



SECOND SPECIAL COUNCIL MEETING AGENDA

September 11, 2023 at 5:30 PM

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

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

Notice of the 2nd Special Meeting of the 2023-2024 Common Council at 5:30 PM or immediately following the Finance and Personnel Meeting, MONDAY, September 11, 2023 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

2. Pledge of Allegiance

3. Public Forum

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

REPORT OF COMMITTEES

- 4.** R. C. No. 79-23-24 by Finance and Personnel Committee to whom was referred DIRECT REFERRAL Res. No. 57-23-24 by Alderpersons Mitchell and Filicky-Peneski authorizing the appropriate City officials to execute a Temporary Use and Access License Agreement between The Boerke Company, Inc. and the City of Sheboygan for purposes of conducting certain due diligence investigations on real property located in the Town of Wilson.

ADJOURN MEETING

5. 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
R. C. 79-23-24**

BY FINANCE AND PERSONNEL COMMITTEE.

SEPTEMBER 11, 2023.

Your Committee to whom was referred DIRECT REFERRAL Res. No. 57-23-24 by Alderpersons Mitchell and Filicky-Peneski authorizing the appropriate City officials to execute a Temporary Use and Access License Agreement between The Boerke Company, Inc. and the City of Sheboygan for purposes of conducting certain due diligence investigations on real property located in the Town of Wilson.

Committee:

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

_____.

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

**CITY OF SHEBOYGAN
DIRECT REFERRAL RESOLUTION 57-23-24
TO FINANCE AND PERSONNEL COMMITTEE**

BY ALDERPERSONS MITCHELL AND FILICKY-PENESKI.

SEPTEMBER 11, 2023.

A RESOLUTION authorizing the appropriate City officials to execute a Temporary Use and Access License Agreement between The Boerke Company, Inc. and the City of Sheboygan for purposes of conducting certain due diligence investigations on real property located in the Town of Wilson.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Temporary Use and Access License Agreement between The Boerke Company, Inc. and the City of Sheboygan, a copy of which is attached hereto and incorporated herein.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

TEMPORARY USE AND ACCESS LICENSE AGREEMENT

THIS TEMPORARY USE AND ACCESS LICENSE AGREEMENT (hereinafter “Agreement”) is made this ____ of _____, 2023 (“Effective Date”) by and between **THE BOERKE COMPANY, INC.**, a Wisconsin corporation (“Owner”) and **THE CITY OF SHEBOYGAN**, a Wisconsin body corporate (“User”).

RECITALS:

Owner is the owner of certain real property located in the Town of Wilson, State of Wisconsin, known as tax parcel numbers 59030454450, 59030454460, 59030454421, and 59030454462 (the “Property”). User has requested a temporary license for entry onto a portion of the Property for the purposes of conducting certain due diligence investigations, including a wetland delineation report, archaeological investigations, and soil borings. Owner has agreed to grant such temporary license, subject to the terms and conditions set forth below.

AGREEMENT:

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **License**. Owner hereby grants and conveys to the User, and the User hereby accepts, upon the terms and conditions hereinafter set forth, a temporary license for access onto the portion of the Property highlighted on the attached Exhibit A (the “License Area”) for the sole purpose of conducting the due diligence inspections on the Property (the “License”). Such License shall be subject to the conditions set forth below and to such further rules as set by Owner. User acknowledges and agrees that the rights granted under this Agreement do not constitute an easement tenancy or any other property interest in either the Property or the License Area and any claim of such an interest is hereby disavowed. User shall only be permitted to exercise the License from the Effective Date to December 31, 2023 (the “Permitted Use Period”). Owner may terminate this Agreement and the License granted herein effective upon written notice to User if Owner reasonably determines that User is improperly using the License Area or is otherwise in breach of the terms of this Agreement.

