheboygan, Wisconsin (the "Treatment Facility"); and

WHEREAS, the City has separately contracted with Lone Star Blower, Inc. to purchase an aeration blower; and

WHEREAS, the City wishes to have the aeration blower unit installed at the Treatment Facility; and

WHEREAS, the City issued Request for Bids 1998-21 to obtain bids from qualified providers of the services needed to complete the installation and other related work (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, Contractor desires to provide the City with the necessary Services under the terms set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

**Article 1. Scope of Services**

Contractor shall complete the Services necessary to install the aeration blower and associated piping and safety railings pursuant to the Project Manual, which is attached to this Agreement as Exhibit I. This includes the provision of all necessary labor, equipment, licenses, permits<sup>1</sup>, and travel expenses.

Any quantities shown in the Project Manual are based on estimated needs. The City reserves the right to increase or decrease quantities to meet actual needs.

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

For the avoidance of doubt, the City is responsible for purchasing the aeration blower to be installed, and will be responsible for: (1) moving the blower into the Treatment Facility and into its approximate position (Contractor will be responsible for moving it to final position and leveling); (2) final connection to electrical power; and (3) purchase of an inlet silencer.<sup>2</sup>

Contractor shall provide an itemized material list to the City's Representative. The City will provide a tax-exempt certificate to Contractor for any approved purchase made by Contractor from vendors related to the Services.

### **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 Steve Jossart as its Representative for purposes of this Agreement. If the City's Representative deems it appropriate, the City's Representative 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 Representative observes any work performed by the Contractor to not be in conformity with the Agreement, the City's Representative 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 \$72,000.00 ("Contract Amount").

Contractor shall submit an invoice to the City on a monthly basis, which shall be based on the percentage of the Services described in Article 1 completed. Contractor shall provide sufficient information for the City to evaluate the percent of the Services completed. Invoices shall be sent via first class mail postage prepaid. Payment will be remitted to Contractor within forty-five (45) days of receipt of the invoice.

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<sup>2</sup> These items may be done by the City or by another contractor. They are not the responsibility of Contractor under this Agreement.



The invoice shall be sent to:

Steve Jossart, Superintendent  
City of Sheboygan Wastewater Facility  
3333 Lakeshore Drive  
Sheboygan, Wisconsin 53081

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

The City shall retain 10% of each invoice until Final Acceptance. Additionally, the City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following ("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.
- Liquidated damages due to the City.

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 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 Final Payment will be paid. If any lien remains unsatisfied after payments are made, Contractor shall refund to the City such amounts as the City may have been compelled to pay in discharging such liens, including all costs and fees.

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 15 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 accordance with the EJCDC forms included with the bid documents, 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. Failure by Contractor to make necessary payments to suppliers or subcontractors may result in forfeiture of Contractor's Payment 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 May 15, 2022, 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. Liquidated Damages**

In the event that Contractor does not complete the Services by the Deadline, there shall be deducted from any monies due or that may become due to Contractor, for each and every calendar day that the work remains uncompleted, a sum of \$400.00 per calendar day.

This sum shall be considered and treated not as a penalty but as fixed, agreed, and liquidated damage due the City from Contractor by reason of inconvenience to the public, added cost of supervision, and other items which have caused an expenditure of public funds resulting from his failure to complete the work.

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

### **Article 9. Workmanship and Quality of Materials**

Contractor's Warranty for the Services is set forth in the Project Manual.

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 10. 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 its 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 11. Access to Records**

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 later of 7 years after receipt of Final Payment under the Agreement or disposition of all such litigation, appeals, claims, or exceptions related thereto.

**Article 12. 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 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.

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 Agreement, the Contractor may – upon 7 days written notice to the City – terminate the Agreement and recover from the City 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.

For the avoidance of doubt, the specific remedies identified in this Article 12 are not exclusive.

### **Article 13. 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 14. Identity of Contractor**

Contractor acknowledges that one of the primary reasons for its selection by the City to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the City<sup>3</sup>. 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 15. 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

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<sup>3</sup> 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.



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 16. 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, claims, actions, causes of action, liens, losses, damages, costs, legal fees, expenses, 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.

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.

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 17. 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. Unemployment and Social Security – Contractor shall acquire and maintain, for the duration of the Agreement, Unemployment and Social Security Insurance that meets all statutory requirements.
- b. Workers' Compensation Insurance – Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements.

- c. Commercial General Liability Insurance – Contractor shall acquire and maintain, for the duration of this Agreement, Commercial General Liability Insurance with a policy limit of at least \$1,000,000 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.
- d. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. Notices**

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

**City:**

**Contractor:**

City Clerk	<i>Travis Glennon</i>
City of Sheboygan	<i>August Winter &amp; Sons, Inc.</i>
828 Center Ave.	<i>2323 N. Adams Rd.</i>
Sheboygan, Wisconsin 53083	<i>Appleton, WI 54911</i>

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

#### **Article 27. 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 28. 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 29. 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 Exhibit 1
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 30. 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 31. 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. 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.
6. 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.
7. Definitions.
  - a. Final Acceptance: The event that occurs when 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**

BY: 

Ryan Sorenson, Mayor

ATTEST: 

Meredith DeBruin, City Clerk

DATE: 1-25-2022

**CONTRACTOR**

BY: 

Travis Glennon, Assistant Secretary

ATTEST: 

DATE: 1-11-2022

Approved by Res. No. 119 -21-22.

**1.1 PROTECTION OF PERSONS**

- A. Work shall be executed in compliance with the Federal Occupational Safety and Health Act and the Wisconsin Administrative Code, Chapter 35, Safety in Construction.

**1.2 APPLICATION OF THIS DIVISION OF THE SPECIFICATIONS**

- A. The work is subject to the requirements of the Instructions to Bidders and this Division 1.
- B. The Contractor is fully responsible for seeing that no work shown is inadvertently left out.

**1.3 INTENT OF CONTRACT DOCUMENTS**

- A. The Sections of the Contract Document and the Contract Drawings are complementary and what is called for by any one shall be binding as if called for by all. The intention of the Contract Document is to include in the contract price the cost of all labor and materials, water, fuel, tools, plants, equipment, light, transportation, and all other expenses as may be necessary for the proper execution and completion of the work included in the Contract.
- B. In interpreting the Contract Documents, words describing materials which have a well-known technical or trade meaning unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well known meanings recognized by Architects, Engineers, and the trade.
- C. Any work shown on the Contract Drawings and not covered in the Contract Specifications, or included in the Contract Specifications and not shown on the Contract Drawings, shall be executed by the Contractor as though both shown on the Contract Drawings and included in the Contract Specifications. If the Contract Drawings and the Specifications should be contradictory in any part, the Contract Specifications shall *govern*.

**1.4 SCOPE OF WORK**

- A. The Contract work shall include the furnishing of all labor, materials, equipment, transportation, appliances and services necessary to complete all work shown or reasonably inferred on the drawings and/or as described in the specifications.
- B. The City of Sheboygan will be responsible for:
- Setting the new blower in position and levelling.
  - Final Connection to electrical power.
  - Purchase of an inlet silencer.
- C. The Contractor will be responsible to:
- Supply and install all necessary piping materials including hangers, supports, fasteners;
  - Supply and install all materials and labor to fabricate and install safety handrails in accordance with the specifications;
  - Make up and install discharge piping and isolation valves in accordance with the plans and specifications including the discharge line through the roof and connection to the main header;
  - All piping to be fabricated out of Schedule 10, 304 Stainless Steel with painted carbon steel backing flanges.
  - There is an existing roof penetration which may need to be modified by the Contractor during installation.



- The Contractor will work with Operations Staff to isolate the header during installation.
- Contractor will be responsible to make up and install all inlet piping in accordance with the drawings. All inlet piping to be Schedule 10, 304 Stainless Steel with painted carbon steel backing flanges.
- Installation will require cutting of a new penetration through the East wall and routing the inlet piping to the roof. Resealing of the opening following installation is the responsibility of the Contractor.
- All piping supports will be fabricated from 304 Stainless Steel and attached with Stainless Steel Hardware.
- The Contractor will be responsible to install the owner-provided inlet silencer.
- The contractor will be responsible to modify and re-seal the roof penetration following installation.

#### 1.5 OWNER'S REPRESENTATIVE

- A. All work under this Contract will be regularly viewed by the Owner's Representatives. Owner's Representatives will regularly visit the site of the project and observe the work for conformity with the Contract Documents, and will immediately report any lack of conformity to the Contractor.
- B. The Owner's Representatives will have authority to stop any portion of the work not in conformity with the Documents until the Owner has investigated and decided upon procedure.
- C. No work aside from that performed during the regular work week will be allowed unless prior due notice is given to the Owner or to the Owner's Representatives. Any work performed without prior notice and approval to do so may be required to be removed for inspection at Contractor's expense.

#### 1.6 SUPERINTENDENCE

- A. 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 Owner and having the authority to act for the Contractor.
- B. Insofar as is practicable, and excepting in the event of discharge by the Contractor, or in the event of proven incompetence, the individual who has been accepted by the Owner to represent the contractor shall so act, and shall follow without delay instructions of the Engineer in the completion of the work in conformity with the contract.

#### 1.7 LABOR

- A. The Contractor shall employ none but competent and skilled workmen and foremen in the prosecution of work on this Contract. The Owner 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 or those of the Engineer or Inspectors, relating to the carrying out of the provisions and intent of the provisions of the Contract, or who is incompetent, unfaithful, abusive, threatening or disorderly in his conduct, and any such person shall not again be employed on this project.

#### 1.8 FIRE PROTECTION

- A. 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.

#### 1.9 LAWS, REGULATIONS, FEES AND PERMITS

- A. The Contractor shall comply with all laws, ordinances, rules and regulations of the local Building Inspection Department, Fire Department, Health Department, Department of Water Supply, Gas and Electricity, Department of Highways and all State and Federal agencies having jurisdiction.
- B. Contractor shall obtain and pay for all necessary permits, fees and inspections required by such agencies. **Note: City Building Inspection does not waive permit fees for other City Departments.**
- C. Contractor shall pay for legitimate costs required by private utility and communication companies.

#### 1.10 WATCHMEN AND OTHER SAFEGUARDS

- A. The Contractor shall provide the necessary safeguards including, but not limited to, warning signs and barricades to prevent accidents, to avoid all necessary hazards, and protect the public, the work and the property at all times, including Saturdays, Sundays, holidays and other times when no work is being done.
- B. Neither the Owner nor the Engineer shall be responsible for any loss or damage to the project materials, tools, equipment, etc., from any cause whatsoever.

#### 1.11 CODES AND STANDARDS

- A. All materials and workmanship shall comply with all applicable codes, specifications, local ordinances, industry standards and utility company regulations.
- B. In case of difference between building codes, specifications, state laws, local ordinances, industry standards and utility company regulations and the Contract Documents, the most stringent shall govern. The Contractor shall promptly notify the Engineer in writing of any such difference.
- C. Non-compliance: Should the Contractor perform any work that does not comply with the requirements of the applicable building codes, state laws, local ordinances, industry standards and utility company regulations, he shall bear all costs arising in correcting the deficiencies.
- D. 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 Electrical 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 Inst.
    - c. ASME- American Society of Mechanical Engineers
    - d. ASTM- American Society of Testing Materials
    - e. IPCEA- Insulated Power Cable Engineers Assoc.
    - f. NBS- National Bureau of Standards
    - g. NEMA- National Electrical Manufacturers Assoc
    - h. NFPA- National Fire Protection Assoc.
    - i. OSHA- Occupational Safety and Health Act
    - j. UL- Underwriters Laboratories
    - k. MSS - Manufacturers Standardization Society



- l. AISC -American Institute of Steel Construction
- m. AWS -American Welding Society
- n. ACCA- Air Conditioning Contractors of America
- o. Air Conditioning and Refrigeration Institute
- p. American Society of Heating, Refrigerating and Air Conditioning Engineers
- q. SMACNA- Sheet Metal and Air Conditioning Contractors National Association

#### 1.12 CUTTING AND PATCHING

- A. The Contractor shall be responsible for all required cutting, etc., and shall make all required repairs thereafter to satisfaction of the Engineer, but in no case shall the Contractor cut into any major structural element, beam or column without the written approval of the Engineer.

#### 1.13 INSURANCE AND LIABILITY

- A. The Contractor and the Surety will be held responsible for and shall save the Owner harmless from all liability for damages occasioned by the digging up, use or occupancy of the street, alley, highway, public grounds and private grounds or which may result therefrom, or which may result in any way from the negligence or carelessness of the Contractor, his agents, employees or workmen; or by reason of the elements, unforeseen or unusual difficulties, obstructions, or obstacles encountered in the prosecution of the work; and they shall indemnify the Owner for and save it harmless from all claims and liabilities, actions and causes of action, and liens for materials furnished or labor performed in the construction or execution of the work, and from all costs, charges and expenses incurred in defending such suits or actions, and from and against all claims and liabilities for injury or damage to persons or property emanating from defective or careless work methods, or from and against all claims or liabilities for royalties, license fees, actions, suits, charges and expenses or damage from infringement for reason of the use of any invention or improvement in tools, equipment or plant or any process, device or combination of devices used in the construction of the work.
- B. The Contractor shall not commence work under a Contract until he has obtained all insurance required under this paragraph and has filed certificates thereof with the Owner, nor shall the Contractor allow a Subcontractor to commence work until all similar insurance required has been so obtained and filed.
- C. Workmen's Compensation
  - 1. Statutory coverages as required by chapter 102 of the Revised Statutes of the State of Wisconsin and all acts amendatory thereof and supplementary thereto, for all employees of the contractor. All subcontractors shall furnish to the Contractor and to the Owner, evidence of similar insurance for all of their respective employees unless such employees are covered by the protection afforded by the contractor.
- D. Comprehensive General Liability and Property Damage Insurance
  - 1. Coverage to include operations; contractor's protective insurance, products coverage and completed operations; contractual coverage; underground coverage; blasting, explosion and collapse; all subject to the following limits:
  - 2. Bodily Injury \$1,000,000 per Person  
\$2,000,000 Aggregate
  - 3. Property Damage \$500,000 per Occurrence  
\$500,000 Aggregate
- E. Comprehensive Automobile Liability and Property Damage
  - 1. Operation of owned, hired and non-owned motor vehicles:
  - 2. Bodily Injury \$1,000,000 per Person  
\$1,000,000 per Occurrence
  - 3. Property Damage \$1,000,000 per Occurrence

- F. If the Contractor is employing Subcontractors or hiring pieces of equipment from another firm/contractor, said Contractor must furnish certificates of insurance for each to the Owner.

Item 10.

#### **1.14 LAWS TO BE OBSERVED**

- A. The Contractor shall give all notices and comply with all Federal, State and Local laws, ordinances and regulations in any manner affecting the conduct of the work and all such orders and degrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the Owner against any claim or liability arising from, or based on, the violation of any such law, ordinance, regulation, order or decree, whether by himself or his employees.

#### **1.15 PUBLIC SAFETY AND CONVENIENCE**

- A. The Contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic and the least possible inconvenience to the general public and to the employees of the Owner.

#### **1.16 USE OF JOB SITE**

- A. The Contractor shall confine his equipment, apparatus, the storage of materials and operations of his workman to limits indicated by the law, ordinances, permit or directions of the Owner and shall not encumber the premises with his materials.
- B. 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 Owner's instructions regarding signs, advertisements, fires and smoke.

#### **1.17 SCHEDULE OF VALUES**

- A. The Contractor shall within ten (10) days of receipt of notice to proceed, 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. Upon approval of the breakdown of the Contract Amount by the Engineer, it shall be used as the basis for all Requests for Payment.

#### **1.18 REQUESTS FOR PAYMENT**

- A. The Contractor may submit periodically but not more than once each month a Request for Payment of work done on the site and materials delivered and stored on the site. The Contractor shall furnish the Engineer all reasonable facilities required for obtaining the necessary information relative to the progress and execution of the work. Payment for materials stored on the site will be conditioned upon evidence submitted to establish the Owner's title to such materials. 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 completion and acceptance of the work and less previous payments.
- B. The Contractor shall be required to file waivers of lien from all suppliers, subcontractors, etc., with the Owner prior to receiving payment on the project.

#### **1.19 RELEASE OF LIENS**

- A. The Contractor shall deliver to the Owner a complete release of all liens arising out of this Contract before the retained percentage or before the final Request for Payment is paid. If any lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens, including all costs and a reasonable attorney's fee.

#### **1.20 PATENTS**

- A. The Contractor shall pay for all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

#### **1.21 COOPERATION WITH OWNER**



- A. Personnel in the employ of the Contractor or any of his subcontractors, either directly or indirectly, are prohibited from using any existing facilities on adjacent property or trespassing in or about adjacent facilities.

## 1.22 SUBCONTRACTS

- A. The Contractor shall notify the Owner, in writing, of the names of the subcontractors proposed on the Contract and shall not employ any subcontractors until the Owner's approval in writing has been obtained.
- B. The Contractor agrees to be fully responsible to the Owner for the acts or omissions of his subcontractors and of anyone employed directly or indirectly by him or them, and this Contract obligation shall be in addition to the liability imposed by law upon the Contractor.
- C. Nothing contained in the Contract documents shall create any contractual relationship between any subcontractors and the Owner. The Contractor agrees to bind every subcontractor (and every subcontractor of a subcontractor) by the terms of the General and special Provisions of the Contract, the Contract Drawings and Specifications, as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner.

## 1.23 ASSIGNMENT OF CONTRACT

- A. No assignment by the Contractor of any construction contract, or any part thereof, or of the funds to be received there under by the Contractor, will be recognized, unless such assignment has had the written approval of the Owner and the Surety has been given due notice of such assignment and has furnished written consent thereto. Such written approval by the Owner shall not relieve that Contractor of the obligations incurred by him under the terms of this Contract. In addition to the usual recitals in assignment contracts, the following language must be set forth:

"It is agreed that the funds to be paid to the assignee under this assignment are subjected to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of any persons, firms, or corporations rendering such services or supplying such materials".

## 1.24 OTHER CONTRACTS

- A. The Owner may award other contracts for additional work at the site of the project (or other locations) and the Contractor shall fully cooperate with such other Contractors and carefully fit his own work to that provided under other contracts as may be directed by the Owner. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

## 1.25 OWNER'S RIGHT TO DO WORK

- A. If the Contractor neglects to prosecute the work to be performed on this Contract properly, or fails to perform any provision of this Contract, the Owner, after three days' written notice to the Contractor and his Surety, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment due the Contractor.

## 1.26 TERMINATION BY THE CONTRACTOR

- A. If the Owner fails to make payment through no fault of the Contractor for a period of thirty (30) days after such payment is due in accordance with the Contract Documents, the Contractor may, upon seven (7) days written notice to the Owner terminate the Contract and recover from the Owner 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.

## 1.27 TERMINATION BY THE OWNER

- A. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after seven (7) days written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or



thereafter due the Contractor or, at his option, may terminate the Contract and take possession of the site and of all material, equipment, tools and construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient, and if the unpaid balance of the Contract sum exceeds the expense of finishing the work, such excess shall be paid to the contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner.

#### 1.28 CHANGES IN THE WORK

- A. The Owner without invalidating the Contract may order changes in the work consisting of additions, deletions, or modifications, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized by written Change Order signed by the Owner.
- B. The Contract Sum and the Contract Time may be changed only by Change Order.
- C. The cost or credit to the Owner from a change in the work shall be determined by mutual agreement before executing the work involved.

#### 1.29 CORRECTION OF WORK

- A. The Contractor shall correct any work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the date of final payment of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article apply to work done by Subcontractors as well as to work done by direct employees of the Contractor. The obligations of the Contractor under this paragraph shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

#### 1.30 SANITARY CONVENIENCE

- A. The Contractor shall have access to the use of sanitary facilities available to the Facility Staff.

#### 1.31 CLEANING UP AND FINAL INSPECTION

- A. The Contractor shall at all times keep the site of the work free from accumulation of waste material or rubbish caused by his employees on the construction work, and at the completion of the work he shall remove all his rubbish from and about the work and all his tools, equipment, scaffolding, and surplus materials, and shall leave the completed work clean and ready for use. In case of dispute, the Owner may remove the rubbish and surplus materials and charge the cost to the several Contractors, if more than one is employed on the project, in proportion to the amounts as shall be determined by the Owner to be just.

#### 1.32 OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION

- A. The Owner may withhold from payments to the Contractor, in addition to retained percentage, such an amount or amounts as may be necessary to cover:
  - 1. Payments that may be earned or due for just claims for labor or materials furnished in and about the work.
  - 2. For defective work not remedied.
  - 3. For failure of the contractor to make proper payments to the Subcontractors.
  - 4. Reasonable doubt that this Contract can be completed for the balance then unpaid.
  - 5. Evidence of damage to another Contractor.
  - 6. Liquidated damages due to failure to meet contract completion dates.
- B. The Owner will disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the part or parties who are entitled to payment therefrom. The Owner will render to the Contractor a proper accounting of all such funds disbursed in behalf of the Contractor.



