

FINANCE AND PERSONNEL COMMITTEE MEETING AGENDA

August 08, 2022 at 5:00 PM

Council Chambers, 828 Center Avenue, Sheboygan, WI

It is possible that a quorum (or a reverse quorum) of the Sheboygan Common Council or any other City committees/boards/commissions may be in attendance, thus requiring a notice pursuant to State ex rel. Badke v. Greendale Village Board, 173 Wis. 2d 553,494 N.W.2d 408 (1993).

Persons with disabilities who need accommodations to attend this meeting should contact the Finance Department at 920-459-3311. Persons other than council members who wish to participate remotely shall provide notice to the Finance Department at 920-459-3311 at least 24 hours before the meeting so that the person may be provided a remote link for that purpose.

OPENING OF MEETING

- 1. Call to Order
- 2. Roll Call (Alderpersons Mitchell, Filicky-Peneski, Perella, Ackley, and Felde may attend remotely)
- 3. Pledge of Allegiance
- 4. Introduction of Committee Members and Staff

MINUTES

5. Approval of Minutes - July 25, 2022

ITEMS FOR DISCUSSION AND POSSIBLE ACTION

- 6. Res. No. 45-22-23 / August 1, 2022: A RESOLUTION authorizing execution of the Department of Natural Resources Principal Forgiven Financial Assistance Agreement.
- 7. Res. No. 49-22-23 / August 1, 2022: A RESOLUTION authorizing the appropriate City officials to enter into a contract with the Sheboygan Water Utility to contribute American Rescue Plan Act State and Local Fiscal Recovery funds to the Raw Water Intake Project.
- 8. Direct Referral R. O. No. 26-22-23 /June 27, 2022: Submitting report in response to a request for direction from the Finance and Personnel Committee on the steps moving forward to complete the compensation study and wage scale adoption. Requests filing the document.
- Direct Referral R. O. No. 52-22-23 by Finance Director submitting a report regarding the progress of the Carlson-Dettmann Compensation Study.

ITEMS FOR DISCUSSION ONLY

10. Hiring Process Update - Director of Human Resources & Labor Relations

DATE OF NEXT REGULAR MEETING

11. August 22, 2022

ADJOURN

12. 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

Item 6.

Res. No. 45 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.

August 1, 2022.

A RESOLUTION authorizing execution of the Department of Natural Resources Principal Forgiven Financial Assistance Agreement.

WHEREAS, the City of Sheboygan (the "Municipality") wishes to undertake a project to replace private lead service lines, identified as DNR No. 4901-10 (the "Project"); and

WHEREAS, the Municipality has applied to the Safe Drinking Water Loan Program (the "SDWLP") for financial assistance in the form of a loan made by the SDWLP to the Municipality of which all the principal will be forgiven at the time that loan disbursements are made to the Municipality, pursuant to the DNR Financial Assistance Agreement; and

WHEREAS, the SDWLP has determined that it can provide a loan with principal forgiveness in an amount up to \$405,000 that it has identified as being eligible for SDWLP funding.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are authorized by and on behalf of the Municipality to execute the Principal Forgiven Financial Assistance Agreement, in form substantially similar to the attached agreement, that contains the terms and conditions of the SDWLP award for the Project, except that the Utility is using only principal forgiveness, so neither the City or the Utility will borrow any money for the program. The Principal Forgiven Financial Assistance Agreement is incorporated herein by this reference.

HP		
I HEREBY CERTIFY that the Common Council of the City of S	heboygan,	
Dated	20	 City Clerk
Approved	20	, Mayor

State of Wisconsin
Department of Natural Resources
Bureau of Community Financial Assistance
101 South Webster Street, 2nd Floor
PO Box 7921
Madison, Wisconsin 53707-7921

Financial Assistance Agreement Safe Drinking Water Loan Program Form 8700-214B rev 05/22

STATE OF WISCONSIN SAFE DRINKING WATER LOAN PROGRAM LEAD SERVICE LINE (LSL) PRINCIPAL FORGIVEN FINANCIAL ASSISTANCE AGREEMENT

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES DEPARTMENT OF ADMINISTRATION

and

CITY OF SHEBOYGAN

\$405,000 With \$405,000 PRINCIPAL FORGIVENESS

FINANCIAL ASSISTANCE AGREEMENT

Dated as of September 14, 2022

This constitutes a <u>Financial Assistance Agreement</u> under the State of Wisconsin's Safe Drinking Water Loan Program. This agreement is awarded pursuant to ss. 281.59 and 281.61, Wis. Stats. The purpose of this agreement is to award financial assistance from the Safe Drinking Water Loan Program. This agreement also discloses the terms and conditions of this award.