2. **Compliance with Laws**. User shall comply with all applicable laws and ordinances in connection with the use of the License granted herein. User shall not commit, or permit to be committed, any waste or nuisance on the License Area or Property or cause any damage to the License Area or Property during the exercise of the rights granted under the License. User covenants and agrees that User shall not use, or suffer, or permit any person or persons to use the License Area or Property in any manner which will void the insurance or increase the rate of insurance on the Property. Notwithstanding anything to the contrary herein, User shall provide prior written notice to Owner regarding the type of proposed soil boring or other invasive testing.

3. **Waiver/Indemnification**. Owner, its agents, directors, officers and employees (collectively the “Owner Parties”) shall not be liable for loss or damage to any personal property of User or its invitees located on the Property or for any injury or death to persons using the License or entering upon the Property. User hereby waives and releases any claims against the Owner Parties for any of the foregoing. User does hereby indemnify and hold harmless the Owner Parties, and each of them, from and against any and all claims, charges, liabilities, obligations, penalties, causes of action, liens, damages, costs and expenses, including, without limitation, reasonable attorneys’ fees and other professional fees, incurred by any of the Owner Parties, and relating to (i) the use of the Property by User, its agents, employees, vendors, or invitees, or (ii) arising from or related to this Agreement.

4. **AS-IS.** Owner makes no representations or warranties as to the suitability, condition, security, or any other matters associated with the Property. Any and all use of the Property is at User's sole risk. User shall exercise its rights this Agreement in a clean and safe manner and shall promptly repair any damage to the Property caused by User or its agents, employees, vendors, or invitees. At the expiration of the Permitted Use Period, User shall surrender the Property to Owner in at least the same condition as existed at the commencement of the Permitted Use Period with all personal property of User or any invitees removed. Pursuant to the foregoing, User shall make all repairs and restorations to the Property required to restore the condition of the same to the condition existing prior to any testing conducted by User.

5. **Insurance.** At all times commencing on the Effective Date and continuing for a period one (1) year thereafter, User shall maintain commercial general liability insurance covering all claims, demands or actions made by, or on behalf of, any person or persons arising from, related to or connected with the Property, the License, and this Agreement in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence/ Two Million Dollars (\$2,000,000.00) annual aggregate. User's insurance will include contractual liability coverage insuring User's indemnification obligations under this Agreement. Such insurance shall name Owner as an additional insured. User's insurance shall be primary and non-contributory. Prior to the Effective Date and as a condition precedent to User's right to exercise any privileges granted by this Agreement, User shall furnish to Owner a certificate evidencing the existence of the insurance required by this Agreement.

6. **Notice.** Whenever notice is required to be given pursuant to this Agreement, it shall be personally delivered or sent by a nationally recognized overnight delivery service, postage prepaid, addressed to the parties at their respective addresses as follows:

If to Owner: The Boerke Company, Inc.
c/o Advocate Health
750 West Virginia Avenue
Milwaukee, Wisconsin 54203
Attn: Corporate Real Estate

If to User: City of Sheboygan
City Hall
828 Center Avenue, Suite 210
Sheboygan, Wisconsin 53081
Attn: Charles C. Adams, City Attorney

Or such other address or addresses as any party, by written notice in the manner specified above to the other parties hereto, may designate from time to time. Notice shall be deemed to have been given on the date the notice is received (if personally delivered) or one business day after the date the notice is properly sent through a nationally recognized overnight delivery service.

7. **Counterparts.** This Agreement may be executed in counterparts, each of which upon such execution shall be deemed an original. Signatures provided by telecopy or other electronic means (i.e., e-mail, DocuSign) shall have the same binding effect as original signatures.

8. **Assignment.** This Agreement is personal to User and may not be assigned by User.

[signature page follows]

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

OWNER:

THE BOERKE COMPANY, INC., a Wisconsin corporation

By: _____
Name: _____
Title: _____

USER:

THE CITY OF SHEBOYGAN,
a Wisconsin body corporate

By: _____
Name: _____
Title: _____

EXHIBIT A
LICENSE AREA

The License Area shall be the portion of the Property illustrated below which is outlined in yellow.