- C. The Owner also reserves the right, even after full completion and acceptance of the work, to refuse payment of the final ten percent (10%) due the contractor until it is satisfied that all Subcontractors, material suppliers and employees of the Contractor have been paid in full.

Item 10.

### 1.33 CHANGES-PAYMENT

- A. The Owner may, in accordance with the rules of its Common Council, authorize changes in the work to be performed or the materials to be furnished under the provisions of this Contract.
- B. Adjustment, if any, in the amounts to be paid to the Contractor by reason of any such changes shall be determined by one or more of the following methods:
1. By an acceptable lump sum or unit price proposal by the Contractor.
  2. On a cost-plus limited basis not to exceed a specified limit (defined as the cost of labor, materials and insurance) plus a specified percentage of the cost of such labor, materials and insurance provided the specified percentage does not exceed fifteen percent (15%) of the aggregate of the cost of such labor, materials and insurance, and shall in no event exceed a specified limit.
- B. No claim for an addition to the contract price will be valid unless authorized as aforesaid.
- C. In cases where a lump sum proposal is submitted by the Contractor in Excess of Five Hundred Dollars (\$500.00) and the Owner considers the proposal so submitted is excessive or unreasonable for the changes or added work contemplated; the Owner reserves the right to request a proposal for the same changed items from other Contractors. If a proposal for such added work is obtained from other Contractors at a lesser amount, the Owner reserves the right to make an award of such work to another Contractor, unless the Contractor on this Contract agrees to do the added work or changed work for the price named by the other Contractor.
- D. It shall be expressly understood and hereby agreed to by the Contractor that no claim for extra work will be recognized by the Owner unless same has been ordered, in writing, by the Owner, or unless claim for such added work has been filed by the Contractor within five (5) days after the end of the calendar month in which such alleged work was performed. Inspectors and Resident Engineers are not authorized to act for the Owner in giving orders for the Owner for extra or additional work, either in writing or verbally.

### 1.34 DEDUCTION FOR UNCORRECTED WORK

- A. If the Owner deems it expedient to accept work damaged or not done in accordance with the Contract, an equitable adjustment will be made with a proper deduction from the contract price for unsatisfactory work.

### 1.35 FINAL ACCEPTANCE OF THE WORK

- A. The Contract shall be deemed as having been finally accepted by the Owner when its governing body, by formal resolution, accepts the work.

### 1.36 CORRECTION OF WORK AFTER FINAL PAYMENT

- A. Neither the final payment on this Contract by the Owner nor any provision in these Contract Documents shall relieve the Contractor or Surety of the responsibility for negligence in the furnishing and installation of faulty materials or for faulty workmanship which shows up within the extent of the period provided by law nor of the responsibility of remedying such faulty workmanship and materials.

**1.37 OWNER'S RIGHT TO USE UNCOMPLETED WORK**

- A. The Owner shall have the right to take possession of and use portions of the work prior to final acceptance without waiving rights against the Contractor or his Surety for defects in the work or failure to complete same in its entirety.

**1.38 PAYMENTS**

- A. Pay estimate periods shall close on the last day of each calendar month so that completed estimates can be computed for processing. On each partial payment during the progress of the project, the Owner will retain an amount in accordance with Chapter 66.29 Wisconsin Statutes. No payment will be made for material stored at the job site.

**1.39 DELAYS**

- A. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor, the Contractor shall have no claim against the Owner on that account other than an extension of time.
- B. In case any action in court is brought against the Owner or Engineer, or any officer or agent of either of them, for the failure, omission or neglect of the Contractor, utility company or Owner of other facilities within the project area to perform any of the covenants, acts, matters or things by this Contract undertaken, or for injury or damage caused by the alleged negligence of the Contractor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, material men, or suppliers, the Contractor shall indemnify and save harmless the Owner and Engineer and their officers or agents, from all losses, damages, costs, expenses, judgments or decrees arising out of such action.

**1.40 ATTACHMENTS**

- A. The following attachments are referenced herein, attached hereto and made part of this document.
- EJCDC Form C-430 Bid Bond Form
  - EJCDC Form C-610 Performance Bond Form
  - EJCDC FORM C-615 Payment Bond Form
  - City of Sheboygan Standard Form of Agreement
  - City of Sheboygan Certificate of Non-Collusion
  - City of Sheboygan Bidders Proof of Responsibility

VIII

R. C. No. 198 - 21 - 22. By PUBLIC WORKS COMMITTEE. January 4, 2022.

Your Committee to whom was referred Res. No. 119-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to enter into a contract with August Winter & Sons, Inc. to install an aeration blower at the Waste Water Treatment Plant, and to make related expenditures; recommends adopting the Resolution.

_____	_____
_____	_____
_____	_____
	Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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



Res. No. 119 - 21 - 22. By Alderpersons Dekker and Perrella.  
December 20, 2021.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with August Winter & Sons, Inc. to install an aeration blower at the Waste Water Treatment Plant, and to make related expenditures.

WHEREAS, in Res. No. 67-21-22, the Common Council authorized the appropriate City officials to enter into a contract with Lone Star Blower, Inc. ("Lone Star") to purchase an aeration blower for the Waste Water Treatment Plant; and

WHEREAS, the City of Sheboygan has advertised for bids to install the aeration blower (the "Project"); and

WHEREAS, the low bid was from August Winter & Sons, Inc. ("August Winter") in the amount of \$72,000; and

WHEREAS, City Staff has reviewed the bids and determined that the low bid met all of the specifications; and

WHEREAS, completion of the Project requires work to paint, install new doors, and complete the electrical installation of the aeration blower (the "Related Work") which are not included in the bid from August Winter or in the previous contract with Lone Star; and

WHEREAS, the estimated cost of the Related Work and contingency is \$71,432.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into the attached Agreement with August Winter for installation of the aeration blower.

By  
adopt



BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw funds, not to exceed \$143,432, which includes the cost of the Project and the Related Work, from Account No. 60138300-631100.

*Dean Dekker*

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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  
AUGUST WINTER & SONS, INC.**

**REGARDING INSTALLATION OF AN AERATION BLOWER  
AT THE SHEBOYGAN WASTEWATER TREATMENT FACILITY**

This Agreement ("Agreement") is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between the City of Sheboygan (the "City"), a municipal corporation, and August Winter & Sons, Inc. ("Contractor").

WITNESSETH:

WHEREAS, the City is the owner of the Wastewater Treatment Facility at 3333 Lakeshore Drive, Sheboygan, Wisconsin (the "Treatment Facility"); and

WHEREAS, the City has separately contracted with Lone Star Blower, Inc. to purchase an aeration blower; and

WHEREAS, the City wishes to have the aeration blower unit installed at the Treatment Facility; and

WHEREAS, the City issued Request for Bids 1998-21 to obtain bids from qualified providers of the services needed to complete the installation and other related work (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, Contractor desires to provide the City with the necessary Services under the terms set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

**Article 1. Scope of Services**

Contractor shall complete the Services necessary to install the aeration blower and associated piping and safety railings pursuant to the Project Manual, which is attached to this Agreement as Exhibit 1. This includes the provision of all necessary labor, equipment, licenses, permits<sup>1</sup>, and travel expenses.

Any quantities shown in the Project Manual are based on estimated needs. The City reserves the right to increase or decrease quantities to meet actual needs.

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

For the avoidance of doubt, the City is responsible for purchasing the aeration blower to be installed, and will be responsible for: (1) setting the blower in position and levelling; (2) final connection to electrical power; and (3) purchase of an inlet silencer.<sup>2</sup>

Contractor shall provide an itemized material list to the City's Representative. The City will provide a tax-exempt certificate to Contractor for any approved purchase made by Contractor from vendors related to the Services.

#### **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 Steve Jossart as its Representative for purposes of this Agreement. If the City's Representative deems it appropriate, the City's Representative 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 Representative observes any work performed by the Contractor to not be in conformity with the Agreement, the City's Representative 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 \$72,000.00 ("Contract Amount").

Contractor shall submit an invoice to the City on a monthly basis, which shall be based on the percentage of the Services described in Article 1 completed. Contractor shall provide sufficient information for the City to evaluate the percent of the Services completed. Invoices shall be sent via first class mail postage prepaid. Payment will be remitted to Contractor within forty-five (45) days of receipt of the invoice.

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<sup>2</sup> These items may be done by the City or by another contractor. They are not the responsibility of Contractor under this Agreement.



The invoice shall be sent to:

Steve Jossart, Superintendent  
City of Sheboygan Wastewater Facility  
3333 Lakeshore Drive  
Sheboygan, Wisconsin 53081

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

The City shall retain 10% of each invoice until Final Acceptance. Additionally, the City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following ("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.
- Liquidated damages due to the City.

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 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 Final Payment will be paid. If any lien remains unsatisfied after payments are made, Contractor shall refund to the City such amounts as the City may have been compelled to pay in discharging such liens, including all costs and fees.

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 15 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 accordance with the EJCDC forms included with the bid documents, 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. Failure by Contractor to make necessary payments to suppliers or subcontractors may result in forfeiture of Contractor's Payment 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 May 15, 2022, 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. Liquidated Damages**

In the event that Contractor does not complete the Services by the Deadline, there shall be deducted from any monies due or that may become due to Contractor, for each and every calendar day that the work remains uncompleted, a sum of \$400.00 per calendar day.

This sum shall be considered and treated not as a penalty but as fixed, agreed, and liquidated damage due the City from Contractor by reason of inconvenience to the public, added cost of supervision, and other items which have caused an expenditure of public funds resulting from his failure to complete the work.

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

### **Article 9. Workmanship and Quality of Materials**

Contractor's Warranty for the Services is set forth in the Project Manual.

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 10. 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 its 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 11. Access to Records**

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 later of 7 years after receipt of Final Payment under the Agreement or disposition of all such litigation, appeals, claims, or exceptions related thereto.

#### **Article 12. 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 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.

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 Agreement, the Contractor may – upon 7 days written notice to the City – terminate the Agreement and recover from the City 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.

For the avoidance of doubt, the specific remedies identified in this Article 12 are not exclusive.

### **Article 13. 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 14. Identity of Contractor**

Contractor acknowledges that one of the primary reasons for its selection by the City to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the City<sup>3</sup>. 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 15. 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

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<sup>3</sup> 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.



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 16. 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, claims, actions, causes of action, liens, losses, damages, costs, legal fees, expenses, 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.

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.

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 17. 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. Unemployment and Social Security – Contractor shall acquire and maintain, for the duration of the Agreement, Unemployment and Social Security Insurance that meets all statutory requirements.
- b. Workers' Compensation Insurance – Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements.

- c. Commercial General Liability Insurance – Contractor shall acquire and maintain, for the duration of this Agreement, Commercial General Liability Insurance with a policy limit of at least \$1,000,000 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.
- d. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. Notices**

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

**City:**

**Contractor:**

City Clerk		
City of Sheboygan		
828 Center Ave.		
Sheboygan, Wisconsin 53083		

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

**Article 27. 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 28. 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 29. 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 Exhibit 1
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 30. 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 31. 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. 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.
6. 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.
7. Definitions.
  - a. Final Acceptance: The event that occurs when 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:** \_\_\_\_\_  
Ryan Sorenson, Mayor

**BY:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
Meredith DeBruin, City Clerk

**ATTEST:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Approved by Res. No. \_\_\_\_-21-22.

**1.1 PROTECTION OF PERSONS**

- A. Work shall be executed in compliance with the Federal Occupational Safety and Health Act and the Wisconsin Administrative Code, Chapter 35, Safety in Construction.

**1.2 APPLICATION OF THIS DIVISION OF THE SPECIFICATIONS**

- A. The work is subject to the requirements of the Instructions to Bidders and this Division 1.
- B. The Contractor is fully responsible for seeing that no work shown is inadvertently left out.

**1.3 INTENT OF CONTRACT DOCUMENTS**

- A. The Sections of the Contract Document and the Contract Drawings are complementary and what is called for by any one shall be binding as if called for by all. The intention of the Contract Document is to include in the contract price the cost of all labor and materials, water, fuel, tools, plants, equipment, light, transportation, and all other expenses as may be necessary for the proper execution and completion of the work included in the Contract.
- B. In interpreting the Contract Documents, words describing materials which have a well-known technical or trade meaning unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well known meanings recognized by Architects, Engineers, and the trade.
- C. Any work shown on the Contract Drawings and not covered in the Contract Specifications, or included in the Contract Specifications and not shown on the Contract Drawings, shall be executed by the Contractor as though both shown on the Contract Drawings and included in the Contract Specifications. If the Contract Drawings and the Specifications should be contradictory in any part, the Contract Specifications shall govern.

**1.4 SCOPE OF WORK**

- A. The Contract work shall include the furnishing of all labor, materials, equipment, transportation, appliances and services necessary to complete all work shown or reasonably inferred on the drawings and/or as described in the specifications.
- B. The City of Sheboygan will be responsible for:
- Setting the new blower in position and levelling.
  - Final Connection to electrical power.
  - Purchase of an inlet silencer.
- C. The Contractor will be responsible to:
- Supply and install all necessary piping materials including hangers, supports, fasteners;
  - Supply and install all materials and labor to fabricate and install safety handrails in accordance with the specifications;
  - Make up and install discharge piping and isolation valves in accordance with the plans and specifications including the discharge line through the roof and connection to the main header;
  - All piping to be fabricated out of Schedule 10, 304 Stainless Steel with painted carbon steel backing flanges.
  - There is an existing roof penetration which may need to be modified by the Contractor during installation.

- The Contractor will work with Operations Staff to isolate the header during installation.
- Contractor will be responsible to make up and install all inlet piping in accordance with the drawings. All inlet piping to be Schedule 10, 304 Stainless Steel with painted carbon steel backing flanges.
- Installation will require cutting of a new penetration through the East wall and routing the inlet piping to the roof. Resealing of the opening following installation is the responsibility of the Contractor.
- All piping supports will be fabricated from 304 Stainless Steel and attached with Stainless Steel Hardware.
- The Contractor will be responsible to install the owner-provided inlet silencer.
- The contractor will be responsible to modify and re-seal the roof penetration following installation.

#### 1.5 OWNER'S REPRESENTATIVE

- A. All work under this Contract will be regularly viewed by the Owner's Representatives. Owner's Representatives will regularly visit the site of the project and observe the work for conformity with the Contract Documents, and will immediately report any lack of conformity to the Contractor.
- B. The Owner's Representatives will have authority to stop any portion of the work not in conformity with the Documents until the Owner has investigated and decided upon procedure.
- C. No work aside from that performed during the regular work week will be allowed unless prior due notice is given to the Owner or to the Owner's Representatives. Any work performed without prior notice and approval to do so may be required to be removed for inspection at Contractor's expense.

#### 1.6 SUPERINTENDENCE

- A. 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 Owner and having the authority to act for the Contractor.
- B. Insofar as is practicable, and excepting in the event of discharge by the Contractor, or in the event of proven incompetence, the individual who has been accepted by the Owner to represent the contractor shall so act, and shall follow without delay instructions of the Engineer in the completion of the work in conformity with the contract.

#### 1.7 LABOR

- A. The Contractor shall employ none but competent and skilled workmen and foremen in the prosecution of work on this Contract. The Owner 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 or those of the Engineer or Inspectors, relating to the carrying out of the provisions and intent of the provisions of the Contract, or who is incompetent, unfaithful, abusive, threatening or disorderly in his conduct, and any such person shall not again be employed on this project.

#### 1.8 FIRE PROTECTION

- A. 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.

#### 1.9 LAWS, REGULATIONS, FEES AND PERMITS



- A. The Contractor shall comply with all laws, ordinances, rules and regulations of the local Building Inspection Department, Fire Department, Health Department, Department of Water Supply, Gas and Electricity, Department of Highways and all State and Federal agencies having jurisdiction.
- B. Contractor shall obtain and pay for all necessary permits, fees and inspections required by such agencies. **Note: City Building Inspection does not waive permit fees for other City Departments.**
- C. Contractor shall pay for legitimate costs required by private utility and communication companies.

#### 1.10 WATCHMEN AND OTHER SAFEGUARDS

- A. The Contractor shall provide the necessary safeguards including, but not limited to, warning signs and barricades to prevent accidents, to avoid all necessary hazards, and protect the public, the work and the property at all times, including Saturdays, Sundays, holidays and other times when no work is being done.
- B. Neither the Owner nor the Engineer shall be responsible for any loss or damage to the project materials, tools, equipment, etc., from any cause whatsoever.

#### 1.11 CODES AND STANDARDS

- A. All materials and workmanship shall comply with all applicable codes, specifications, local ordinances, industry standards and utility company regulations.
- B. In case of difference between building codes, specifications, state laws, local ordinances, industry standards and utility company regulations and the Contract Documents, the most stringent shall govern. The Contractor shall promptly notify the Engineer in writing of any such difference.
- C. Non-compliance: Should the Contractor perform any work that does not comply with the requirements of the applicable building codes, state laws, local ordinances, industry standards and utility company regulations, he shall bear all costs arising in correcting the deficiencies.
- D. 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 Electrical 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 Inst.
    - c. ASME- American Society of Mechanical Engineers
    - d. ASTM- American Society of Testing Materials
    - e. IPCEA- Insulated Power Cable Engineers Assoc.
    - f. NBS- National Bureau of Standards
    - g. NEMA- National Electrical Manufacturers Assoc
    - h. NFPA- National Fire Protection Assoc.
    - i. OSHA- Occupational Safety and Health Act
    - j. UL- Underwriters Laboratories
    - k. MSS - Manufacturers Standardization Society

- l. AISC -American Institute of Steel Construction
- m. AWS -American Welding Society
- n. ACCA- Air Conditioning Contractors of America
- o. Air Conditioning and Refrigeration Institute
- p. American Society of Heating, Refrigerating and Air Conditioning Engineers
- q. SMACNA- Sheet Metal and Air Conditioning Contractors National Association

#### 1.12 CUTTING AND PATCHING

- A. The Contractor shall be responsible for all required cutting, etc., and shall make all required repairs thereafter to satisfaction of the Engineer, but in no case shall the Contractor cut into any major structural element, beam or column without the written approval of the Engineer.

#### 1.13 INSURANCE AND LIABILITY

- A. The Contractor and the Surety will be held responsible for and shall save the Owner harmless from all liability for damages occasioned by the digging up, use or occupancy of the street, alley, highway, public grounds and private grounds or which may result therefrom, or which may result in any way from the negligence or carelessness of the Contractor, his agents, employees or workmen; or by reason of the elements, unforeseen or unusual difficulties, obstructions, or obstacles encountered in the prosecution of the work; and they shall indemnify the Owner for and save it harmless from all claims and liabilities, actions and causes of action, and liens for materials furnished or labor performed in the construction or execution of the work, and from all costs, charges and expenses incurred in defending such suits or actions, and from and against all claims and liabilities for injury or damage to persons or property emanating from defective or careless work methods, or from and against all claims or liabilities for royalties, license fees, actions, suits, charges and expenses or damage from infringement for reason of the use of any invention or improvement in tools, equipment or plant or any process, device or combination of devices used in the construction of the work.
- B. The Contractor shall not commence work under a Contract until he has obtained all insurance required under this paragraph and has filed certificates thereof with the Owner, nor shall the Contractor allow a Subcontractor to commence work until all similar insurance required has been so obtained and filed.
- C. Workmen's Compensation
  - 1. Statutory coverages as required by chapter 102 of the Revised Statutes of the State of Wisconsin and all acts amendatory thereof and supplementary thereto, for all employees of the contractor. All subcontractors shall furnish to the Contractor and to the Owner, evidence of similar insurance for all of their respective employees unless such employees are covered by the protection afforded by the contractor.
- D. Comprehensive General Liability and Property Damage Insurance
  - 1. Coverage to include operations; contractor's protective insurance, products coverage and completed operations; contractual coverage; underground coverage; blasting, explosion and collapse; all subject to the following limits:
  - 2. Bodily Injury \$1,000,000 per Person  
\$2,000,000 Aggregate
  - 3. Property Damage \$500,000 per Occurrence  
\$500,000 Aggregate
- E. Comprehensive Automobile Liability and Property Damage
  - 1. Operation of owned, hired and non-owned motor vehicles:
  - 2. Bodily Injury \$1,000,000 per Person  
\$1,000,000 per Occurrence
  - 3. Property Damage \$1,000,000 per Occurrence



- F. If the Contractor is employing Subcontractors or hiring pieces of equipment from another firm/contractor, said Contractor must furnish certificates of insurance for each to the Owner.

#### 1.14 LAWS TO BE OBSERVED

- A. The Contractor shall give all notices and comply with all Federal, State and Local laws, ordinances and regulations in any manner affecting the conduct of the work and all such orders and degrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the Owner against any claim or liability arising from, or based on, the violation of any such law, ordinance, regulation, order or decree, whether by himself or his employees.