This agreement is only effective when signed by authorized officers of the municipality, the State of Wisconsin Department of Natural Resources, and the State of Wisconsin Department of Administration.

The Department of Natural Resources and the Department of Administration may rescind or terminate this agreement if the municipality fails to comply with the terms and conditions contained within. Any determination or certification made in this agreement by the Department of Natural Resources or the Department of Administration is made solely for the purpose of providing financial assistance under the Safe Drinking Water Loan Program.

Municipal Identification No. 59281 Safe Drinking Water Loan Program Project No. 4901-10

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WITNESSETH:

WHEREAS, this is a FINANCIAL ASSISTANCE AGREEMENT (the "FAA"), dated September 14, 2022, between the STATE OF WISCONSIN Safe Drinking Water Loan Program (the "SDWLP"), by the Department of Natural Resources (the "DNR") and the Department of Administration (the "DOA"), acting under authority of ss. 281.59 and 281.61, Wis. Stats., as amended (the "Statute"), and the City of Sheboygan, a municipality within the meaning of the Statute, duly organized and existing under the laws of the State of Wisconsin (the "Municipality"); and

WHEREAS, the United States, pursuant to the Federal Safe Drinking Water Act Amendments of 1996 (the "Act"), requires each state to establish a drinking water revolving loan fund to be administered by an instrumentality of the state before the state may receive capitalization grants for eligible projects from the United States Environmental Protection Agency (the "EPA"), or any successor which may succeed to the administration of the program established by the Act; and

WHEREAS, the State of Wisconsin has, pursuant to the Statute, established the SDWLP to be used in part for purposes of the Act; and

WHEREAS, the State of Wisconsin has, pursuant to s. 25.43, Wis. Stats., established a State of Wisconsin Environmental Improvement Fund which includes the SDWLP; and

WHEREAS, DNR and DOA have the joint responsibility to provide SDWLP financial assistance to municipalities for the construction of eligible drinking water projects, all as set forth in the Statute; and

WHEREAS, the Municipality has submitted to DNR an application for financial assistance (the "Application") for a project (the "Project"), and DNR has approved the Application and determined the Application meets the DNR criteria for project eligibility established in applicable state statutes and regulations; and

WHEREAS, DNR has determined that the Municipality and the Project are not ineligible for financial assistance under s. 281.61(2g), Wis. Stats.; and

WHEREAS, DNR has determined the SDWLP will provide financial assistance to the Municipality by making a loan (the "Loan") under s. 281.59(9), Wis. Stats., for the purposes of that subsection, and providing Principal Forgiveness of the Loan principal;

NOW, THEREFORE, in consideration of the promises and of the mutual representations, covenants, and agreements herein set forth, the SDWLP and the Municipality, each binding itself, its successors, and its assigns, do mutually promise, covenant, and agree as follows:

ARTICLE I DEFINITIONS; RULES OF INTERPRETATION

Section 1.01. <u>Definitions</u> The following capitalized terms as used in this FAA shall have the following meanings:

"Act" means the federal Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26.

"American Iron and Steel" means the requirements for using American iron and steel as mandated under EPA's Drinking Water State Revolving Fund Program.

"Application" means the written application of the Municipality dated December 29, 2021, for financial assistance under the Statute.

"Business Day" means any day on which State offices are open to conduct business.

"CWFP" means the State of Wisconsin Clean Water Fund Program, established pursuant to ss. 281.58 and 281.59, Wis. Stats., and managed and administered by DNR and DOA.

"DNR" means the State of Wisconsin Department of Natural Resources and any successor entity.

"DOA" means the State of Wisconsin Department of Administration and any successor entity.

"EPA" means the United States Environmental Protection Agency or any successor entity that may succeed to the administration of the program established by the Act.

"Final Completion" means all Service Lines to be financed under this FAA have been installed and the Municipality has submitted all necessary Project closeout documentation, including the final request for disbursement of Financial Assistance to the Municipality.

"Financial Assistance" means any proceeds provided under this Financial Assistance Agreement in the form of a Loan of which the Loan principal will be forgiven.

"Financial Assistance Agreement" or "FAA" means this Financial Assistance Agreement between the SDWLP, by DNR and DOA, and the Municipality.

"Lead Service Line" or "LSL" means a Service Line made from or including lead, or galvanized material which is or was downstream of lead, as reported to the Public Service Commission on Schedule W-29.

"Loan" means the loan made by the SDWLP to the Municipality of which the principal will be forgiven pursuant to this FAA at the time Loan disbursements are made.

"Municipality" means City of Sheboygan, a "local governmental unit" or "municipality" within the meaning of the Statute, duly organized and existing under the laws of the State, and any successor entity.