#### 1.15 PUBLIC SAFETY AND CONVENIENCE

- A. The Contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic and the least possible inconvenience to the general public and to the employees of the Owner.

#### 1.16 USE OF JOB SITE

- A. The Contractor shall confine his equipment, apparatus, the storage of materials and operations of his workman to limits indicated by the law, ordinances, permit or directions of the Owner and shall not encumber the premises with his materials.
- B. 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 Owner's instructions regarding signs, advertisements, fires and smoke.

#### 1.17 SCHEDULE OF VALUES

- A. The Contractor shall within ten (10) days of receipt of notice to proceed, 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. Upon approval of the breakdown of the Contract Amount by the Engineer, it shall be used as the basis for all Requests for Payment.

#### 1.18 REQUESTS FOR PAYMENT

- A. The Contractor may submit periodically but not more than once each month a Request for Payment of work done on the site and materials delivered and stored on the site. The Contractor shall furnish the Engineer all reasonable facilities required for obtaining the necessary information relative to the progress and execution of the work. Payment for materials stored on the site will be conditioned upon evidence submitted to establish the Owner's title to such materials. 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 completion and acceptance of the work and less previous payments.
- B. The Contractor shall be required to file waivers of lien from all suppliers, subcontractors, etc., with the Owner prior to receiving payment on the project.

#### 1.19 RELEASE OF LIENS

- A. The Contractor shall deliver to the Owner a complete release of all liens arising out of this Contract before the retained percentage or before the final Request for Payment is paid. If any lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens, including all costs and a reasonable attorney's fee.

#### 1.20 PATENTS

- A. The Contractor shall pay for all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

#### 1.21 COOPERATION WITH OWNER



- A. Personnel in the employ of the Contractor or any of his subcontractors, either directly or indirectly, are prohibited from using any existing facilities on adjacent property or trespassing in or about adjacent facilities.

## 1.22 SUBCONTRACTS

- A. The Contractor shall notify the Owner, in writing, of the names of the subcontractors proposed on the Contract and shall not employ any subcontractors until the Owner's approval in writing has been obtained.
- B. The Contractor agrees to be fully responsible to the Owner for the acts or omissions of his subcontractors and of anyone employed directly or indirectly by him or them, and this Contract obligation shall be in addition to the liability imposed by law upon the Contractor.
- C. Nothing contained in the Contract documents shall create any contractual relationship between any subcontractors and the Owner. The Contractor agrees to bind every subcontractor (and every subcontractor of a subcontractor) by the terms of the General and special Provisions of the Contract, the Contract Drawings and Specifications, as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner.

## 1.23 ASSIGNMENT OF CONTRACT

- A. No assignment by the Contractor of any construction contract, or any part thereof, or of the funds to be received there under by the Contractor, will be recognized, unless such assignment has had the written approval of the Owner and the Surety has been given due notice of such assignment and has furnished written consent thereto. Such written approval by the Owner shall not relieve that Contractor of the obligations incurred by him under the terms of this Contract. In addition to the usual recitals in assignment contracts, the following language must be set forth:

"It is agreed that the funds to be paid to the assignee under this assignment are subjected to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of any persons, firms, or corporations rendering such services or supplying such materials".

## 1.24 OTHER CONTRACTS

- A. The Owner may award other contracts for additional work at the site of the project (or other locations) and the Contractor shall fully cooperate with such other Contractors and carefully fit his own work to that provided under other contracts as may be directed by the Owner. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

## 1.25 OWNER'S RIGHT TO DO WORK

- A. If the Contractor neglects to prosecute the work to be performed on this Contract properly, or fails to perform any provision of this Contract, the Owner, after three days' written notice to the Contractor and his Surety, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment due the Contractor.

## 1.26 TERMINATION BY THE CONTRACTOR

- A. If the Owner fails to make payment through no fault of the Contractor for a period of thirty (30) days after such payment is due in accordance with the Contract Documents, the Contractor may, upon seven (7) days written notice to the Owner terminate the Contract and recover from the Owner 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.

## 1.27 TERMINATION BY THE OWNER

- A. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after seven (7) days written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or

thereafter due the Contractor or, at his option, may terminate the Contract and take possession of the site and of all material, equipment, tools and construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient, and if the unpaid balance of the Contract sum exceeds the expense of finishing the work, such excess shall be paid to the contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner.

#### **1.28 CHANGES IN THE WORK**

- A. The Owner without invalidating the Contract may order changes in the work consisting of additions, deletions, or modifications, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized by written Change Order signed by the Owner.
- B. The Contract Sum and the Contract Time may be changed only by Change Order.
- C. The cost or credit to the Owner from a change in the work shall be determined by mutual agreement before executing the work involved.

#### **1.29 CORRECTION OF WORK**

- A. The Contractor shall correct any work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the date of final payment of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article apply to work done by Subcontractors as well as to work done by direct employees of the Contractor. The obligations of the Contractor under this paragraph shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

#### **1.30 SANITARY CONVENIENCE**

- A. The Contractor shall have access to the use of sanitary facilities available to the Facility Staff.

#### **1.31 CLEANING UP AND FINAL INSPECTION**

- A. The Contractor shall at all times keep the site of the work free from accumulation of waste material or rubbish caused by his employees on the construction work, and at the completion of the work he shall remove all his rubbish from and about the work and all his tools, equipment, scaffolding, and surplus materials, and shall leave the completed work clean and ready for use. In case of dispute, the Owner may remove the rubbish and surplus materials and charge the cost to the several Contractors, if more than one is employed on the project, in proportion to the amounts as shall be determined by the Owner to be just.

#### **1.32 OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION**

- A. The Owner may withhold from payments to the Contractor, in addition to retained percentage, such an amount or amounts as may be necessary to cover:
  - 1. Payments that may be earned or due for just claims for labor or materials furnished in and about the work.
  - 2. For defective work not remedied.
  - 3. For failure of the contractor to make proper payments to the Subcontractors.
  - 4. Reasonable doubt that this Contract can be completed for the balance then unpaid.
  - 5. Evidence of damage to another Contractor.
  - 6. Liquidated damages due to failure to meet contract completion dates.
- B. The Owner will disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the part or parties who are entitled to payment therefrom. The Owner will render to the Contractor a proper accounting of all such funds disbursed in behalf of the Contractor.



- C. The Owner also reserves the right, even after full completion and acceptance of the work, to refuse payment of the final ten percent (10%) due the contractor until it is satisfied that all Subcontractors, material suppliers and employees of the Contractor have been paid in full.

### 1.33 CHANGES-PAYMENT

- A. The Owner may, in accordance with the rules of its Common Council, authorize changes in the work to be performed or the materials to be furnished under the provisions of this Contract.
- B. Adjustment, if any, in the amounts to be paid to the Contractor by reason of any such changes shall be determined by one or more of the following methods:
  - 1. By an acceptable lump sum or unit price proposal by the Contractor.
  - 2. On a cost-plus limited basis not to exceed a specified limit (defined as the cost of labor, materials and insurance) plus a specified percentage of the cost of such labor, materials and insurance provided the specified percentage does not exceed fifteen percent (15%) of the aggregate of the cost of such labor, materials and insurance, and shall in no event exceed a specified limit.
- B. No claim for an addition to the contract price will be valid unless authorized as aforesaid.
- C. In cases where a lump sum proposal is submitted by the Contractor in Excess of Five Hundred Dollars (\$500.00) and the Owner considers the proposal so submitted is excessive or unreasonable for the changes or added work contemplated; the Owner reserves the right to request a proposal for the same changed items from other Contractors. If a proposal for such added work is obtained from other Contractors at a lesser amount, the Owner reserves the right to make an award of such work to another Contractor, unless the Contractor on this Contract agrees to do the added work or changed work for the price named by the other Contractor.
- D. It shall be expressly understood and hereby agreed to by the Contractor that no claim for extra work will be recognized by the Owner unless same has been ordered, in writing, by the Owner, or unless claim for such added work has been filed by the Contractor within five (5) days after the end of the calendar month in which such alleged work was performed. Inspectors and Resident Engineers are not authorized to act for the Owner in giving orders for the Owner for extra or additional work, either in writing or verbally.

### 1.34 DEDUCTION FOR UNCORRECTED WORK

- A. If the Owner deems it expedient to accept work damaged or not done in accordance with the Contract, an equitable adjustment will be made with a proper deduction from the contract price for unsatisfactory work.

### 1.35 FINAL ACCEPTANCE OF THE WORK

- A. The Contract shall be deemed as having been finally accepted by the Owner when its governing body, by formal resolution, accepts the work.

### 1.36 CORRECTION OF WORK AFTER FINAL PAYMENT

- A. Neither the final payment on this Contract by the Owner nor any provision in these Contract Documents shall relieve the Contractor or Surety of the responsibility for negligence in the furnishing and installation of faulty materials or for faulty workmanship which shows up within the extent of the period provided by law nor of the responsibility of remedying such faulty workmanship and materials.



**1.37 OWNER'S RIGHT TO USE UNCOMPLETED WORK**

- A. The Owner shall have the right to take possession of and use portions of the work prior to final acceptance without waiving rights against the Contractor or his Surety for defects in the work or failure to complete same in its entirety.

**1.38 PAYMENTS**

- A. Pay estimate periods shall close on the last day of each calendar month so that completed estimates can be computed for processing. On each partial payment during the progress of the project, the Owner will retain an amount in accordance with Chapter 66.29 Wisconsin Statutes. No payment will be made for material stored at the job site.

**1.39 DELAYS**

- A. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor, the Contractor shall have no claim against the Owner on that account other than an extension of time.
- B. In case any action in court is brought against the Owner or Engineer, or any officer or agent of either of them, for the failure, omission or neglect of the Contractor, utility company or Owner of other facilities within the project area to perform any of the covenants, acts, matters or things by this Contract undertaken, or for injury or damage caused by the alleged negligence of the Contractor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, material men, or suppliers, the Contractor shall indemnify and save harmless the Owner and Engineer and their officers or agents, from all losses, damages, costs, expenses, judgments or decrees arising out of such action.

**1.40 ATTACHMENTS**

- A. The following attachments are referenced herein, attached hereto and made part of this document.
- EJCDC Form C-430 Bid Bond Form
  - EJCDC Form C-610 Performance Bond Form
  - EJCDC FORM C-615 Payment Bond Form
  - City of Sheboygan Standard Form of Agreement
  - City of Sheboygan Certificate of Non-Collusion
  - City of Sheboygan Bidders Proof of Responsibility

IX

R. C. No. 199 - 21 - 22. By PUBLIC WORKS COMMITTEE. January 4, 2022.

Your Committee to whom was referred Gen. Ord. No. 35-21-22 by Alderpersons Dekker and Perrella creating a no parking zone on the south side of S. Water Street just west of the intersection of S. Water Street and Virginia Avenue; recommends adopting the Ordinance.

_____	_____
_____	_____
_____	_____
	Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

*I*

*Other Matters*

Gen. Ord. No. 35 - 21 - 22. By Alderpersons Dekker and Perrella.  
December 20, 2021.

AN ORDINANCE creating a no parking zone on the south side of S. Water Street just west of the intersection of S. Water Street and Virginia Ave.

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

Section 1. Pursuant to Section 118-126 of the Municipal Code entitled "Prohibitions and Restrictions Authorized," the south side of S. Water Street from the west curb line of the intersection of S. Water Street and Virginia Ave. (the "Intersection") to 50 feet west of the Intersection is hereby added to the list of locations where parking is not permitted.

Section 2. The Department of Public Works and the Police Department are hereby authorized and directed to install the signs to give notification of the aforementioned parking restrictions.

Section 3. 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.

*no  
adopt*

*Dean Dekker*

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



R. O. No. 112 - 21 - 22. By City Clerk. January 4, 2022.

Submitting a notice of claim by Wisconsin Public Service Corporation for alleged damages and associated loss of gas service in the area of 1103 Mead Avenue on or about February 19, 2021.

\_\_\_\_\_  
CITY CLERK



DEC 20 2021

Item 12.

**Wisconsin Public Service Corporation**

Claims - A145

P.O. Box 1132

Milwaukee, WI 53201-1132

Phone 800-558-3303 x3437

Fax 262-523-7889

Email [damageclaims@wecenergygroup.com](mailto:damageclaims@wecenergygroup.com)

#20-21

MKC

12-20-21

**NOTICE OF CLAIM FOR DAMAGES**

**TO: City of Sheboygan**  
**Attn: City Clerk**  
**828 Center Ave Suite 110**  
**Sheboygan, WI 53081-4442**

**PLEASE TAKE NOTICE**, that pursuant to Sec. 893.80, Wis. Stats, Wisconsin Public Service Corporation, 700 North Adams Street, Green Bay, Wisconsin by Mary Ritenour, Claims Analyst, hereby gives notice that on or about February 19, 2021, the claimant suffered damage and associated loss of gas service in the area of 1103 Mead Avenue in the City of Sheboygan, Wisconsin.

**PLEASE TAKE FURTHER NOTICE** that at the aforementioned time and place, the claimant sustained damage to gas meter regulator.

**PLEASE TAKE FURTHER NOTICE**, that all times material City of Sheboygan through its officials, employees, agents or representatives, including but not limited to City of Sheboygan Department of Public Works did strike and damage front of regulator with snow blower.

**PLEASE TAKE FURTHER NOTICE** that the damages suffered by Wisconsin Public Service Corporation were directly and proximately caused by the actions of City of Sheboygan in that its employee, in the normal course of employment, did strike and damage gas meter regulator while clearing snow, breaking it.







**Wisconsin Public Service Corporation**

Claims - A145

P.O. Box 1132

Milwaukee, WI 53201-1132

Phone 800-558-3303 x3437

Fax 262-523-7889

Email [damageclaims@wecenergygroup.com](mailto:damageclaims@wecenergygroup.com)

**City of Sheboygan**

Page 2

**PLEASE TAKE FURTHER NOTICE**, that by reason of the aforesaid actions of City of Sheboygan, Wisconsin Public Service Corporation sustained damages for which it makes claim upon City of Sheboygan in the sum of \$210.24 and such other relief as provided by law.

**PLEASE TAKE FURTHER NOTICE**, that Mary Ritenour is the representative of the claimant in this matter, and any request for further information should be addressed to said individual at PO Box 1132, Milwaukee, Wisconsin, 53201-1132.

Dated at Milwaukee, Wisconsin, this 17th day of December, 2021.

WE ENERGIES

By Mary Ritenour  
Mary Ritenour, Claims Analyst

**P.O. ADDRESS:**

We Energies

Claims, Room A145

PO Box 1132

Milwaukee WI 53201-1132

Telephone: 414-221-3788

Claim Number CL-2021105344



II

R. O. No. 113 - 21 - 22. By City Clerk. January 4, 2022.

Submitting a Notice of Claim from Patrick A. Gillette for alleged damages with regard to alleged misconduct by City employees.

FTP

---

CITY CLERK



**PATRICK A. GILLETTE**  
**915 NORTH AVENUE**  
**SHEBOYGAN, WI 53893**

**PLAINTIFF**

claim# 21-21

**CITY ATTORNEY, CHARLES ADAMS**  
**CITY HALL**  
**828 CENTER AVENUE**  
**SHEBOYGAN, WI 53081**

**ATTORNEY FOR RESPONDENTS**  
**CITY OF SHEBOYGAN**  
**COUNTY OF SHEBOYGAN**  
**STATE OF WISCONSIN**

---

## **NOTICE OF CLAIM**

---

Now comes the Plaintiff, Patrick A. Gillette, who claims injury by the intentional individual acts of malice, misconduct, malfeasance, and conspiracy to act in concert with each other by the following respondents:

1. City Attorney, Charles Adams
2. Director of Human Resources, Vicki Schneider
3. City Clerk, Meredith De Bruin
4. Robert Lettre, President of the Police and Fire Commission
5. Christopher Domalgalski, Chief of Police
6. Kurt Zempel, Captain of the PD Patrol Division
7. Michael Stelter, Lt. of the PD Patrol Division
8. Kendra Zipperer, Officer of the PD Patrol Division

Pursuant to Wis. Stat. 893.82, this claim for damages to include time and materials, and pain and suffering, not to exceed \$50,000. The immunity clause is hereby waived on the bases of intentional acts performed by the respondents.

Notwithstanding SS 893.82, plaintiff claims all rights under:

1. The Constitution of the State of Wisconsin, Article I, Section 9
2. The Constitution of the State of Wisconsin, Article I, Section 9(m)

3. Federal Rights under:

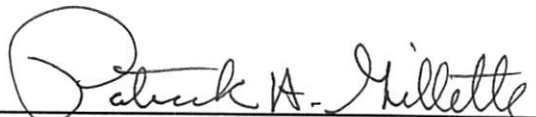
- a. USC Title 42, Section 1983 Civil Action for Deprivation of Rights
- b. USC Title 42, Section 1985 Conspiracy to interfere with Civil Rights
- c. USC Title 42, Section 1986 Action for neglect to prevent

Plaintiff further reserves all rights, included but not enumerated in this claim to exercise his rights to extend beyond the limitations of SS 893.82.

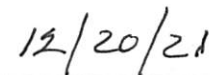
Plaintiff complains that individual acts, and acts in consortium, were performed by the respondents since October 4, 2021, causing injury and civil rights violations whereby:

1. On October 4, 2021, the Plaintiff did file a Verified Formal Complaint, directed and addressed to the President of the Police and Fire Commission.
2. On October 4, 2021, said complaint was filed with the Director of Human Resources and with the City Clerk, at 828 Center Avenue, Sheboygan, Wisconsin.
3. That said complaint was directed by the Director of Human Resources and the City Clerk to the City Attorney and not to the PFC President.
4. That the City Attorney and the President of the Police and Fire Commission failed to act on said complaint.
5. That all stated respondents conspired to intentionally interfere with the process of that complaint.
6. That by these actions the conspirators have delayed and caused injury and civil rights violations to the plaintiff.

The Plaintiff personally filed this Notice of Claim to the Office of the City Clerk, 828 Center Avenue, Sheboygan, WI 53081, on December 20, 2021, and within the 120 days specified in SS 893.82.

  
\_\_\_\_\_

Signed

  
\_\_\_\_\_

Dated

PATRICK A. GILLETTE  
915 NORTH AVENUE  
SHEBOYGAN, WI 53893

PLAINTIFF

CITY ATTORNEY, CHARLES ADAMS  
CITY HALL  
828 CENTER AVENUE  
SHEBOYGAN, WI 53081

ATTORNEY FOR RESPONDENTS  
CITY OF SHEBOYGAN  
COUNTY OF SHEBOYGAN  
STATE OF WISCONSIN

---

NOTICE OF CLAIM: SUPPLIMENTAL AMENDMENT

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Now comes the Plaintiff, Patrick A. Gillette, who claims injury by the intentional individual acts of malice, misconduct, malfeasance, and conspiracy to act in concert with each other by the following respondents:

1. City Attorney, Charles Adams
2. Director of Human Resources, Vicki Schneider
3. City Clerk, Meredith De Bruin
4. Robert Lettre, President of the Police and Fire Commission
5. Christopher Domalgalski, Chief of Police
6. Kurt Zempel, Captain of the PD Patrol Division
7. Michael Stelter, Lt. of the PD Patrol Division
8. Kendra Zipperer, Officer of the PD Patrol Division

**AMMENDED TO ADD TO THE RESPONDENT'S LIST**

1. Ryan Sorenson, Mayor of the City of Sheboygan
2. Dean Dekker, Alderman and Chairman of the Common Council Committee of the Whole for the City of Sheboygan

**AMMENDED TO ADD PLAINTIFF'S ADDITIONAL CLAIM OF INJURIES**



1. The additional Respondents had prior knowledge of, and the ability to prevent, such injuries.
2. That all Respondents, in concert, did in fact cause the injury to the Plaintiff of defamation of character.

A copy of the Original Notice of Claim, filed on December 20, 2021, is attached.

**AMMENDED TO ADD LIST OF CLAIMS SUPPLIMENTAL TO THE ORIGINAL NOTICE OF CLAIM:**

1. Research and preparation of 12 documents at \$200.00 each = \$2400.00
2. Miscellaneous communications with respondents and other related witnesses. 24 hours at \$100.00 per hour = \$2400.00
3. Office materials and postage = \$200.00
4. Travel expenses: Auto and travel time. 8 hours at \$100.00 per hour = \$800.00
5. Violation of Civil Rights injuries and Injury of Defamation of Character.

**Total Claim of Injuries = \$50,000**

**I ATTEST AND VERIFY THAT I HAVE PERSONNALLY DELIVERED PERSONAL COPIES OF THE ORIGINAL NOTICE OF INTENT, AND PERSONAL COPIES OF THE SUPPLIMENTAL AMMENDMENT TO THE NOTICE OF CLAIM, TO THE AGENT ADDRESS OF THE FOLLOWING RESPONDENTS, AT 828 CENTER AVENUE, CITY HALL FOR THE CITY OF SHEBOYGAN.**

1. City Attorney, Charles Adams
2. Director of human resources, Vicki Schneider
3. City Clerk, Meredith De Bruin
4. Robert Lettre, President of the Sheboygan Police and Fire Commission
5. Ryan Sorenson, Mayor of the City of Sheboygan
6. Dean Dekker, Alderman and Chairman of the Common Council Committee of the Whole

**I FURTHER ATTEST AND VERIFY THAT COPIES OF THIS VERY SAME NOTICE OF INTENT AND SAID SUPPLIMENTAL AMMENDMENTS TO THE NOTICE OF INTENT WERE PERSONALLY DELIVERED BY MYSELF, THE PLAINTIFF, TO THE AGENT**

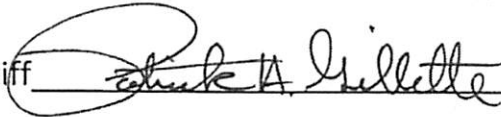
ADDRESS OF THE RESPONDENTS OF THE CITY OF SHEBOYGAN POLICE  
DEPARTMENT, LOCATED AT 1315 n. 23<sup>RD</sup> STREET, CITY OF SHEBOYGAN, WI  
53081.

RESPONDENTS OF THE SHEBOYGAN POLICE DEPARTMENT

1. Christopher Domalgalski, Chief of Police
2. Kurt Zempel, Captain of Patrol
3. Michael Stelter, Lt. of Patrol
4. Kendra Zipperer, Patrol Officer

ATTESTED TO AND VERIFIED THIS 29<sup>TH</sup> DAY OF DECEMBER 2021

Patrick A. Gillette, Plaintiff



A handwritten signature in black ink, appearing to read 'Patrick A. Gillette', is written over a horizontal line.

R. O. No. 114 - 21 - 22. By FINANCE DIRECTOR. January 4, 2022.

Reporting that, pursuant to Res. No. 66-20-21 authorizing the City Administrator to negotiate settlement of certain claims made by the City of Sheboygan, City Invoice No. 8670, in the amount of \$5,323.34, billed to Vinton Construction Company, regarding damage to a street light pole located on N. 14<sup>th</sup> Street and St. Clair Avenue on July 20, 2021, has been settled with a payment to the City of Sheboygan in the amount of \$4,575.90.

\_\_\_\_\_  
Finance Director





**City of Sheboygan**  
828 Center Ave, Suite 110  
Sheboygan, WI 53081

**PHONE**  
(920) 459-3371  
**FAX**  
(920) 459-3967

**WEBSITE**  
[www.sheboyganwi.gov](http://www.sheboyganwi.gov)

IN **Item 14.**  
Customer Copy

CUSTOMER	INVOICE DATE	INVOICE NUMBER	AMOUNT PAID	DUE DATE	INVOICE TOTAL DUE		
VINTON CONSTRUCTION CO	11/16/2021	8670	\$0.00	12/16/2021	\$5,323.34		
DESCRIPTION	QUANTITY	PRICE	UOM	ORIGINAL BILL	ADJUSTED	PAID	AMOUNT DUE
WORK ORDER 96174	1	\$1,560.00	EACH	\$1,560.00	\$0.00	\$0.00	\$1,560.00
SALARIES	1	\$1,820.00	EACH	\$1,820.00	\$0.00	\$0.00	\$1,820.00
EQUIPMENT	1	\$1,820.00	EACH	\$1,820.00	\$0.00	\$0.00	\$1,820.00
MATERIALS	1	\$1,943.34	EACH	\$1,943.34	\$0.00	\$0.00	\$1,943.34
STREET LIGHT DAMAGED N 14TH ST 7/20/21	1	\$1,943.34	EACH	\$1,943.34	\$0.00	\$0.00	\$1,943.34
				Invoice Total:		\$5,323.34	

Promptly Send Payment To:



**City of Sheboygan**  
828 Center Ave, Suite 110  
Sheboygan, WI 53081  
(920) 459-3371 Fax (920) 459-3967

51691  
VINTON CONSTRUCTION CO  
1322 33RD ST  
TWO RIVERS, WI 54241-1747

## INVOICE

Remit Portion

Invoice Date	11/16/2021
Invoice Number	8670
Customer Number	51691
Amount Paid	\$0.00
Due Date	12/16/2021
Invoice Total Due	\$5,323.34

Please put Invoice Number on your check.  
Make Checks Payable to: City of Sheboygan



## WORK ORDER

Department Electrical  
 Date Requested 07/20/21  
 Work Order # **96174**  
 Police Report # C21-12292  
 Date Completed 10/11/21

### Project Location:

Address: N 14TH ST

Street: \_\_\_\_\_ From: \_\_\_\_\_ To: \_\_\_\_\_

### Description of Work

☐ New ☐ Replacement ☐ Repair ☐ Abandonment / Removal

General Description: STREET LIGHT DAMAGED N 14TH ST 7/20/21

VINTON CONSTRUCTION 1322 33RD ST TWO RIVERS 54241-1747 #51691

### Material / Parts

Part No.	Description	Units	Unit Cost	Quantity	Total Cost
11122	MISC WIRENUTS, BOLT!	EA	\$ 15.49	1	\$ 15.49
MEN-3 thru 15 A	Fast Acting Fuses	EA	\$ 6.17	1	\$ 6.17
HEB-AA	Buss Single Midget Fuse	EA	\$ 22.26	1	\$ 22.26
USE #12	#12 Used Copper	FT	\$ 0.20	120	\$ 24.00
159-00038	WIS DOT TYPE 5 ALUMI	EA	\$ 900.00	1	\$ 900.00
159-00047	6' Aluminum St Light Arr	EA	\$ 140.00	1	\$ 140.00
LEOTEK-LED-COI	LED COBRA 40F=150 HI	EA	\$ 351.89	1	\$ 351.89
IPL4/03	POLARIS CONNCECTION	EA	\$ 11.69	3	\$ 35.07
					\$ -
					\$ 1,494.88

### Labor

Employee	Class	Equipment Used	Group	Hours	Total Cost
HAYON R	MW V \$ 75	M129 INTERNATIONAL BUCKET TRUC	IV \$ 85	8	\$ 1,280.00
FLEISNER A	MW V \$ 75	M113 INTERNATIONAL VERSALIFT	IV \$ 85	6	\$ 960.00
		M581 Trailer	I \$ 25	6	\$ 150.00
HUENINK, C	MW III \$ 65	M18 PAINT VAN	II \$ 60	6	\$ 750.00
KUCHINSKI, S	MW II \$ 60	M4 PICKUP TRUCK	II \$ 60	2	\$ 240.00
					\$ -
					\$ 3,380.00

30% Material Markup \$ 448.46  
 Sales Tax  
 Grand Total \$ 5,323.34

Res. No. 120 - 21 - 22. By Alderpersons Felde and Ackley. January 4, 2022.

A RESOLUTION authorizing the appropriate City officials to enter into a Master Customer Agreement with Motorola Solutions, Inc. and authorizing the Police Chief to execute Ordering Documents under that Master Customer Agreement to the extent funds are appropriated.

WHEREAS, the Sheboygan Police Department (the "Department") has several existing video systems; and

WHEREAS, it is in the best interest of the City that these existing video systems be consolidated into one system; and

WHEREAS, the Department believes that Motorola Solutions, Inc. ("Motorola") is the best solution for all of the Department's video needs, including in-squad, body, and interrogation room video; and

WHEREAS, in order to provide flexibility to purchase additional video equipment as needed in the future, it is recommended that the City enter into a Master Customer Agreement with Motorola, which allows the City to make purchases in the future under the terms set forth in the Master Customer Agreement by executing an Ordering Document; and

WHEREAS, a copy of the Master Customer Agreement the City has negotiated with Motorola and the Department's first set of Ordering Documents is attached to this Resolution; and

WHEREAS, the items listed on the Department's first set of Ordering Documents are currently available; and

WHEREAS, in light of current supply-chain realities and the fact that the City's contract with its current body camera vendor is set to expire in May 2022, it is in the best interest of the City to suspend the rules and pass this Resolution without referral to committee, so that the City can order the in-stock items now.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into the attached Master Customer Agreement with Motorola.

BE IT FURTHER RESOLVED: That the Police Chief is hereby authorized to execute Ordering Documents, as that term is defined in the Master Customer Agreement, under the Master Customer Agreement, to the extent funds are appropriated.

*Suspend  
Adopt.*



BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw funds, to the extent funds are appropriated, in payment of an approved Ordering Document.

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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 Customer Agreement

This Master Customer Agreement (the “**MCA**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and the entity set forth in the signature block below (“**Customer**”). Motorola and Customer will each be referred to herein as a “**Party**” and collectively as the “**Parties**”. This Agreement (as defined below) is effective as of the date of the last signature (the “**Effective Date**”).

### 1. Agreement.

**1.1. Scope; Agreement Documents.** This MCA governs Customer’s purchase of Products (as defined below) and Services (as defined below) from Motorola. Additional terms and conditions applicable to specific Products and Services are set forth in one or more addenda attached to this MCA (each an “**Addendum**”, and collectively the “**Addenda**”). In addition, the Parties may agree upon solution descriptions, equipment lists, statements of work, schedules, technical specifications, and other ordering documents setting forth the Products and Services to be purchased by Customer and provided by Motorola and additional rights and obligations of the Parties (the “**Ordering Documents**”). To the extent required by applicable procurement law, a proposal submitted by Motorola in response to a competitive procurement process will be included within the meaning of the term Ordering Documents. This MCA, the Addenda, and any Ordering Documents collectively form the Parties’ “**Agreement**”.

**1.2. Order of Precedence.** Each Addendum will control with respect to conflicting terms in the MCA, but only as applicable to the Products and Services described in such Addendum. Each Ordering Document will control with respect to conflicting terms in the MCA or any Addenda, but only as applicable to the Products and Services described on such Ordering Document.

### 2. Products and Services.

**2.1. Products.** Motorola will (a) sell hardware provided by Motorola (“**Equipment**”), (b) license software which is either preinstalled on Equipment or installed on Customer-Provided Equipment (as defined below) and licensed to Customer by Motorola for a perpetual or other defined license term (“**Licensed Software**”), and (c) license cloud-based software as a service products and other software which is either preinstalled on Equipment or installed on Customer- Provided Equipment, but licensed to Customer by Motorola on a subscription basis (“**Subscription Software**”) to Customer, to the extent each is set forth in an Ordering Document, for Customer’s own use in accordance with this Agreement. The Equipment, Licensed Software, and Subscription Software shall collectively be referred to herein as “**Products**”, or individually as a “**Product**”. At any time during the Term (as defined below), Motorola may substitute any Products at no cost to Customer, if the substitute is substantially similar to the Products set forth in the applicable Ordering Documents.

#### 2.2. Services.

**2.2.1.** Motorola will provide services related to purchased Products (“**Services**”), to the extent set forth in an Ordering Document.

**2.2.2. Integration Services; Maintenance and Support Services.** If specified in an Ordering Document, Motorola will provide, for the term of such Ordering Document, (a) design, deployment, and integration Services in order to design, install, set up, configure, and/or integrate the applicable Products at the applicable locations (“**Sites**”), agreed upon by the Parties (“**Integration Services**”), or (b) break/fix maintenance, technical support, or other Services (such as software integration Services) (“**Maintenance and Support Services**”), each as further described in



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the applicable statement of work. Maintenance and Support Services and Integration Services will each be considered "Services", as defined above.

2.2.3. Service Ordering Documents. The Fees for Services will be set forth in an Ordering Document and any applicable project schedules. A Customer point of contact will be set forth in the applicable statement of work for the Services. For purposes of clarity, each statement of work will be incorporated into, and form an integral part of, the Agreement.

2.2.4. Service Completion. Unless otherwise specified in the applicable Ordering Document, Services described in an Ordering Document will be deemed complete upon Motorola's performance of all Services listed in such Ordering Document ("**Service Completion Date**"); provided, however, that Maintenance and Support Services may be offered on an ongoing basis during a given Ordering Document term, in which case such Maintenance and Support Services will conclude upon the expiration or termination of such Ordering Document.

2.3. Non-Preclusion. If, in connection with the Products and Services provided under this Agreement, Motorola makes recommendations, including a recommendation to purchase other products or services, nothing in this Agreement precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement standards or other laws, regulations, or policies.

2.4. Customer Obligations. Customer will ensure that information Customer provides to Motorola in connection with receipt of Products and Services are accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Motorola to provide the Products and Services and perform its other duties under this Agreement. Unless the applicable Ordering Document states otherwise, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions or Customer information, decisions, or approvals described in this Section. If any assumptions in the Ordering Documents or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, Motorola's ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.

2.5. Documentation. Products and Services may be delivered with documentation for the Equipment, software Products, or data that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information (collectively, "**Documentation**"). Documentation is and will be owned by Motorola, unless otherwise expressly agreed in an Addendum or Ordering Document that certain Documentation will be owned by Customer. Motorola hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Products and Services.

2.6. Motorola Tools and Equipment. As part of delivering the Products and Services, Motorola may provide certain tools, equipment, models, and other materials of its own. Such tools and equipment will remain the sole property of Motorola unless they are to be purchased by Customer as Products and are explicitly listed on an Ordering Document. The tools and equipment may be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction. Customer will safeguard all tools and equipment while in Customer's custody or control, and be liable for any loss or damage. Upon the expiration or earlier termination of this Agreement, Customer, at its expense, will return to Motorola all tools and equipment in its possession or control.



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**2.7. Authorized Users.** Customer will ensure its employees and Authorized Users comply with the terms of this Agreement and will be liable for all acts and omissions of its employees and Authorized Users. Customer is responsible for the secure management of Authorized Users' names, passwords and login credentials for access to Products and Services. "**Authorized Users**" are Customer's employees, full-time contractors engaged for the purpose of supporting the Products and Services that are not competitors of Motorola, and the entities (if any) specified in an Ordering Document or otherwise approved by Motorola in writing (email from an authorized Motorola signatory accepted), which may include affiliates or other Customer agencies.

**2.8. Export Control.** Customer, its employees, and any other Authorized Users will not access or use the Products and Services in any jurisdiction in which the provision of such Products and Services is prohibited under applicable laws or regulations (a "**Prohibited Jurisdiction**"), and Customer will not provide access to the Products and Services to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Products or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.

**2.9. Change Orders.** Unless a different change control process is agreed upon in writing by the Parties, a Party may request changes to an Addendum or an Ordering Document by submitting a change order to the other Party (each, a "**Change Order**"). If a requested change in a Change Order causes an increase or decrease in the Products or Services, the Parties by means of the Change Order will make appropriate adjustments to the Fees, project schedule, or other matters. Change Orders are effective and binding on the Parties only upon execution of the Change Order by an authorized representative of both Parties.

### **3. Term and Termination.**

**3.1. Term.** The term of this MCA ("**Term**") will commence on the Effective Date and continue until six (6) months after the later of (a) the termination, expiration, or discontinuance of services under the last Ordering Document in effect, or (b) the expiration of all applicable warranty periods, unless the MCA is earlier terminated as set forth herein. The applicable Addendum or Ordering Document will set forth the term for the Products and Services governed thereby.

**3.2. Termination.** Either Party may terminate the Agreement or the applicable Addendum or Ordering Document if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Each Addendum and Ordering Document may be separately terminable as set forth therein.



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**3.3. Suspension of Services.** Motorola may terminate or suspend any Products or Services under an Ordering Document if Motorola determines: (a) the related Product license has expired or has terminated for any reason; (b) the applicable Product is being used on a hardware platform, operating system, or version not approved by Motorola; (c) Customer fails to make any payments when due; or (d) Customer fails to comply with any of its other obligations or otherwise delays Motorola's ability to perform.

**3.4. Termination for Non-Appropriation.** If funds for the continued fulfillment of this Agreement by the Customer are at any time not forthcoming or are insufficient, through failure of any entity – including the Customer itself – to appropriate funds or otherwise, then the Customer shall have the right to terminate this Agreement without penalty or additional payment. Customer shall provide Motorola thirty (30) days prior written notice of such termination for non-appropriation. In the event that no funds or insufficient funds are appropriated for the next fiscal year, this Agreement shall terminate the end of such fiscal year on the last day of the fiscal year for which appropriations were received and Customer shall return any Equipment which has not been fully paid for to Motorola (at Customer's expense, to a destination Motorola directs, in good working condition less normal wear and tear).

**3.5. Effect of Termination or Expiration.** Upon termination for any reason or expiration of this Agreement, an Addendum, or an Ordering Document, Customer and the Authorized Users will return or destroy (at Motorola's option) all Motorola Materials and Motorola's Confidential Information in their possession or control and, as applicable, provide proof of such destruction, except that Equipment purchased by Customer should not be returned. If Customer has any outstanding payment obligations under this Agreement, Motorola may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer must pay Motorola for Products and Services already delivered. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by Motorola and Customer's termination of this Agreement.

#### **4. Payment and Invoicing.**

**4.1. Fees.** Fees and charges applicable to the Products and Services (the "**Fees**") will be as set forth in the applicable Addendum or Ordering Document, and such Fees may be changed by Motorola at any time, except that Motorola will not change the Fees for Products and Services purchased by Customer during the term of an active Ordering Document or during a Subscription Term (as defined and further described in the applicable Addendum). Changes in the scope of Services described in an Ordering Document may require an adjustment to the Fees due under such Ordering Document. If a specific invoicing or payment schedule is set forth in the applicable Addendum or Ordering Document, such schedule will apply solely with respect to such Addendum or Ordering Document. Unless otherwise specified in the applicable Ordering Document, the Fees for any Services exclude expenses associated with unusual and costly Site access requirements (e.g., if Site access requires a helicopter or other equipment), and Customer will reimburse Motorola for these or other expenses incurred by Motorola in connection with the Services.

**4.2. Taxes.** The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "**Taxes**"), all of which will be paid by Customer, except as exempt by law, unless otherwise specified in an Ordering Document. If Motorola is required to pay any Taxes, Customer will reimburse Motorola for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Customer will be solely responsible for reporting the Products for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income and net worth.



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**4.3. Invoicing.** Motorola will invoice Customer at the frequency set forth in the applicable Addendum or Ordering Document, and Customer will pay all invoices within thirty (30) days of the invoice date or as otherwise specified in the applicable Addendum or Ordering Document. Late payments will be subject to interest charges at the maximum rate permitted by law, commencing upon the due date. Motorola may invoice electronically via email, and Customer agrees to receive invoices via email at the email address set forth in an Ordering Document. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Products or Services.

**5. Sites; Customer-Provided Equipment; Non-Motorola Content.**

**5.1. Access to Sites.** Customer will be responsible for providing all necessary permits, licenses, and other approvals necessary for the installation and use of the Products and the performance of the Services at each applicable Site, including for Motorola to perform its obligations hereunder, and for facilitating Motorola's access to the Sites. No waivers of liability will be imposed on Motorola or its subcontractors by Customer or others at Customer facilities or other Sites, but if and to the extent any such waivers are imposed, the Parties agree such waivers are void.

**5.2. Site Conditions.** Customer will ensure that (a) all Sites are safe and secure, (b) Site conditions meet all applicable industry and legal standards (including standards promulgated by OSHA or other governmental or regulatory bodies), (c) to the extent applicable, Sites have adequate physical space, air conditioning, and other environmental conditions, electrical power outlets, distribution, equipment, connections, and telephone or other communication lines (including modem access and interfacing networking capabilities), and (d) Sites are suitable for the installation, use, and maintenance of the Products and Services. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

**5.3. Site Issues.** Motorola will have the right at any time to inspect the Sites and advise Customer of any deficiencies or non-conformities with the requirements of this **Section 5 – Sites; Customer-Provided Equipment; Non-Motorola Content**. If Motorola or Customer identifies any deficiencies or non-conformities, Customer will promptly remediate such issues or the Parties will select a replacement Site. If a Party determines that a Site identified in an Ordering Document is not acceptable or desired, the Parties will cooperate to investigate the conditions and select a replacement Site or otherwise adjust the installation plans and specifications as necessary. A change in Site or adjustment to the installation plans and specifications may cause a change in the Fees or performance schedule under the applicable Ordering Document.

**5.4. Customer-Provided Equipment.** Certain components, including equipment and software, not provided by Motorola may be required for use of the Products and Services ("**Customer-Provided Equipment**"). Customer will be responsible, at its sole cost and expense, for providing and maintaining the Customer-Provided Equipment in good working order. Customer represents and warrants that it has all rights in Customer-Provided Equipment to permit Motorola to access and use the applicable Customer-Provided Equipment to provide the Products and Services under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). Customer (and not Motorola) will be fully liable for Customer-Provided Equipment damage, loss, change, or theft that may impact Motorola's ability to provide the Products and Services under this Agreement, and Customer acknowledges that any such events may cause a change in the Fees or performance schedule under the applicable Ordering Document.