"Principal Forgiveness" means Financial Assistance received in the form of forgiveness of Loan principal amounts pursuant to the Act or this FAA.

"Project" means the project assigned SDWLP Project No. 4901-10 by DNR, described in the Project Manager Summary (Exhibit B).

"Project Costs" means the costs of the Project that are eligible for financial assistance from the SDWLP under the Statute, which are allowable costs under the Regulations or are costs for which DNR granted a variance to a portion of the Regulations to make them allowable, which have been incurred by the Municipality, an estimate of which is set forth in Exhibit A hereto and made a part hereof.

"Regulations" means chs. NR 108, NR 150, NR 166, NR 809, NR 810, and NR 811, Wis. Adm. Code, the regulations of DNR, and ch. Adm. 35, Wis. Adm. Code, the regulations of DOA, adopted pursuant to and in furtherance of the Statute, and ch. 145, Wis. Stats, as administered by the Department of Safety and Professional Services, as such may be adopted or amended from time to time.

"SDWLP" means State of Wisconsin Safe Drinking Water Loan Program, established pursuant to the Statute and managed and administered by DNR and DOA.

"Service Line" means the water service piping from the curb stop of a municipally-owned water main or service line to the meter, isolation valve, or other water utility service terminal on private residential property, a pre k–12 school, or a licensed and/or certified daycare center.

"State" means the State of Wisconsin.

"Statute" means ss. 281.59 and 281.61, Wis. Stats., as amended.

"Substantial Completion" means the point in time when no further Lead Service Lines are to be replaced by the Municipality using Financial Assistance provided in this FAA or December 31, 2022, whichever occurs first.

"Water Diversion Permit" means a DNR permit issued to the Municipality under s. 30.18(2), Wis. Stats., to divert water from a stream or lake in Wisconsin.

"Water System" means all structures, conduits, and appurtenances by means of which water is delivered to consumers, except piping and fixtures inside buildings served and service pipes downstream from the curb stop.

Section 1.02. <u>Rules of Interpretation</u> Unless the context clearly indicates to the contrary, the following rules shall apply to the context of this FAA:

- (a) Words importing the singular number shall include the plural number and vice versa, and one gender shall include all genders.
- (b) All references herein to particular articles or sections are references to articles or sections of this FAA.
- (c) The captions and headings herein are solely for convenience of reference and shall not constitute a part of this FAA nor shall they affect its meaning, construction, or effect.
- (d) The terms "hereby", "hereof", "hereto", "herein", "hereunder", and any similar terms as used in this FAA refer to this FAA in its entirety and not the particular article or section of this FAA in which they appear, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this FAA.
- (e) All accounting terms not otherwise defined in this FAA have the meanings assigned to them in accordance with generally accepted accounting principles, and all computations provided for herein shall be made in accordance with generally accepted accounting principles.

ARTICLE II REPRESENTATIONS

Section 2.01. Representations of the SDWLP The SDWLP represents and warrants as follows:

- (a) The SDWLP has complied with the provisions of the Statute and has full power and authority to execute and deliver this FAA, consummate the transactions contemplated hereby, and perform its obligations hereunder.
- (b) The SDWLP is not in violation of any of the provisions of the Constitution or laws of the State which would affect its powers referred to in the preceding paragraph (a).
- (c) Pursuant to the Statute, the SDWLP is authorized to execute and deliver this FAA, and to take actions and make determinations that are required of the SDWLP under the terms and conditions of this FAA.
- (d) The execution and delivery by the SDWLP of this FAA and the consummation of the transactions contemplated by this FAA shall not violate any indenture, mortgage, deed of trust, note, agreement, or other contract or instrument to which the State is a party or by which it is bound, or, to the best of the SDWLP's knowledge, any judgment, decree, order, statute, rule, or regulation applicable to the SDWLP, and all consents, approvals, authorizations, and orders of governmental or regulatory authorities that are required for the consummation of the transactions contemplated thereby have been obtained.
- (e) To the knowledge of the SDWLP, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court, public board, or body, pending or threatened, against or affecting the SDWLP, or, to the knowledge of the SDWLP, any basis therefor, wherein an unfavorable decision, ruling, or finding would adversely affect the transactions contemplated hereby or which, in any way, could adversely affect the validity of this FAA or any agreement or instrument to which the State is a party and which is used or contemplated for use in consummation of the transactions contemplated by each of the foregoing.