**5.5. Non-Motorola Content.** In certain instances, Customer may be permitted to access, use, or integrate Customer or third-party software, services, content, and data that is not provided by



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Motorola (collectively, “**Non-Motorola Content**”) with or through the Products and Services. If Customer accesses, uses, or integrates any Non-Motorola Content with the Products or Services, Customer will first obtain all necessary rights and licenses to permit Customer’s and its Authorized Users’ use of the Non-Motorola Content in connection with the Products and Services. Customer will also obtain the necessary rights for Motorola to use such Non-Motorola Content in connection with providing the Products and Services, including the right for Motorola to access, store, and process such Non-Motorola Content (e.g., in connection with Subscription Software), and to otherwise enable interoperation with the Products and Services. Customer represents and warrants that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-Motorola Content with the Products and Services, and that Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-Motorola Content. If any Non-Motorola Content require access to Customer Data (as defined below), Customer hereby authorizes Motorola to allow the provider of such Non-Motorola Content to access Customer Data, in connection with the interoperation of such Non-Motorola Content with the Products and Services. Customer acknowledges and agrees that Motorola is not responsible for, and makes no representations or warranties with respect to, the Non-Motorola Content (including any disclosure, modification, or deletion of Customer Data resulting from use of Non-Motorola Content or failure to properly interoperate with the Products and Services). If Customer receives notice that any Non-Motorola Content must be removed, modified, or disabled within the Products or Services, Customer will promptly do so. Motorola will have the right to disable or remove Non-Motorola Content if Motorola believes a violation of law, third-party rights, or Motorola’s policies is likely to occur, or if such Non-Motorola Content poses or may pose a security or other risk or adverse impact to the Products or Services, Motorola, Motorola’s systems, or any third party (including other Motorola customers). Nothing in this Section will limit the exclusions set forth in **Section 7.2 – Intellectual Property Infringement**.

## **6. Representations and Warranties.**

**6.1. Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that (a) it has the right to enter into the Agreement and perform its obligations hereunder, and (b) the Agreement will be binding on such Party.

**6.2. Motorola Warranties.** Subject to the disclaimers and exclusions below, Motorola represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable Ordering Document; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Other than as set forth in subsection (a) above, recurring Services are not warranted but rather will be subject to the requirements of the applicable Addendum or Ordering Document. Motorola provides other express warranties for Motorola-manufactured Equipment, Motorola-owned software Products, and certain Services. Such express warranties are included in the applicable Addendum or Ordering Document. Such representations and warranties will apply only to the applicable Product or Service that is the subject of such Addendum or Ordering Document.

**6.3. Warranty Claims; Remedies.** To assert a warranty claim, Customer must notify Motorola in writing of the claim prior to the expiration of any warranty period set forth in this MCA or the applicable Addendum or Ordering Document. Unless a different remedy is otherwise expressly set forth for a particular warranty under an Addendum, upon receipt of such claim, Motorola will investigate the claim and use commercially reasonable efforts to repair or replace any confirmed materially non-conforming Product or re-perform any non-conforming Service, at its option. Such remedies are Customer’s sole and exclusive remedies for Motorola’s breach of a warranty. Motorola’s warranties are extended by Motorola to Customer only, and are not assignable or transferrable.

**6.4. Pass-Through Warranties.** Notwithstanding any provision of this Agreement to the contrary, Motorola will have no liability for third-party software or hardware provided by Motorola;

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provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, Motorola will pass through express warranties provided by such third parties.

**6.5. WARRANTY DISCLAIMER.** EXCEPT FOR THE EXPRESS AND PASS THROUGH WARRANTIES IN THIS AGREEMENT, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED "AS IS" AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT ARE THE COMPLETE WARRANTIES FOR THE PRODUCTS AND SERVICES AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. MOTOROLA DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER'S PARTICULAR REQUIREMENTS.

## **7. Indemnification.**

**7.1. General Indemnity.** Motorola will defend, indemnify, and hold Customer harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding ("**Claim**") for personal injury, death, or direct damage to tangible property to the extent caused by Motorola's negligence, gross negligence or willful misconduct while performing its duties under an Ordering Document or an Addendum, except to the extent the claim arises from Customer's negligence or willful misconduct. Motorola's duties under this **Section 7.1 – General Indemnity** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Claim.

**7.2. Intellectual Property Infringement.** Motorola will defend Customer against any third-party claim alleging that a Motorola-developed or manufactured Product or Service (the "**Infringing Product**") directly infringes a United States patent or copyright ("**Infringement Claim**"), and Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by Motorola in settlement of an Infringement Claim. Motorola's duties under this **Section 7.2 – Intellectual Property Infringement** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Infringement Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Infringement Claim.

7.2.1. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant Customer (i) a pro-rated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a software Product, i.e., Licensed Software or Subscription Software) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is Equipment, including Equipment with embedded software).

7.2.2. In addition to the other damages disclaimed under this Agreement, Motorola will have no duty to defend or indemnify Customer for any Infringement Claim that arises from or is based upon: (a) Customer Data, Customer-Provided Equipment, Non-Motorola Content, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product or Service with any products or materials not provided by Motorola; (c) a Product or Service designed, modified, or manufactured in accordance with Customer's designs, specifications,



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guidelines or instructions; (d) a modification of the Product or Service by a party other than Motorola; (e) use of the Product or Service in a manner for which the Product or Service was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to use or install an update to the Product or Service that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the Infringing Product.

7.2.3. This **Section 7.2 – Intellectual Property Infringement** provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. For clarity, the rights and remedies provided in this Section are subject to, and limited by, the restrictions set forth in **Section 8 – Limitation of Liability** below.

**7.3. Customer Indemnity.** Customer will defend, indemnify, and hold Motorola and its subcontractors, subsidiaries and other affiliates harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual or threatened third-party claim, demand, action, or proceeding arising from or related to (a) Customer-Provided Equipment, Customer Data, or Non-Motorola Content, including any claim, demand, action, or proceeding alleging that any such equipment, data, or materials (or the integration or use thereof with the Products and Services) infringes or misappropriates a third-party intellectual property or other right, violates applicable law, or breaches the Agreement; (b) Customer-Provided Equipment's failure to meet the minimum requirements set forth in the applicable Documentation or match the applicable specifications provided to Motorola by Customer in connection with the Products or Services; (c) Customer's (or its service providers, agents, employees, or Authorized User's) negligence or willful misconduct; and (d) Customer's or its Authorized User's breach of this Agreement. This indemnity will not apply to the extent any such claim is caused by Motorola's use of Customer- Provided Equipment, Customer Data, or Non-Motorola Content in violation of the Agreement. Motorola will give Customer prompt, written notice of any claim subject to the foregoing indemnity. Motorola will, at its own expense, cooperate with Customer in its defense or settlement of the claim.

## **8. Limitation of Liability.**

**8.1. DISCLAIMER OF CONSEQUENTIAL DAMAGES.** EXCEPT FOR PERSONAL INJURY OR DEATH, MOTOROLA, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "**MOTOROLA PARTIES**") WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER MOTOROLA'S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR REVENUES, EVEN IF MOTOROLA HAS BEEN ADVISED BY CUSTOMER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.

**8.2. DIRECT DAMAGES.** EXCEPT FOR PERSONAL INJURY OR DEATH, THE TOTAL AGGREGATE LIABILITY OF THE MOTOROLA PARTIES, WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE FEES SET FORTH IN THE ORDERING DOCUMENT UNDER WHICH THE CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, FOR ANY SUBSCRIPTION SOFTWARE OR FOR ANY RECURRING SERVICES, THE MOTOROLA PARTIES' TOTAL LIABILITY FOR ALL CLAIMS RELATED TO SUCH PRODUCT OR RECURRING SERVICES IN THE AGGREGATE WILL NOT EXCEED THE TOTAL FEES PAID



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FOR SUCH SUBSCRIPTION SOFTWARE OR RECURRING SERVICE, AS APPLICABLE, DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE.

**8.3. ADDITIONAL EXCLUSIONS.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, MOTOROLA WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) CUSTOMER DATA, INCLUDING ITS TRANSMISSION TO MOTOROLA, OR ANY OTHER DATA AVAILABLE THROUGH THE PRODUCTS OR SERVICES; (B) CUSTOMER-PROVIDED EQUIPMENT, NON-MOTOROLA CONTENT, THE SITES, OR THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR OTHER THIRD-PARTY MATERIALS, OR THE COMBINATION OF PRODUCTS AND SERVICES WITH ANY OF THE FOREGOING; (C) LOSS OF DATA OR HACKING; (D) MODIFICATION OF PRODUCTS OR SERVICES BY ANY PERSON OTHER THAN MOTOROLA; (E) RECOMMENDATIONS PROVIDED IN CONNECTION WITH OR BY THE PRODUCTS AND SERVICES; (F) DATA RECOVERY SERVICES OR DATABASE MODIFICATIONS; OR (G) CUSTOMER'S OR ANY AUTHORIZED USER'S BREACH OF THIS AGREEMENT OR MISUSE OF THE PRODUCTS AND SERVICES.

**8.4. Voluntary Remedies.** Motorola is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed issues in **Section 8.3 – Additional Exclusions** above, but if Motorola agrees to provide Services to help resolve such issues, Customer will reimburse Motorola for its reasonable time and expenses, including by paying Motorola any Fees set forth in an Ordering Document for such Services, if applicable.

**8.5. Statute of Limitations.** Customer may not bring any claims against a Motorola Party in connection with this Agreement or the Products and Services more than one (1) year after the date of accrual of the cause of action.

## **9. Confidentiality.**

**9.1. Confidential Information.** “**Confidential Information**” means any and all non-public information provided by one Party (“**Discloser**”) to the other (“**Recipient**”) that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable businessperson would consider non-public and confidential by its nature. With respect to Motorola, Confidential Information will also include Products and Services, and Documentation, as well as any other information relating to the Products and Services. In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by Discloser by submitting a written document to Recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

**9.2. Obligations of Confidentiality.** During the Term and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this **Section 9 - Confidentiality**; (b) restrict disclosure of Confidential Information to only those employees (including, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must access the Confidential Information for the purpose of, and who are bound by confidentiality terms substantially similar to those in, this Agreement; (c) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under



this Agreement.

**9.3. Exceptions.** Recipient is not obligated to maintain as confidential any information that Recipient can demonstrate by documentation (a) is publicly available at the time of disclosure or becomes available to the public without breach of this Agreement; (b) is lawfully obtained from a third party without a duty of confidentiality to Discloser; (c) is otherwise lawfully known to Recipient prior to such disclosure without a duty of confidentiality to Discloser; or (d) is independently developed by Recipient without the use of, or reference to, any of Discloser's Confidential Information or any breach of this Agreement. Additionally, Recipient may disclose Confidential Information to the extent required by law, including a judicial or legislative order or proceeding.

For the sake of clarity, both Parties understand that Customer is bound by the Wisconsin Public Records Law and, as such, this Agreement is subject to that law and all other laws applicable to municipalities in the State of Wisconsin, including those laws regarding the retention of records. The Wisconsin Public Records Law limits the extent to which Customer may prevent public access to a public record (as that term is defined by the Wisconsin Public Records Law). The Wisconsin Public Records Law prohibits the disclosure of trade secrets.

The Recipient understands that the Discloser has disclosed or may disclose business, technical or financial information relating to the Discloser's business (hereinafter referred to as "Proprietary Information" of the Discloser). Proprietary Information of Motorola includes non-public information regarding features, functionality and performance of the Equipment and Services. Proprietary Information of Customer includes non-public data provided by Customer to Motorola to enable the provision of the Services.

The Recipient agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use or divulge to any third person any such Proprietary Information, unless required by law (including in response to a public records request). In the event the Customer receives a public records request or similar request—such as a subpoena—for Proprietary Information, the Customer will promptly email Motorola at [mary.ehrsam@motorolasolutions.com](mailto:mary.ehrsam@motorolasolutions.com). Motorola may provide guidance to Customer as to whether, in its opinion, requested information constitutes a trade secret or is otherwise protected from disclosure. Any such guidance shall be provided to Customer within 3 business days of Customer's email, time being of the essence, so that Customer has time to comply with its obligations to respond to the public records request. Customer agrees to consider any guidance provided by Motorola in making its decision how to proceed under the Wisconsin Public Records Law or similar law. If the Customer follows the guidance provided by Motorola, Motorola agrees to indemnify, defend, and hold the Customer harmless from any liability of any kind whatsoever that may result from the Customer following the guidance from Motorola; provided, however, that (a) Customer promptly notifying Motorola in writing of a Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Claim.

**9.4. Ownership of Confidential Information.** All Confidential Information is and will remain the property of Discloser and will not be copied or reproduced without the express written permission of Discloser (including as permitted herein). Within ten (10) days of receipt of Discloser's written request, Recipient will return or destroy all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain (a) one (1) archival copy of the Confidential Information for use only in case of a dispute concerning this Agreement and (b) Confidential Information that has been automatically stored in accordance with Recipient's standard backup or recordkeeping procedures, provided, however that Recipient will remain subject to the obligations of this Agreement with respect to any Confidential Information retained subject to clauses (a) or (b). No license, express or implied, in the Confidential Information is granted to the Recipient other than to use the Confidential Information in the manner and to the extent authorized



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by this Agreement. Discloser represents and warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

## **10. Proprietary Rights; Data; Feedback.**

**10.1. Data Definitions.** The following terms will have the stated meanings: “**Customer Contact Data**” means data Motorola collects from Customer, its Authorized Users, and their end users for business contact purposes, including marketing, advertising, licensing and sales purposes; “**Service Use Data**” means data generated by Customer’s use of the Products and Services or by Motorola’s support of the Products and Services, including personal information, product performance and error information, activity logs and date and time of use; “**Customer Data**” means data, information, and content, including images, text, videos, documents, audio, telemetry, location and structured data base records, provided by, through, or on behalf of Customer, its Authorized Users, and their end users through the use of the Products and Services. Customer Data does not include Customer Contact Data, Service Use Data, or information from publicly available sources or other Third-Party Data or Motorola Data; “**Third-Party Data**” means information obtained by Motorola from publicly available sources or its third party content providers and made available to Customer through the Products or Services; “**Motorola Data**” means data owned or licensed by Motorola; “**Feedback**” means comments or information, in oral or written form, given to Motorola by Customer or Authorized Users, including their end users, in connection with or relating to the Products or Services; and “**Process**” or “**Processing**” means any operation or set of operations which is performed on personal information or on sets of personal information, whether or not by automated means, such as collection, recording, copying, analyzing, caching, organization, structuring, storage, adaptation, or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**10.2. Motorola Materials.** Customer acknowledges that Motorola may use or provide Customer with access to software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which Motorola has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative works of the foregoing, whether made by Motorola or another party) (collectively, “**Motorola Materials**”). The Products and Services, Motorola Data, Third-Party Data, and Documentation, are considered Motorola Materials. Except when Motorola has expressly transferred title or other interest to Customer by way of an Addendum or Ordering Document, the Motorola Materials are the property of Motorola or its licensors, and Motorola or its licensors retain all right, title and interest in and to the Motorola Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights). For clarity, this Agreement does not grant to Customer any shared development rights in or to any Motorola Materials or other intellectual property, and Customer agrees to execute any documents and take any other actions reasonably requested by Motorola to effectuate the foregoing. Motorola and its licensors reserve all rights not expressly granted to Customer, and no rights, other than those expressly granted herein, are granted to Customer by implication, estoppel or otherwise. Customer will not modify, disassemble, reverse engineer, derive source code or create derivative works from, merge with other software, distribute, sublicense, sell, or export the Products and Services or other Motorola Materials, or permit any third party to do so.

**10.3. Ownership of Customer Data.** Customer retains all right, title and interest, including intellectual property rights, if any, in and to Customer Data. Motorola acquires no rights to Customer Data except those rights granted under this Agreement including the right to Process and use the Customer Data as set forth in **Section 10.4 – Processing Customer Data** below and in other applicable Addenda. The Parties agree that with regard to the Processing of personal information which may be part of Customer Data, Customer is the controller and Motorola is the processor, and may engage sub-processors pursuant to **Section 10.4.3 – Sub-processors**.



#### 10.4. Processing Customer Data.

10.4.1. Motorola Use of Customer Data. To the extent permitted by law, Customer grants Motorola and its subcontractors a right to use Customer Data and a royalty-free, worldwide, non-exclusive license to use Customer Data (including to process, host, cache, store, reproduce, copy, modify, combine, analyze, create derivative works from such Customer Data and to communicate, transmit, and distribute such Customer Data to third parties engaged by Motorola) to (a) perform Services and provide Products under the Agreement, (b) analyze the Customer Data to operate, maintain, manage, and improve Motorola Products and Services, and (c) create new products and services. Customer agrees that this Agreement, along with the Documentation, are Customer's complete and final documented instructions to Motorola for the processing of Customer Data. Any additional or alternate instructions must be agreed to according to the Change Order process. Customer represents and warrants to Motorola that Customer's instructions, including appointment of Motorola as a processor or sub-processor, have been authorized by the relevant controller.

10.4.2. Collection, Creation, Use of Customer Data. Customer further represents and warrants that the Customer Data, Customer's collection, creation, and use of the Customer Data (including in connection with Motorola's Products and Services), and Motorola's use of such Customer Data in accordance with the Agreement, will not violate any laws or applicable privacy notices or infringe any third-party rights (including intellectual property and privacy rights). Customer also represents and warrants that the Customer Data will be accurate and complete, and that Customer has obtained all required consents, provided all necessary notices, and met any other applicable legal requirements with respect to collection and use (including Motorola's and its subcontractors' use) of the Customer Data as described in the Agreement.

10.4.3. Sub-processors. Customer agrees that Motorola may engage sub-processors who in turn may engage additional sub-processors to Process personal data in accordance with this Agreement. When engaging sub-processors, Motorola will enter into agreements with the sub-processors to bind them to data processing obligations to the extent required by law.

10.5. Data Retention and Deletion. Except for anonymized Customer Data, as described above, or as otherwise provided under the Agreement, Motorola will delete all Customer Data following termination or expiration of this MCA or the applicable Addendum or Ordering Document, with such deletion to occur no later than ninety (90) days following the applicable date of termination or expiration, unless otherwise required to comply with applicable law. Any requests for the exportation or download of Customer Data must be made by Customer to Motorola in writing before expiration or termination, subject to **Section 13.9 – Notices**. Motorola will have no obligation to retain such Customer Data beyond expiration or termination unless the Customer has purchased extended storage from Motorola through a mutually executed Ordering Document.

10.6. Service Use Data. Customer understands and agrees that Motorola may collect and use Service Use Data for its own purposes, including the uses described below. Motorola may use Service Use Data to (a) operate, maintain, manage, and improve existing and create new products and services, (b) test products and services, (c) to aggregate Service Use Data and combine it with that of other users, and (d) to use anonymized or aggregated data for marketing, research or other business purposes. Service Use Data may be disclosed to third parties. It is Customer's responsibility to notify Authorized Users of Motorola's collection and use of Service Use Data and to obtain any required consents, provide all necessary notices, and meet any other applicable legal requirements with respect to such collection and use, and Customer represents and



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warrants to Motorola that it has complied and will continue to comply with this Section.

**10.7. Third-Party Data and Motorola Data.** Motorola Data and Third-Party Data may be available to Customer through the Products and Services. Customer and its Authorized Users may use Motorola Data and Third-Party Data as permitted by Motorola and the applicable Third-Party Data provider, as described in the applicable Addendum. Unless expressly permitted in the applicable Addendum, Customer will not, and will ensure its Authorized Users will not: (a) use the Motorola Data or Third-Party Data for any purpose other than Customer's internal business purposes; (b) disclose the data to third parties; (c) "white label" such data or otherwise misrepresent its source or ownership, or resell, distribute, sublicense, or commercially exploit the data in any manner; (d) use such data in violation of applicable laws; (e) remove, obscure, alter, or falsify any marks or proprietary rights notices indicating the source, origin, or ownership of the data; or (f) modify such data or combine it with Customer Data or other data or use the data to build databases. Additional restrictions may be set forth in the applicable Addendum. Any rights granted to Customer or Authorized Users with respect to Motorola Data or Third-Party Data will immediately terminate upon termination or expiration of the applicable Addendum, Ordering Document, or this MCA. Further, Motorola or the applicable Third-Party Data provider may suspend, change, or terminate Customer's or any Authorized User's access to Motorola Data or Third-Party Data if Motorola or such Third-Party Data provider believes Customer's or the Authorized User's use of the data violates the Agreement, applicable law or Motorola's agreement with the applicable Third-Party Data provider. Upon termination of Customer's rights to use any Motorola Data or Third-Party Data, Customer and all Authorized Users will immediately discontinue use of such data, delete all copies of such data, and certify such deletion to Motorola. Notwithstanding any provision of the Agreement to the contrary, Motorola will have no liability for Third-Party Data or Motorola Data available through the Products and Services. Motorola and its Third-Party Data providers reserve all rights in and to Motorola Data and Third-Party Data not expressly granted in an Addendum or Ordering Document.

**10.8. Feedback.** Any Feedback provided by Customer is entirely voluntary, and will not create any confidentiality obligation for Motorola, even if designated as confidential by Customer. Motorola may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to Customer or Authorized Users and Customer represents and warrants that it has obtained all necessary rights and consents to grant Motorola the foregoing rights.

**10.9. Improvements; Products and Services.** The Parties agree that, notwithstanding any provision of this MCA or the Agreement to the contrary, all fixes, modifications and improvements to the Services or Products conceived of or made by or on behalf of Motorola that are based either in whole or in part on the Feedback, Customer Data, or Service Use Data (or otherwise) are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements will vest solely in Motorola. Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to Motorola.

## **11. Force Majeure; Delays Caused by Customer.**

**11.1. Force Majeure.** Except for Customer's payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.

**11.2. Delays Caused by Customer.** Motorola's performance of the Products and Services will be excused for delays caused by Customer or its Authorized Users or subcontractors, or by failure of any assumptions set forth in this Agreement (including in any Addendum or Ordering Document). In the event of a delay under this **Section 11.2 – Delays Caused by Customer**, (a)



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Customer will continue to pay the Fees as required hereunder, (b) the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule, and (c) Customer will compensate Motorola for its out-of-pocket costs incurred due to the delay (including those incurred by Motorola's affiliates, vendors, and subcontractors).

**12. Disputes.** The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a "**Dispute**"):

**12.1. Governing Law.** All matters relating to or arising out of the Agreement are governed by the laws of the State of Illinois, unless Customer is the United States Government (or an agency thereof), in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Products and Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

**12.2. Negotiation; Mediation.** Either Party may initiate dispute resolution procedures by sending a notice of Dispute ("**Notice of Dispute**") to the other Party. The Parties will attempt to resolve the Dispute promptly through good faith negotiations, including timely escalation of the Dispute to executives who have authority to settle the Dispute (and who are at a higher level of management than the persons with direct responsibility for the matter). If a Dispute is not resolved through negotiation, either Party may initiate mediation by sending a notice of mediation ("**Notice of Mediation**") to the other Party. The Parties will choose an independent mediator within thirty (30) days of such Notice of Mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute. All in person meetings under this **Section 12.2 – Negotiation; Mediation** will take place in Chicago, Illinois, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to Motorola's intellectual property rights will not be subject to negotiation or mediation in accordance with this Section, but instead will be decided by a court of competent jurisdiction, in accordance with **Section 12.3 – Litigation, Venue, Jurisdiction** below.

**12.3. Litigation, Venue, Jurisdiction.** If the Dispute has not been resolved by mediation within sixty (60) days from the Notice of Mediation, either Party may submit the Dispute exclusively to a court in Cook County, Illinois. Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute and to enforce the outcome of any mediation.

### **13. General.**

**13.1. Compliance with Laws.** Each Party will comply with applicable laws in connection with the performance of its obligations under this Agreement, including that Customer will ensure its and its Authorized Users' use of the Products and Services complies with law (including privacy laws), and Customer will obtain any FCC and other licenses or authorizations (including licenses or authorizations required by foreign regulatory bodies) required for its and its Authorized Users' use of the Products and Services. Motorola may, at its discretion, cease providing or otherwise modify Products and Services (or any terms related thereto in an Addendum or Ordering Document), in order to comply with any changes in applicable law.

**13.2. Audit; Monitoring.** Motorola will have the right to monitor and audit use of the Products, which may also include access by Motorola to Customer Data and Service Use Data. Customer will provide notice of such monitoring to its Authorized Users and obtain any required consents, including individual end users, and will cooperate with Motorola in any monitoring or audit. Customer will maintain during the Term, and for two (2) years thereafter, accurate records relating



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to any software licenses granted under this Agreement to verify compliance with this Agreement. Motorola or a third party ("**Auditor**") may inspect Customer's and, as applicable, Authorized Users' premises, books, and records. Motorola will pay expenses and costs of the Auditor, unless Customer is found to be in violation of the terms of the Agreement, in which case Customer will be responsible for such expenses and costs.

**13.3. Assignment and Subcontracting.** Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Motorola may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.

**13.4. Waiver.** A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.

**13.5. Severability.** If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.

**13.6. Independent Contractors.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.

**13.7. Third-Party Beneficiaries.** The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the software Products will be a direct and intended third-party beneficiary of this Agreement.

**13.8. Interpretation.** The section headings in this Agreement are included only for convenience. The words "including" and "include" will be deemed to be followed by the phrase "without limitation". This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

**13.9. Notices.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as FedEx, UPS, or DHL), and will be effective upon receipt.

**13.10. Cumulative Remedies.** Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.

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**13.11. Survival.** The following provisions will survive the expiration or termination of this Agreement for any reason: **Section 2.4 – Customer Obligations; Section 3.4 – Effect of Termination or Expiration; Section 4 – Payment and Invoicing; Section 6.5 – Warranty Disclaimer; Section 7.3 – Customer Indemnity; Section 8 – Limitation of Liability; Section 9 – Confidentiality; Section 10 – Proprietary Rights; Data; Feedback; Section 11 – Force Majeure; Delays Caused by Customer; Section 12 – Disputes; and Section 13 – General.**

**13.12. Entire Agreement.** This Agreement, including all Addenda and Ordering Documents, constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment, or other form will not be considered an amendment or modification or part of this Agreement, even if a representative of each Party signs such document.

The Parties hereby enter into this MCA as of the Effective Date.

**Motorola: Motorola Solutions, Inc.**

**Customer: City of Sheboygan**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



### Equipment Purchase and Software License Addendum

This Equipment Purchase and Software License Addendum (this “**EPSLA**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and the entity set forth in the signature block below or in the MCA (“**Customer**”), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of \_\_\_\_\_ (the “**MCA**”). Capitalized terms used in this EPSLA, but not defined herein, will have the meanings set forth in the MCA.

**1. Addendum.** This EPSLA governs Customer’s purchase of Equipment and license of Licensed Software (and, if set forth in an Ordering Document, related Services) from Motorola, and will form part of the Parties’ Agreement.

#### **2. Delivery of Equipment and Licensed Software.**

**2.1. Delivery and Risk of Loss.** Motorola will provide to Customer the Products (and, if applicable, related Services) set forth in an Ordering Document, in accordance with the terms of the Agreement. Motorola will, using commercially reasonable practices, pack the ordered Equipment and ship such Equipment to the Customer address set forth in the applicable Ordering Document or otherwise provided by Customer in writing, using a carrier selected by Motorola. Notwithstanding the foregoing, delivery of Equipment (and any incorporated Licensed Software) will occur, and title and risk of loss for the Equipment will pass to Customer, upon shipment by Motorola in accordance with Ex Works, Motorola’s premises (Incoterms 2020). Customer will pay all shipping costs, taxes, and other charges applicable to the shipment and import or export of the Products and Services, as applicable, and Customer will be responsible for reporting the Products for personal property tax purposes. Delivery of Licensed Software for installation on Equipment or Customer-Provided Equipment will occur upon the earlier of (a) electronic delivery of the Licensed Software by Motorola, and (b) the date Motorola otherwise makes the Licensed Software available for download by Customer. If agreed upon in an Ordering Document, Motorola will also provide Services related to such Products.

**2.2. Delays.** Any shipping dates set forth in an Ordering Document are approximate, and while Motorola will make reasonable efforts to ship Products by any such estimated shipping date, Motorola will not be liable for any delay or related damages to Customer. Time for delivery will not be of the essence, and delays will not constitute grounds for cancellation, penalties, termination, or a refund.

**2.3. Beta Services.** If Motorola makes any beta version of a software application (“**Beta Service**”) available to Customer, Customer may choose to use such Beta Service at its own discretion, provided, however, that Customer will use the Beta Service solely for purposes of Customer’s evaluation of such Beta Service, and for no other purpose. Customer acknowledges and agrees that all Beta Services are offered “as-is” and without any representations or warranties or other commitments or protections from Motorola. Motorola will determine the duration of the evaluation period for any Beta Service, in its sole discretion, and Motorola may discontinue any Beta Service at any time. Customer acknowledges that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

#### **3. Licensed Software License and Restrictions.**



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**3.1. Licensed Software License.** Subject to Customer's and its Authorized Users' compliance with the Agreement (including payment terms), Motorola hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Licensed Software identified in an Ordering Document, in object code form only, and the associated Documentation, solely in connection with the Equipment provided by Motorola or authorized Customer-Provided Equipment (as applicable, the "**Designated Products**") and solely for Customer's internal business purposes. Unless otherwise stated in an Addendum or the Ordering Document, the foregoing license grant will be limited to the number of licenses set forth in the applicable Ordering Document and will continue for the life of the applicable Designated Product. Except as otherwise permitted in an applicable Addendum or Ordering Document, Customer may install, access, and use Licensed Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Licensed Software remotely from any location.

**3.2. Subscription License Model.** If the Parties mutually agree that any Licensed Software purchased under this EPSLA will be replaced with or upgraded to Subscription Software, then upon such time which the Parties execute the applicable Ordering Document, the licenses granted under this EPSLA will automatically terminate, and such Subscription Software will be governed by the terms of the applicable Addendum under this Agreement.

**3.3. End User Licenses.** Notwithstanding any provision to the contrary in the Agreement, certain Licensed Software is governed by a separate license, EULA, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Products and Services. Customer will comply, and ensure its Authorized Users comply, with any such additional terms applicable to third-party equipment or software.

**3.4. Customer Restrictions.** Customers and Authorized Users will comply with the applicable Documentation in connection with their use of the Products. Customer will not and will not allow others, including the Authorized Users, to: (a) make the Licensed Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; (b) reverse engineer, disassemble, or reprogram the Licensed Software or any portion thereof to a human-readable form; (c) modify, create derivative works of, or merge the Licensed Software with other software or equipment; (d) copy, reproduce, distribute, lend, lease, or transfer the Licensed Software or Documentation for or to any third party without the prior express written permission of Motorola; (e) take any action that would cause the Licensed Software or Documentation to be placed in the public domain; (f) use the Licensed Software to compete with Motorola; or (g) remove, alter, or obscure, any copyright or other notice.

**3.5. Copies.** Customer may make one (1) copy of the Licensed Software solely for archival, back-up, or disaster recovery purposes during the term of the applicable Licensed Software license. Customer may make as many copies of the Documentation reasonably required for the internal use of the Licensed Software during such Licensed Software's license term. Unless otherwise authorized by Motorola in writing, Customer will not, and will not enable or allow any third party to: (a) install a licensed copy of the Licensed Software on more than one (1) unit of a Designated Product; or (b) copy onto or transfer Licensed Software installed in a unit of a Designated Product onto another device. Customer may temporarily transfer Licensed Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Customer provides written notice to Motorola of the temporary transfer and identifies the device on which the Licensed is transferred. Temporary transfer of the Licensed Software to another device must be discontinued when the original Designated Product is returned to operation and the Licensed Software must be removed from the other device. Customer must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

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**3.6. Resale of Equipment.** Equipment contains embedded Licensed Software. If Customer desires to sell its used Equipment to a third party, Customer must first receive prior written authorization from Motorola and obtain written acceptance of the applicable Licensed Software license terms, including the obligation to pay relevant license fees, from such third party.

**4. Term.**

**4.1. Term.** The term of this EPSLA (the “**EPSLA Term**”) will commence upon either (a) the Effective Date of the MCA, if this EPSLA is attached to the MCA as of such Effective Date, or (b) the EPSLA Date set forth on the signature page below, if this EPSLA is executed after the MCA Effective Date, and will continue until the later of (i) three (3) years after the first order for Products is placed via an Ordering Document, or (ii) the expiration of all applicable warranty periods (as set forth in **Section 6.1 – Motorola Warranties** below) under this EPSLA, unless this EPSLA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

**4.2. Termination.** Notwithstanding the termination provisions of the MCA, Motorola may terminate this EPSLA (and any Ordering Documents hereunder) immediately upon notice to Customer if Customer breaches **Section 3 – Licensed Software License and Restrictions** of this EPSLA, or any other provision related to Licensed Software license scope or restrictions set forth in an Ordering Document, EULA, or other applicable Addendum. For clarity, upon termination or expiration of the EPSLA Term, all Motorola obligations under this EPSLA (including with respect to Equipment and Licensed Software delivered hereunder) will terminate. If Customer desires to purchase additional Services in connection with such Equipment or Licensed Software, Customer may enter into a separate Addendum with Motorola, governing such Services. Customer acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Licensed Software and Documentation, and that Customer's breach of the Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, in addition to termination, Motorola will be entitled to all available remedies at law or in equity, including immediate injunctive relief and repossession of all non-embedded Licensed Software and associated Documentation.

**4.3. Equipment as a Service.** In the event that Customer purchases any Equipment at a price below the MSRP for such Equipment in connection Customer entering into a fixed- or minimum required-term agreement for Subscription Software, and Customer or Motorola terminates the Agreement, this EPSLA, or other applicable Addendum (such as the Addendum governing the purchase of such Subscription Software) prior to the expiration of such fixed- or minimum required-term, then Motorola will have the right to invoice Customer for, and Customer will pay, the amount of the discount to the MSRP for the Equipment or such other amount set forth in the applicable Addendum or Ordering Document. This Section will not limit any other remedies Motorola may have with respect to an early termination.

**5. Payment.** Customer will pay invoices for the Products and Services provided under this EPSLA in accordance with the invoice payment terms set forth in the MCA. Generally, invoices are issued after shipment of Equipment or upon Motorola's delivery of Licensed Software (in accordance with **Section 2.1 – Delivery and Risk of Loss**), as applicable, but if a specific invoicing or payment schedule is set forth in the applicable Ordering Document, EULA or other Addendum, such schedule will control with respect to the applicable Products and Services referenced therein. Motorola will have the right to suspend future deliveries of Products and Services if Customer fails to make any payments when due.

**6. Representations and Warranties; Liability.**

**6.1. Motorola Warranties.** Subject to the disclaimers and exclusions set forth in the MCA and this EPSLA, (a) for a period of one (1) year commencing upon the delivery of Motorola-



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manufactured Equipment under **Section 2.1 – Delivery and Risk of Loss**, Motorola represents and warrants that such Motorola-manufactured Equipment, under normal use, will be free from material defects in materials and workmanship; (b) to the extent permitted by the providers of third-party software or hardware included in the Products and Services, Motorola will pass through to Customer any warranties provided by such third parties, which warranties will apply for the period defined by the applicable third party; and (c) for a period of ninety (90) days commencing upon the delivery of Motorola-owned Licensed Software under **Section 2.1 – Delivery and Risk of Loss**, Motorola represents and warrants that such Licensed Software, when used in accordance with the Documentation and the Agreement, will be free from reproducible defects that prevent operation of features critical to the primary functionality or successful operation of the Motorola-developed Licensed Software (as determined by Motorola). The warranty set forth in subsection (c) will be referred to as the “**Motorola Licensed Software Warranty**”. As Customer's sole and exclusive remedy for any breach of the Motorola Licensed Software Warranty, Motorola will use commercially reasonable efforts to remedy the material defect in the applicable Licensed Software; provided, however, that if Motorola does not remedy such material defect within a reasonable time, then at Motorola's sole option, Motorola will either replace the defective Licensed Software with functionally-equivalent software, provide substitute software to Customer, or terminate the applicable software license and refund any paid license fees to Customer on a pro-rata basis. For clarity, the Motorola Licensed Software Warranty applies only to the most current version of the Licensed Software issued by Motorola, and issuance of updated versions of any Licensed Software does not result in a renewal or extension of the Motorola Licensed Software Warranty beyond the ninety (90) day warranty period.

**6.2. ADDITIONAL EXCLUSIONS.** IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THE MCA, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) DEFECTS IN OR DAMAGE TO PRODUCTS RESULTING FROM USE OTHER THAN IN THE NORMAL AUTHORIZED MANNER, OR FROM ACCIDENT, LIQUIDS, OR NEGLIGENCE; (B) TESTING, MAINTENANCE, REPAIR, INSTALLATION, OR MODIFICATION BY PARTIES OTHER THAN MOTOROLA; (C) CUSTOMER'S OR ANY AUTHORIZED USER'S FAILURE TO COMPLY WITH INDUSTRY AND OSHA OR OTHER LEGAL STANDARDS; (D) DAMAGE TO RADIO ANTENNAS, UNLESS CAUSED BY DEFECTS IN MATERIAL OR WORKMANSHIP; (E) EQUIPMENT WITH NO SERIAL NUMBER; (F) BATTERIES OR CONSUMABLES; (G) FREIGHT COSTS FOR SHIPMENT TO REPAIR DEPOTS; (H) COSMETIC DAMAGE THAT DOES NOT AFFECT OPERATION; (I) NORMAL WEAR AND TEAR; (J) ISSUES OR OBSOLESCENCE OF LICENSED SOFTWARE DUE TO CHANGES IN CUSTOMER OR AUTHORIZED USER REQUIREMENTS, EQUIPMENT, OR SYSTEMS; (K) TRACKING AND LOCATION-BASED SERVICES; OR (L) BETA SERVICES.

**6.3. Voluntary Remedies.** Motorola is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed or excluded issues in the MCA or **Section 6.2 – Additional Exclusions** above, but if Motorola agrees to provide Services to help resolve such issues, Customer will reimburse Motorola for its reasonable time and expenses, including by paying Motorola any Fees set forth in an Ordering Document for such Services, if applicable.

**7. Copyright Notices.** The existence of a copyright notice on any Licensed Software will not be construed as an admission or presumption of publication of the Licensed Software or public disclosure of any trade secrets associated with the Licensed Software.

**8. Survival.** The following provisions will survive the expiration or termination of this EPSLA for any reason: Section 3 -Licensed Software License and Restrictions; Section 4 -Term; Section 5- Payment; Section 6.2- Additional Exclusions; Section 8- Survival.



### Subscription Software Addendum

This Subscription Software Addendum (this “**SSA**”) is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 (“**Motorola**”) and the entity set forth in the signature block below or in the MCA (“**Customer**”), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of \_\_\_\_\_ (the “**MCA**”). Capitalized terms used in this SSA, but not defined herein, will have the meanings set forth in the MCA.

**1. Addendum.** This SSA governs Customer’s purchase of Subscription Software (and, if set forth in an Ordering Document, related Services) from Motorola, and will form part of the Parties’ Agreement. Additional Subscription Software-specific Addenda or other terms and conditions may apply to certain Subscription Software, where such terms are provided or presented to Customer.

#### **2. Delivery of Subscription Software.**

**2.1. Delivery.** During the applicable Subscription Term (as defined below), Motorola will provide to Customer the Subscription Software set forth in an Ordering Document, in accordance with the terms of the Agreement. Motorola will provide Customer advance notice (which may be provided electronically) of any planned downtime. Delivery will occur upon Customer’s receipt of credentials required for access to the Subscription Software or upon Motorola otherwise providing access to the Subscription Software. If agreed upon in an Ordering Document, Motorola will also provide Services related to such Subscription Software.

**2.2. Modifications.** In addition to other rights to modify the Products and Services set forth in the MCA, Motorola may modify the Subscription Software, any associated recurring Services and any related systems so long as their functionality (as described in the applicable Ordering Document) is not materially degraded. Documentation for the Subscription Software may be updated to reflect such modifications. For clarity, new features or enhancements that are added to any Subscription Software may be subject to additional Fees.

**2.3. User Credentials.** If applicable, Motorola will provide Customer with administrative user credentials for the Subscription Software, and Customer will ensure such administrative user credentials are accessed and used only by Customer’s employees with training on their proper use. Customer will protect, and will cause its Authorized Users to protect, the confidentiality and security of all user credentials, including any administrative user credentials, and maintain user credential validity, including by updating passwords. Customer will be liable for any use of the Subscription Software through such user credential (including through any administrative user credentials), including any changes made to the Subscription Software or issues or user impact arising therefrom. To the extent Motorola provides Services to Customer in order to help resolve issues resulting from changes made to the Subscription Software through user credentials, including through any administrative user credentials, or issues otherwise created by Authorized Users, such Services will be billed to Customer on a time and materials basis, and Customer will pay all invoices in accordance with the payment terms of the MCA.

**2.4. Beta Services.** If Motorola makes any beta version of a software application (“**Beta Service**”) available to Customer, Customer may choose to use such Beta Service at its own discretion, provided, however, that Customer will use the Beta Service solely for purposes of Customer’s evaluation of such Beta Service, and for no other purpose. Customer acknowledges and agrees that all Beta Services are offered “as-is” and without any representations or warranties or other commitments or protections from Motorola. Motorola will determine the duration of the evaluation period for any Beta Service, in its sole discretion, and Motorola may



discontinue any Beta Service at any time. Customer acknowledges that Beta Services, by their nature, have not been fully tested and may contain defects or deficiencies.

### 3. Subscription Software License and Restrictions.

**3.1. Subscription Software License.** Subject to Customer's and its Authorized Users' compliance with the Agreement, including payment terms, Motorola hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicenseable, and non-exclusive license to use the Subscription Software identified in an Ordering Document, and the associated Documentation, solely for Customer's internal business purposes. The foregoing license grant will be limited to use in the territory and to the number of licenses set forth in an Ordering Document (if applicable), and will continue for the applicable Subscription Term. Customer may access, and use the Subscription Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Subscription Software remotely from any location. No custom development work will be performed under this Addendum.

**3.2. End User Licenses.** Notwithstanding any provision to the contrary in the Agreement, certain Subscription Software is governed by a separate license, EULA, or other agreement, including terms governing third-party software, such as open source software, included in the Subscription Software. Customer will comply, and ensure its Authorized Users comply, with such additional license agreements.

**3.3. Customer Restrictions.** Customers and Authorized Users will comply with the applicable Documentation and the copyright laws of the United States and all other relevant jurisdictions (including the copyright laws where Customer uses the Subscription Software) in connection with their use of the Subscription Software. Customer will not, and will not allow others including the Authorized Users, to make the Subscription Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; reverse engineer, disassemble, or reprogram software used to provide the Subscription Software or any portion thereof to a human-readable form; modify, create derivative works of, or merge the Subscription Software or software used to provide the Subscription Software with other software; copy, reproduce, distribute, lend, or lease the Subscription Software or Documentation for or to any third party; take any action that would cause the Subscription Software, software used to provide the Subscription Software, or Documentation to be placed in the public domain; use the Subscription Software to compete with Motorola; remove, alter, or obscure, any copyright or other notice; share user credentials (including among Authorized Users); use the Subscription Software to store or transmit malicious code; or attempt to gain unauthorized access to the Subscription Software or its related systems or networks.

### 4. Term.

**4.1. Subscription Terms.** The duration of Customer's subscription to the first Subscription Software and any associated recurring Services ordered under this SSA (or the first Subscription Software or recurring Service, if multiple are ordered at once) will commence upon delivery of such Subscription Software (and recurring Services, if applicable) and will continue for a twelve (12) month period or such longer period identified in an Ordering Document (the "**Initial Subscription Period**"). Following the Initial Subscription Period, Customer's subscription to the Subscription Software and any recurring Services will automatically renew for additional twelve (12) month periods (each, a "**Renewal Subscription Year**"), unless either Party notifies the other Party of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. (The Initial Subscription Period and each

Renewal Subscription Year will each be referred to herein as a “**Subscription Term**”). Motorola may increase Fees prior to any Renewal Subscription Year. In such case, Motorola will notify Customer of such proposed increase no later than thirty (30) days prior to commencement of such Renewal Subscription Year. Unless otherwise specified in the applicable Ordering Document, if Customer orders any additional Subscription Software or recurring Services under this SSA during an in-process Subscription Term, the subscription for each new Subscription Software or recurring Service will (a) commence upon delivery of such Subscription Software or recurring Service, and continue until the conclusion of Customer’s then-current Subscription Term (a “**Partial Subscription Year**”), and (b) automatically renew for Renewal Subscription Years thereafter, unless either Party notifies the other Party of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. Thus, unless otherwise specified in the applicable Ordering Document, the Subscription Terms for all Subscription Software and recurring Services hereunder will be synchronized.

**4.2. Term.** The term of this SSA (the “**SSA Term**”) will commence upon either (a) the Effective Date of the MCA, if this SSA is attached to the MCA as of such Effective Date, or (b) the SSA Date set forth on the signature page below, if this SSA is executed after the MCA Effective Date, and will continue until the expiration or termination of all Subscription Terms under this SSA, unless this SSA or the Agreement is earlier terminated in accordance with the terms of the Agreement.

**4.3. Termination.** Notwithstanding the termination provisions of the MCA, Motorola may terminate this SSA (or any Addendum or Ordering Documents hereunder), or suspend delivery of Subscription Software or Services, immediately upon notice to Customer if (a) Customer breaches **Section 3 – Subscription Software License and Restrictions** of this SSA, or any other provision related to Subscription Software license scope or restrictions set forth in an Addendum or Ordering Document, or (b) it determines that Customer’s use of the Subscription Software poses, or may pose, a security or other risk or adverse impact to any Subscription Software, Motorola, Motorola’s systems, or any third party (including other Motorola customers). Customer acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Subscription Software and Documentation, and that Customer’s breach of the Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Customer breaches this Agreement, in addition to termination, Motorola will be entitled to all available remedies at law or in equity (including immediate injunctive relief).

**4.4. Wind Down of Subscription Software.** In addition to the termination rights in the MCA, Motorola may terminate any Ordering Document and Subscription Term, in whole or in part, in the event Motorola plans to cease offering the applicable Subscription Software or Service to customers.

## **5. Payment.**

**5.1. Payment.** Unless otherwise provided in an Ordering Document (and notwithstanding the provisions of the MCA), Customer will prepay an annual subscription Fee set forth in an Ordering Document for each Subscription Software and associated recurring Service, before the commencement of each Subscription Term. For any Partial Subscription Year, the applicable annual subscription Fee will be prorated based on the number of months in the Partial Subscription Year. The annual subscription Fee for Subscription Software and associated recurring Services may include certain one-time Fees, such as start-up fees, license fees, or other fees set forth in an Ordering Document. Motorola will have the right to suspend the Subscription Software and any recurring Services if Customer fails to make any payments when due.



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**5.2. License True-Up.** Motorola will have the right to conduct an audit of total user licenses credentialed by Customer for any Subscription Software during a Subscription Term, and Customer will cooperate with such audit. If Motorola determines that Customer's usage of the Subscription Software during the applicable Subscription Term exceeded the total number of licenses purchased by Customer, Motorola may invoice Customer for the additional licenses used by Customer, pro-rated for each additional license from the date such license was activated, and Customer will pay such invoice in accordance with the payment terms in the MCA.

**6. Liability.**

**6.1. ADDITIONAL EXCLUSIONS.** IN ADDITION TO THE EXCLUSIONS FROM DAMAGES SET FORTH IN THE MCA, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) INTERRUPTION OR FAILURE OF CONNECTIVITY, VULNERABILITIES, OR SECURITY EVENTS; (B) DISRUPTION OF OR DAMAGE TO CUSTOMER'S OR THIRD PARTIES' SYSTEMS, EQUIPMENT, OR DATA, INCLUDING DENIAL OF ACCESS TO USERS, OR SHUTDOWN OF SYSTEMS CAUSED BY INTRUSION DETECTION SOFTWARE OR HARDWARE; (C) AVAILABILITY OR ACCURACY OF ANY DATA AVAILABLE THROUGH THE SUBSCRIPTION SOFTWARE OR SERVICES, OR INTERPRETATION, USE, OR MISUSE THEREOF; (D) TRACKING AND LOCATION-BASED SERVICES; OR (E) BETA SERVICES.

**6.2. Voluntary Remedies.** Motorola is not obligated to remedy, repair, replace, or refund the purchase price for the disclaimed or excluded issues in the MCA or **Section 6.1 – Additional Exclusions** above, but if Motorola agrees to provide Services to help resolve such issues, Customer will reimburse Motorola for its reasonable time and expenses, including by paying Motorola any Fees set forth in an Ordering Document for such Services, if applicable.

**7. Motorola as a Controller or Joint Controller.** In all instances where Motorola acts as a controller of data, it will comply with the applicable provisions of the Motorola Privacy Statement at [https://www.motorolasolutions.com/en\\_us/about/privacy-policy.html#privacystatement](https://www.motorolasolutions.com/en_us/about/privacy-policy.html#privacystatement), as may be updated from time to time. Motorola holds all Customer Contact Data as a controller and shall Process such Customer Contact Data in accordance with the Motorola Privacy Statement. In instances where Motorola is acting as a joint controller with Customer, the Parties will enter into a separate Addendum to the Agreement to allocate the respective roles as joint controllers.

**8. Survival.** The following provisions will survive the expiration or termination of this SSA for any reason: **Section 4 – Term; Section 5 – Payment; Section 6.1 – Additional Exclusions; Section 8 – Survival.**

## Mobile Video Addendum

This Mobile Video Addendum (this "**MVA**") is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 ("**Motorola**") and Customer (as defined in the MCA), and will be subject to, and governed by, the terms of the Master Customer Agreement entered into between the Parties, effective as of \_\_\_\_\_ (the "**MCA**"). Capitalized terms used in this MVA, but not defined herein, will have the meanings set forth in the MCA or the applicable Addenda.

**1. Addendum.** This MVA, available at [www.motorolasolutions.com/product-terms](http://www.motorolasolutions.com/product-terms), governs Customer's purchase of any Motorola mobile video Products, including participation in Motorola's Video-as-a-Service Program ("**VaaS Program**"). A "**Mobile Video System**" is a solution that includes at least one mobile video Product and requires Integration Services to deploy such mobile video Product or the associated evidence management Product at a Customer Site. In addition to the MCA, other Addenda may be applicable to Products offered under this MVA, including the Subscription Software Addendum ("**SSA**"), with respect to Subscription Software, and the Equipment Purchase and Software License Addendum ("**EPSLA**"), with respect to Licensed Software and Equipment, as each of those terms are defined therein, and as further described below. This MVA will control with respect to conflicting or ambiguous terms in the MCA or any other applicable Addendum, but only as applicable to the Mobile Video System or other Products purchased under this MVA and not with respect to other Products or Services.

## **2. Evidence Management Systems; Applicable Terms and Conditions.**

**2.1. On-Premise Evidence Management.** If Customer purchases a Mobile Video System where Equipment and Licensed Software for evidence management is installed at Customer Sites (an "**On-Premises Evidence Management System**"), then, unless the Ordering Document(s) specify that any software is being purchased on a subscription basis (i.e., as Subscription Software), any (i) Equipment and (ii) Licensed Software installed at Customer Sites or on Customer-Provided Equipment, in each case purchased in connection with the On-Premises Evidence Management System, are subject to the EPSLA. On-Premises Evidence Management Systems described in this Section qualify for the System Warranty as described in **Section 4 – On-Premises Evidence Management System Warranty** (the "**System Warranty**").

**2.2. Cloud Hosted Evidence Management.** If Customer purchases Mobile Video System where the software for evidence management is hosted in a data center and provided to Customer as a service ("**Cloud Hosted Evidence Management System**"), including CommandCentral Evidence and EvidenceLibrary.com Products, then such Cloud Hosted Evidence Management System is subject to the SSA. Any Equipment purchased in connection with Cloud Hosted Evidence Management System is subject to the EPSLA. Cloud Hosted Evidence Management System described in this Section do not qualify for the System Warranty. System completion, however, is determined in accordance with the provisions of **Section 7 – System Completion** below.

**2.3. Services.** Any Integration Services or Maintenance and Support Services purchased in connection with, or included as a part of, a Mobile Video System are subject to the MCA, and as described in the applicable Ordering Document.

**3. Payment.** Customer will pay invoices for the Products and Services covered by this MVA in accordance with the invoice payment terms set forth in the MCA. Fees for Mobile Video Systems will be invoiced as of the System Completion Date, unless another payment process or schedule or milestones are set forth in an Ordering Document or applicable Addendum. In addition to Equipment, Licensed Software, Subscription Software and Integration Services (as applicable) sold as part of a Mobile Video System, the Ordering Documents for a Mobile Video System may also include post-deployment Integration Services or other Services which are to be provided



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following the date of functional demonstration ("**Post-Deployment Services**"). Post-Deployment Services will be invoiced upon their completion and paid by Customer in accordance with the terms of the MCA.

**4. On-Premises Evidence Management System Warranty.** Subject to the disclaimers in the MCA and any other applicable Addenda, Motorola represents and warrants that, on the System Completion Date (as defined below) for an On-Premises Evidence Management System described in **Section 2.1 – On-Premises Evidence Management** (a) such On-Premises Evidence Management System will perform in accordance with the descriptions in the applicable Ordering Documents in all material respects, and (b) if Customer has purchased any Equipment or Motorola Licensed Software (but, for clarity, excluding Subscription Software) as part of such On-Premises Evidence Management System, the warranty period applicable to such Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon the System Completion Date for the On-Premises Evidence Management System that includes such Products, or on the applicable Product Completion Date, if earlier, instead of commencing upon delivery of the Products in accordance with the terms and conditions set forth in **Section 6 – Representations and Warranties; Liabilities** of the EPSLA. The warranties set forth in the applicable Addenda are not otherwise modified by this MVA.

**5. Additional Software and Video Terms.**

**5.1. Unlimited Storage.** In the event Customer purchases a Cloud Hosted Evidence Management System with "Unlimited Storage", including evidence management under the VaaS Program, then "Unlimited Storage" means storage of all data captured using Equipment sold under this MVA, provided that (1) video recordings are recorded in an event-based setting where users are not recording an entire shift under one video footage and (2) Customer's data retention policies and practices do not result in the retention of data beyond the statutory minimums set forth by the State in which the Customer resides. In the event Customer does not comply with the preceding clauses (1) and (2), Motorola shall have the right to charge Customer for such excess data storage at the prevailing rates. Motorola also has the right to place any data that has not been accessed for a consecutive six (6) month period into archival storage, retrieval of which may take up to twenty-four (24) hours from any access request.

**5.2. Applicable End User Terms.** Additional license terms apply to third-party software included in certain software Products which are available online at: [www.motorolasolutions.com/legal-flow-downs](http://www.motorolasolutions.com/legal-flow-downs). Customer will comply, and ensure its Authorized Users comply, with all such additional license terms.

**5.3. WatchGuard Detector Mobile.** Any order by Customer of WatchGuard Detector Mobile is on a subscription basis and subject to the SSA.

**5.4. Vigilant Access.** Customer may opt for subscription to additional Subscription Software, including use of the Law Enforcement Archival Network ("**LEARN**"), which is subject to the SSA and any additional terms governing the use of LEARN. If Customer purchases a subscription to commercial license plate recognition data, then Customer will execute and agree to the terms of Motorola's standard Data License Addendum.

**5.5. License Plate Recognition Data.** License plate recognition ("**LPR**") data collected by Customer is considered Customer Data (as defined in the MCA) and is therefore subject to the



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Customer's own retention policy. Customer, at its option, may share its LPR data with other similarly situated Law Enforcement Agencies ("**LEAs**") which contract with Motorola to access LEARN by selecting this option within LEARN. Other similarly situated LEAs may similarly opt to share their LPR data with Customer using LEARN. Such LPR data generated by other LEAs is considered Third-Party Data (as defined in the MCA), is governed by the retention policy of the respective LEA, and shall be used by Customer only in connection with its use of LEARN. LPR data that has reached its expiration date will be deleted from LEARN. Only individuals who are agents and/or sworn officers of Customer and who are authorized by Customer to access LEARN on behalf of Customer through login credentials provided by Customer ("**User Eligibility Requirements**") may access LEARN. Vigilant in its sole discretion may deny access to LEARN to any individual based on such person's failure to meet the User Eligibility Requirements. Customer will ensure no user logins are provided to agents or officers of other local, state, or Federal LEAs without the express written consent of Vigilant. Customer will be responsible for all individuals' access to, and use of, LEARN through use of Customer login credentials, including ensuring their compliance with this Agreement.

**5.6. API Support.** Motorola will use commercially reasonable efforts to maintain its Application Programming Interface ("**API**") sold in connection with any Mobile Video System. APIs will evolve and mature over time, requiring changes and updates. Motorola will use reasonable efforts to continue supporting any version of an API for six (6) months after such version is introduced, but if Motorola determines, in its sole discretion, to discontinue support of an API for any reason, Motorola will provide reasonable advance notification to Customer. If an API presents a security risk, Motorola may discontinue an API without prior notice.

**5.7. Support of Downloaded Clients.** If Customer purchases any software Product that requires a client installed locally on Customer-Provided Equipment or Equipment in possession of Customer, Customer will be responsible for downloading and installing the current version of such client, as it may be updated from time to time. Motorola will use reasonable efforts to continue supporting any version of a client for forty-five (45) days following its release, but Motorola may update the current version of its client at any time, including for bug fixes, product improvements, and feature updates, and Motorola makes no representations or warranties that any software Product will support prior versions of a client.

**5.8. CJIS Security Policy.** Motorola agrees to support Customer's obligation to comply with the Federal Bureau of Investigation Criminal Justice Information Services ("**CJIS**") Security Policy and will comply with the terms of the CJIS Security Addendum for the term of the Addendum or Ordering Document for the applicable Product. Customer hereby consents to Motorola screened personnel serving as the "escort" within the meaning of CJIS Security Policy for unscreened Motorola personnel that require access to unencrypted Criminal Justice Information for purposes of Product support and development.

**6. VaaS Program Terms.** All hardware provided by Motorola to Customer under the VaaS Program will be considered "Equipment", as defined in the EPSLA, and constitutes a purchase of such Equipment subject to the terms of the EPSLA. Additionally, the following terms and conditions apply to any Equipment purchased under the VaaS Program:

**6.1. Technology Refresh.** All body cameras and associated batteries purchased under the VaaS Program ("**Body Cameras**") are eligible for a one-time replacement at no additional cost to the Customer beginning on the date three (3) years following the date of delivery of the initial Body Cameras and associated batteries provided under the VaaS Program. In order to receive any replacement Body Camera applicable under this **Section 6.1 – Technology Refresh**, Customer must return the existing Body Camera to Motorola in working condition. The corresponding replacement Body Camera will be the then-current model of the Body Camera at



the same tier as the Body Camera that is returned to Motorola. For clarity, any other Equipment received by Customer as part of the VaaS Program, other than Body Cameras, will not be eligible for a technology refresh hereunder.

**6.2. No-Fault Warranty.** Subject to the disclaimers set forth in the MCA and EPSLA, upon delivery of any Equipment purchased as part of the VaaS Program, Motorola will provide a No-fault Warranty to Customer for such Equipment that extends until the end of the Commitment Term (as defined below) applicable to such Equipment; except that the No-fault Warranty will not apply to: (i) any Equipment with intentionally altered or removed serial numbers, (ii) any other damages disclaimed under the MCA or EPSLA, or (iii) any Equipment that Motorola determines was changed, modified, or repaired by Customer or any third party. The “**No-fault Warranty**” means that Motorola will repair or replace any Equipment components or parts that render the applicable Equipment unable to perform its intended purpose. With respect to any batteries in Body Cameras, a battery will be considered faulty and covered under this No-fault Warranty if it falls below sixty percent (60%) of rated capacity.

**6.3. Commitment Term.** Customer accepts that following the delivery of any Equipment under the VaaS Program, Customer commits to a five (5) year subscription term for such Equipment at the rate provided in the Ordering Document (the “**Initial Commitment Term**”). If Customer, for any reason, terminates any of its obligations to Motorola prior to expiration of the applicable Commitment Term (as defined below), Customer will be subject to the payments described in **Section 6.7.2 – Termination** hereunder.

**6.4. Additional Devices.** Any additional Equipment, including any accessory items, ordered by Customer after Customers’ initial purchase of Equipment hereunder may be subject to an incremental increase in Fees. In the event Customer orders additional Equipment under the VaaS Program within the ninety (90) days immediately following its initial purchase, such Equipment will be included in and subject to the Initial Commitment Term. Any additional Equipment purchased under the VaaS Program subsequent to such ninety (90) day period, will commence an additional subscription term commitment for such Equipment of five (5) years (a “**Subsequent Commitment Term**”) with respect to the monthly Fee associated with such additional Equipment. For purposes of this Addendum, the Initial Commitment Term and each Subsequent Commitment Term are each also referred to herein as a “**Commitment Term**”.

**6.5. Included Subscription Software.**

**6.5.1. EvidenceLibrary.com.** Subject to **Section 6.7.1 – VaaS Term**, the VaaS Program provides Customer with a subscription to the Cloud Hosted Evidence Management System specified in the Ordering Document during the VaaS Term (as defined below), the use of which is subject to the SSA. Customer’s subscription will include unlimited users, Unlimited Storage and unlimited sharing, provided any media or data uploaded to the Cloud Hosted Evidence Management System is done so using Motorola Equipment actively enrolled in the VaaS Program. Following expiration of the applicable Commitment Term, if Customer desires to continue use of expired Equipment with the Cloud Hosted Evidence Management System, Customer must purchase additional access to Cloud Hosted Evidence Management System based on Motorola’s prevailing rates, or Motorola may disconnect connectivity of any expired Equipment to the Cloud Hosted Evidence Management System.

**6.5.2. CommandCentral.** For each Body Camera, in-car system or integrated system purchased, Customer will receive one user license for Motorola CommandCentral, which provides access to CC Community, CC Capture, CC



Vault and CC Records. If the Customer requires additional licenses to CommandCentral they must be purchased for an additional fee.

6.5.3. CarDetector Mobile. If Customer's VaaS Program order includes an in-car system, Customer will receive a subscription to WatchGuard CarDetector Mobile during the VaaS Term, the use of which is subject to the SSA.

6.6. VaaS Program Payment. Unless otherwise provided in an Ordering Document (and notwithstanding the provisions of the MCA), Customer will prepay a subscription Fee quarterly (each a "**Subscription Quarter**"), as set forth in an Ordering Document. If Customer orders any additional Product(s) under the VaaS Program subsequent to the initial purchase by Customer, Fees for such additional Product will be added to the quarterly subscription Fee, and will be payable on the same Fee payment schedule as the initial Product purchased under the VaaS Program; provided, however, that for the first Subscription Quarter during which such additional Product is purchased, the subscription Fee for the applicable additional Product will be pro-rated based on the applicable number of days remaining in the such initial Subscription Quarter.

6.7. VaaS Program Term and Termination.

6.7.1. VaaS Term. Customer's participation in the VaaS Program will commence upon the System Completion Date under this MVA, and will continue through the end of the final Commitment Term hereunder ("the "**VaaS Term**"). Following the end of any Commitment Term, Customer's access to the Cloud Hosted Evidence Management System with respect to the Equipment purchased relative to that Commitment Term will expire, and Customer must download or transfer all Customer Data associated with the applicable Equipment within thirty (30) days following expiration unless Customer purchases extended access to the Cloud Hosted Evidence Management System from Motorola at the prevailing rates. Motorola has no obligation to retain Customer Data for expired Equipment beyond thirty (30) days following expiration of the applicable Commitment Term. For example, if Customer purchases 100 devices on January 1 of Year 1 of the VaaS Term, and then 100 additional devices on January 1 of Year 3, on December 31 of Year 5 (i.e., the conclusion of the Initial Commitment Term), Customer's access to the Cloud Hosted Evidence Management System with respect to the first 100 devices will be discontinued, and Customer must purchase extended storage or transfer all Customer Data associated with the first 100 devices within thirty (30) days of expiration of the Initial Commitment Term. In the foregoing example, the Cloud Hosted Evidence Management System access and data storage for the second 100 devices purchase will extend until December 31 of Year 7.

6.7.2. Termination. The termination provisions applicable to the VaaS Program will be those set forth in the MCA, EPSLA and SSA, as applicable. If Customer's participation in the VaaS Program is terminated for any reason prior to the end of the Initial Commitment Term or any Subsequent Commitment Term, Customer will pay the pro-rated remainder of the aggregate Equipment MSRP price (prevailing as of the time of delivery), calculated by multiplying the MSRP price of all Equipment purchased under the VaaS Program by the percentage resulting from dividing the number of months remaining in the Commitment Term applicable to such Equipment by sixty (60). In the event Customer purchased Equipment on multiple dates, resulting in separate Commitment Terms for certain Equipment, the preceding calculation will be made relative to the applicable Commitment Term for each Equipment order. For example, if Customer



purchased \$1,000 worth of Equipment on January 1 of Year 1 of the VaaS Term, and then \$1,000 worth of Equipment on January 1 of Year 2, and then Customer's VaaS Program terminates on December 31 of Year 3, Customer will be required to repay:  $\$1,000 \times (24/60) + \$1,000 \times (36/60)$ , which is equal to \$1,000 in the aggregate.

**7. System Completion.** Any Mobile Video System sold hereunder will be deemed completed upon Customer's (or the applicable Authorized User's) Beneficial Use of the applicable Mobile Video System (the "**System Completion Date**"). Customer will not unreasonably delay Beneficial Use, and in any event, the Parties agree that Beneficial Use will be deemed to have occurred thirty (30) days after functional demonstration. As used in this Section, "**Beneficial Use**" means use by Customer or at least one (1) Authorized User of the material features and functionalities of Mobile Video System, in material conformance with Product descriptions in the applicable Ordering Document. Any additional Equipment sold in connection with the initial Mobile Video System shall be deemed delivered in accordance of the terms of the EPSLA. Any additional Subscription Software purchased under the VaaS Program will be deemed delivered upon Customer's receipt of credentials required for access to the Cloud Hosted Evidence Management System or upon Motorola otherwise providing access to the Cloud Hosted Evidence Management System. This Section applies to Products purchased under the MVA notwithstanding the delivery provisions of the Addendum applicable to such Products, such as the SSA or EPSLA, and this Section will control over such other delivery provisions to the extent of a conflict.

**8. Additional Cloud Terms.** The terms set forth in this **Section 8 – Additional Cloud Terms** apply in the event Customer purchases any cloud hosted software Products under this MVA, including a Cloud Hosted Evidence Management System.

**8.1. Data Storage.** Motorola will determine, in its sole discretion, the location of the stored content for cloud hosted software Products. All data, replications, and backups will be stored at a location in the United States for Customers in the United States.

**8.2. Data Retrieval.** Cloud hosted software Products will leverage different types of storage to optimize software, as determined in Motorola's sole discretion. For multimedia data, such as videos, pictures, audio files, Motorola will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by Motorola will determine the data retrieval speed. Access to content in archival storage may take up to twenty-four (24) hours to be viewable.

**8.3. Availability.** Motorola will make reasonable efforts to provide monthly availability of 99.9% for cloud hosted software Products with the exception of maintenance windows. There are many factors beyond Motorola's control that may impact Motorola's ability to achieve this goal.

**8.4. Maintenance.** Scheduled maintenance of cloud hosted software Products will be performed periodically. Motorola will make commercially reasonable efforts to notify customers one (1) week in advance of any such maintenance. Unscheduled and emergency maintenance may be required from time to time. Motorola will make commercially reasonable efforts to notify customers of any unscheduled or emergency maintenance twenty-four (24) hours in advance.

**9. Survival.** The following provisions will survive the expiration or termination of this MVA for any reason: Section 1 – Addendum; 2 – Evidence Management Systems; Applicable Terms and Conditions; Section 3 – Payment; Section 5.2 – Applicable End User Terms; Section 6.5.1 – EvidenceLibrary.com; Section 6.7 – VaaS Program Term and Termination; Section 9 – Survival.



## **Quote For:**

**Sheboygan Police Department  
Attn: Stephen Cobb**

## **Reference:**

**VaaS 17 In Car 70 Body Worn 12 Interview**

## **Quote By:**

**WatchGuard Video / Motorola Solutions  
Darrell Probst**

**Date: 11-09-21**

**Serving Law Enforcement with the Most Compelling, Quality Video Products**

**WatchGuard Video**

415 E. Exchange  
 Allen, TX 75002  
 (P) 800-605-6734 (F) 212-383-9661

**Prepared For:**

Sheboygan Police Department - Attention: Stephen Cobb  
 VaaS 17 In Car 70 Body Worn 12 Interview

**QUOTATION - E3E-0065-21**
**DATE: 11-09-21**

Deliverables / Materials / Services	Qty	Sell Price	Amount
<b>4RE In-car video system with Integrated Body-worn camera and evidence management software - 5 Year Video-as-a-Service Package @ \$189 per Month</b> <b>AAS-ICV-BWC-5YR (PaaS)</b> Video-as-a-Service Bundle includes the cloud-based evidence management system, with unlimited storage and unlimited cloud sharing. User Licenses on a per-bundle basis (each 4RE+V300 aaS Bundle = 1 User License). CommandCentral Evidence, capture, records, redaction and community engagement capabilities included. V300 Body-worn camera (choice of mount) Third year technology (Hardware) refresh. CarDetector Mobile LPR w/ Vigilant LEARN (PlateSearch) 4RE In-Car Video System (Choice of forward camera) Includes 200GB DVR, Control panel & Infrared cabin camera WiFi Dock, HiFi wireless microphone kit, MiKroTik WiFi Kit & Smart Power Switch 5-year agreement (billed Quarterly or Annually) No-Fault hardware warranty, Advanced hardware replacement service & 24/7 support	17	\$11,340.00	\$192,780.00



<b>Body-worn camera and evidence management software - 5 Year Video-as-a-Service Package @ \$49 per Month</b>	<b>53</b>	<b>\$2,940.00</b>	<b>\$155,820.00</b>
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**AAS-BWC-5YR-001 (PaaS)**

Video-as-a-Service includes CommandCentral Evidence, the cloud-based evidence management system with unlimited device storage and unlimited cloud sharing.

1 User License per Body Worn Camera.

50 GB of non-device storage included per device, averaged across all devices in the program

CommandCentral Evidence, Records, Redaction, Sharing, Community Engagement capabilities and capture application included.

Body-worn camera (battery + choice of mount included)

Third year technology (Hardware) refresh.

5-year agreement (billed Quarterly or Annually)

Advanced hardware replacement service & 24/7 support

No-Fault hardware warranty

<b>Transfer Station (8 Bay) Video-as-a-Service Package @ \$30 per Month</b>	<b>9</b>	<b>\$1,600.00</b>	<b>\$14,400.00</b>
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**AAS-BWC-XFS-DOC (PaaS)**

8-Bay Ethernet Transfer Station

Ethernet Cable, Rack mount (optional) & Power Cord

<b>Upload Server - Video-as-a-Service Package @ \$100 per Month</b>	<b>1</b>	<b>\$6,000.00</b>	<b>\$6,000.00</b>
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**AAS-UPL-SVR-001 (PaaS)**

Upload Server

Fast video offload, 8 TB of storage, 5 Year Warranty

<b>USB Docking Station Video-as-a-Service Package @ \$4 per Month</b>	<b>5</b>	<b>\$120.00</b>	<b>\$600.00</b>
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**AAS-BWC-USB-DOC (PaaS)**

USB Dock for Body-worn camera including USB Cable

<b>V300, Battery, Removable and Rechargeable, 3.8V, 4180mAh</b>	<b>9</b>	<b>\$99.00</b>	<b>\$891.00</b>
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**WGP02614 (PaaS)**

<b>Managed Software Installation Service; On-Site Assist Install, Training, Configuration, Project Management, Consultation</b>	<b>1</b>	<b>\$5,000.00</b>	<b>\$5,000.00</b>
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**WGW00122-400 (PaaS)**

<b>Shipping &amp; Handling NASPO</b>	<b>1</b>	<b>\$0.00</b>	<b>\$0.00</b>
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**Freight - NASPO (PaaS)**

<b>Subtotal Price</b>	<b>\$375,491.00</b>
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## Data Migration

Item 15.

Deliverables / Materials / Services	Qty	Sell Price	Amount
Coban Video Migration / Data Migration and Transfer *** Requires: Migration Quote Checklist to be completed *** WGW00166 ( <i>PaaS</i> )	5	\$600.00	\$3,000.00
Axon Video Migration / Data Migration and Transfer *** Requires: Migration Quote Checklist to be completed *** WGW00166 ( <i>PaaS</i> )	14	\$0.00	\$0.00
Subtotal Price			\$3,000.00

## Interview Room

Deliverables / Materials / Services	Qty	Sell Price	Amount
4RE Interview Room System with Dome Camera - Touch Screen Display Integrated 200GB automotive grade hard drive 16GB USB removable thumb drive Remote viewing software 1 Yr Hardware Warranty Cabling 4RE Firmware Record-After-the-Fact® (RATF) technology Multiple Resolution Encoding H.264 High Profile Video Compression INT-4RE-1-D ( <i>PaaS</i> )	12	\$4,995.00	\$59,940.00
Interview Room Additional Camera - Dome Camera Camera, Analog, Interview, Vandal Proof, Fixed Dome w/ Audio CAM-BST-101-NEW ( <i>PaaS</i> )	1	\$250.00	\$250.00
Warranty, 4RE, In-Car, 1st Year (Months 1-12) WAR-4RE-CAR-1ST ( <i>PaaS</i> )	12	\$0.00	\$0.00
Warranty, 4RE, In-Car, 2nd Year (Months 13- 24) WAR-4RE-CAR-2ND ( <i>PaaS</i> )	12	\$0.00	\$0.00
Warranty, 4RE, In-Car, 3rd Year (Months 25-36) WAR-4RE-CAR-3RD ( <i>PaaS</i> )	12	\$0.00	\$0.00
Warranty, 4RE, In-Car, 4th Year (Months 37-48) WAR-4RE-CAR-4TH ( <i>PaaS</i> )	12	\$325.00	\$3,900.00
Warranty, 4RE, In-Car, 5th Year (Months 49-60) WAR-4RE-CAR-5TH ( <i>PaaS</i> )	12	\$450.00	\$5,400.00

Subtotal Price

\$69,49

Item 15.

## Spares - Body Worn Cameras

Deliverables / Materials / Services	Qty	Sell Price	Amount
Spares Body-worn camera and evidence management software - 5 Year Video-as-a-Service Package	2	\$0.00	\$0.00
AAS-BWC-5YR-001 ( <i>PaaS</i> )			

Subtotal Price

\$0.00

## Installation Training

Deliverables / Materials / Services	Qty	Sell Price	Amount
Two-Day 4RE Install Training to include vehicle (1.5 days) and interview room (.5 days) installation training in Sheboygan, WI.	1	\$2,000.00	\$2,000.00
Installation ( <i>PaaS</i> )			

Subtotal Price

\$2,000.00

Total Price

\$449,981.00

Deferred

\$449,981.00

Due Now

\$0.00

Annual Invoice

\$89,996.20

## Purchase as a Service (PaaS) Financial Profile

Total Price:	\$449,981.00
Contract Term:	5 Years
Monthly Payments:	\$7,499.68
<b>Annual Invoice:</b>	<b>\$89,996.20</b>

### Notes:

1. This Quote is valid for 90 days from the Quote Date. Pricing may change thereafter.
2. Any sales transaction resulting from this Quote is based on and subject to the applicable Motorola's Standard Terms and Conditions, notwithstanding terms and conditions on purchase orders or other Customer ordering documents.
3. Motorola's Standard Terms and Conditions are found at [www.motorolasolutions.com/product-terms](http://www.motorolasolutions.com/product-terms).
4. Payment Terms: Equipment-Net 30 days upon shipment; Installation-Net 30 days upon completion; Services and Subscription Agreements-Net 30 days from receipt of Order.



5. The pricing in this Quote does not include any applicable taxes (e.g. sales/use tax).

Item 15.

6. UNLESS OTHERWISE NOTED IN THIS QUOTE / ORDER, INSTALLATION OF EQUIPMENT IS NOT INCLUDED

Quoted by: Darrell Probst - 800-605-6734 - darrell.probst@motorolasolutions.com



## **Quote For:**

**Sheboygan Police Department  
Attn: Stephen Cobb**

## **Reference:**

**CCE Plus Yearly after VaaS**

## **Quote By:**

**WatchGuard Video / Motorola Solutions  
Darrell Probst**

**Date: 11-09-21**

**Serving Law Enforcement with the Most Compelling, Quality Video Products**

**WatchGuard Video**

415 E. Exchange  
 Allen, TX 75002  
 (P) 800-605-6734 (F) 212-383-9661

**Prepared For:**

Sheboygan Police Department - Attention: Stephen Cobb  
 CCE Plus Yearly after VaaS

**QUOTATION - E3E-0065-20**
**DATE: 11-09-21**

Deliverables / Materials / Services	Qty	Sell Price	Amount
<b>CommandCentral Evidence PLUS - One (1) Year Subscription</b> SSV00S02601A-01 Digital Evidence Management Field Response Application Records Management PLUS these additional features: Advanced Tools: Redaction, Transcription, and Reporting Community Interaction Tools Case Sharing Capabilities One (1) Year Subscription Duration Priced Per Named User (Qty = # of Users)	88	\$468.00	\$41,184.00
<b>CC Evidence Unlimited Data Storage for ICV</b> SSV00S02784A Unlimited for In Car Video Priced Annually: \$52 per car per month	17	\$624.00	\$10,608.00
<b>CC Evidence Unlimited Data Storage for BWC</b> SSV00S02785A Unlimited for Bodyworn Cameras Priced Annually: \$32 per user per month	70	\$384.00	\$26,880.00

**Total Price** **\$78,672.00**
**Notes:**

1. This Quote is valid for 90 days from the Quote Date. Pricing may change thereafter.
2. Any sales transaction resulting from this Quote is based on and subject to the applicable Motorola's Standard Terms and Conditions, notwithstanding terms and conditions on purchase orders or other Customer ordering documents.
3. Motorola's Standard Terms and Conditions are found at [www.motorolasolutions.com/product-terms](http://www.motorolasolutions.com/product-terms).



- Item 15.
4. Payment Terms: Equipment-Net 30 days upon shipment; Installation-Net 30 days upon completion; Services and Subscription Agreements-Net 30 days from receipt of Order.
  5. The pricing in this Quote does not include any applicable taxes (e.g. sales/use tax).
  6. UNLESS OTHERWISE NOTED IN THIS QUOTE / ORDER, INSTALLATION OF EQUIPMENT IS NOT INCLUDED

Quoted by: Darrell Probst - 800-605-6734 - darrell.probst@motorolasolutions.com

III

Res. No. 12 - 21 - 22. By Alderpersons Felde and Filicky-Peneski.  
January 4, 2022.

A RESOLUTION authorizing the appropriate City officials to enter into a lease agreement for a replacement postage meter with terms that are acceptable to the City Attorney.

WHEREAS, the postage meter in the City Clerk's Office is not functioning properly at this time and, as such, it is appropriate to suspend the rules and pass this Resolution without referral to committee in order for City Hall to have a functioning postage meter as soon as possible.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are authorized to execute all documents that have been approved by the City Attorney and that are reasonably necessary to procure a new postage meter, and to expend funds for the procurement of the postage meter to the extent money has been appropriated.

Suspend  
Adopt

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

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

X

Gen. Ord. No. 36- 21 - 22. By Alderpersons Felde and Filicky-Peneski.  
January 4, 2022.

AN ORDINANCE re-establishing the salary schedule for certain designated elected officials.

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

Section 1. The following salary schedule is hereby established for the elected part-time Municipal Court Judge, effective the first payday in May each year:

2023	\$48,155
2024	\$49,118
2025	\$50,100
2026	\$51,102

Section 2. Part-Time elected officials can engage in outside business activities during normal City Hall office hours.

Section 3. The position of part-time Municipal Court Judge is a limited hour position; benefit eligibility is limited to WRS contributions only.

Section 4. The following salary schedule is hereby established for the elected full-time City Attorney and City Clerk, effective the first payday in May each year:

<u>City Attorney</u>	<u>City Clerk</u>
2023 \$132,320	2023 \$94,918
2024 \$134,967	2024 \$96,817
2025 \$137,666	2025 \$98,753
2026 \$140,419	2026 \$100,728

Section 5. Full-time elected officials shall not engage in any outside business activities during normal City Hall office hours.

Section 6. Health insurance premium contributions for the full-time City Attorney and City Clerk will be consistent with the non-represented employees.

Section 7. Amounts for 2023 reflect a 2.0% increase plus an additional 0.75% increase so that the 2023 increases reflect the across the board increases earned by other non-representative employees (0.5% in 2017 and 0.25% in 2018) that were not accounted for in the previous salary ordinance.

FAP



Section 8. Amounts for 2024-2026 reflect a 2.0% increase. It is anticipated that any increases for other non-represented employees above that 2.0% will be added to the salary schedule in 2027.

Section 9. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

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

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

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

III  
Res. No. 118 - 21 - 22. By Alderpersons Mitchell and Filicky-Peneski.  
December 20, 2021.

A RESOLUTION establishing a debt service reserve account regarding the City of Sheboygan's Section 108 Loan to renovate 1817 N. 8<sup>th</sup> Street.

WHEREAS, in Res. No. 105-20-21, the Common Council of the City of Sheboygan expressed its desire to borrow approximately \$3,200,000 through Section 108 of the Housing and Community Development Act of 1974 ("Section 108") to develop the former Save a Lot building at 1817 N. 8<sup>th</sup> Street into a community center to serve seniors and other community groups; and

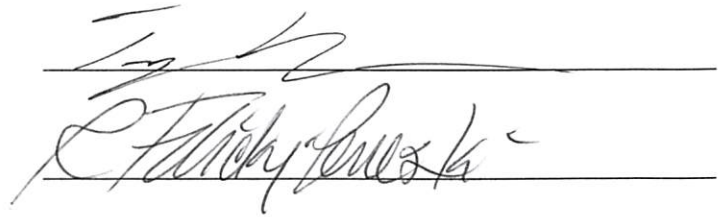
WHEREAS, in that Resolution, the Mayor was authorized to execute the documents necessary to implement the City's Section 108 application and to issue any debt obligations; and

WHEREAS, because of the appraised value of the property at 1817 N. 8<sup>th</sup> Street relative to the loan value, the U.S. Department of Housing and Urban Development is requiring that the City of Sheboygan establish a debt service reserve account of at least \$350,000 for the Section 108 loan.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials may take all actions necessary to establish a debt service reserve account with an initial balance of \$350,000 that complies with all requirements imposed by the U.S. Department of Housing and Urban Development.

BE IT FURTHER RESOLVED: That this debt service reserve account shall be funded with funds currently held in the State of Wisconsin Local Government Investment Pool.

BE IT FURTHER RESOLVED: That City Staff is instructed and directed to work with the U.S. Department of Housing and Urban Development to permit the debt service reserve account to be closed and the funds returned to the Local Government Investment Pool as quickly as possible, which is anticipated to be approximately two years after the City begins making payment toward the Section 108 loan.



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