Section 2.02. Representations of the Municipality The Municipality represents and warrants as of the date of this FAA, and with respect to paragraphs (b), (k), (l), (m), (n), and (o), covenants during the term of this FAA, as follows:

- (a) The Municipality possesses the legal municipal form of a city under ch. 62, Wis. Stats. The Municipality is located within the State and is a "local governmental unit" within the meaning of the Statute, duly organized and existing under the laws of the State, and has full legal right, power, and authority to:
 - (1) conduct its business and own its properties,
 - (2) enter into this FAA, and
 - (3) carry out and consummate all transactions contemplated by this FAA.
- (b) The Municipality is in compliance and will remain in compliance with its Water Diversion Permit (if any).
- (c) The governing body of the Municipality has duly approved the execution and delivery of this FAA in the amount of \$405,000, and has authorized the taking of any and all action as may be required on the part of the Municipality and its authorized officers to carry out, give effect to, and consummate the transactions contemplated by this FAA.
- (d) This FAA has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of the Municipality, enforceable in accordance with its terms.

- (e) To the knowledge of the Municipality, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board, or body, pending or threatened, against or affecting the Municipality, or, to the knowledge of the Municipality any, basis therefor:
 - (1) affecting the creation, organization, or existence of the Municipality or the title of its officers to their respective offices;
 - (2) seeking to prohibit, restrain, or enjoin the execution of this FAA;
 - (3) in any way contesting or affecting the validity or enforceability of this FAA, or any agreement or instrument relating to this FAA, or used or contemplated for use in the consummation of the transactions contemplated by this FAA; or
 - (4) wherein an unfavorable decision, ruling, or finding could adversely affect the transactions contemplated hereby.
- (f) The Municipality is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or the United States or any applicable judgment or decree or any agreement or other instrument to which the Municipality is a party, or by which it or any of its properties is bound, and no event has occurred that, with the passage of time, the giving of notice, or both, could constitute such a breach or default. The execution and delivery of this FAA and compliance with the provisions hereof shall not conflict with, or constitute a breach of or default under, any applicable law or administrative regulation of the State or of the United States or any applicable judgment or decree or any agreement or other instrument to which the Municipality is a party or by which it or any of its property is bound.
- (g) The resolution of the Municipality authorizing execution of this FAA has been duly adopted by the Municipality and remains in full force and effect as of the date hereof.
- (h) The Municipality has full legal right and authority and all necessary permits, licenses, easements, and approvals (other than such permits, licenses, easements, or approvals which are not by their nature obtainable prior to Substantial Completion of the Project) required as of the date hereof to carry on its activities relating to the Project, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this FAA.
- (i) The Municipality represents that it has not made any commitment or taken any action that shall result in a valid claim for any finders' or similar fees or commitments for obtaining the Loan under this FAA.
- (j) Each of the facilities constituting a part of the Project is eligible for financing under the Act. The DNR is granting a variance through this FAA to s. NR 166.07(2)(w), Wis. Adm. Code, to allow Service Lines to be eligible for SDWLP funding. A variance is also granted through this FAA to s. NR 166.10(2)(b), Wis. Adm. Code as plans and specifications are not required for Lead Service Line replacement projects. Any portions of the Project that are ineligible for financing from the SDWLP are listed within the Project Manager Summary attached hereto as Exhibit B. The Municipality intends the Project to be and continue to be an eligible project under the Statute throughout the term of this FAA. Each Service Line to be replaced as part of the Project will satisfy the federal environmental review requirements. The Project is an eligible project under s. 281.61, Wis. Stats.
- (k) All amounts shown in Exhibit A of this FAA are costs of a Project eligible for financial assistance under the Act or Statute. All proceeds of any borrowing of the Municipality that have been spent and are being paid with the proceeds of the Financial Assistance made hereunder have been spent on Project Costs. All Project Costs are reasonable, necessary, and allocable by the Municipality to the Project under generally accepted accounting principles. None of the

proceeds of the Loan shall be used directly or indirectly by the Municipality as working capital or to finance inventory, as opposed to capital improvements.

- (I) The Project is and will remain in compliance with all applicable federal, state, and local laws and ordinances (including rules and regulations) relating to zoning, building, safety, and environmental quality. The Municipality has complied with and completed all requirements of DNR necessary to commence construction of the Project prior to the date hereof. The Municipality intends to proceed with due diligence to complete the Project pursuant to Section 4.02 hereof.
- (m) The Municipality represents that it has satisfied and will continue to satisfy all the applicable requirements in ss. 281.61(3), (4), (5), and (8m), Wis. Stats., ch. NR 166, Wis. Adm. Code, and ch.145, Wis. Stats.
- (n) The Municipality is in substantial compliance and will remain in substantial compliance with all conditions, requirements, and terms of any financial assistance previously awarded through the federal construction grants program, the Wisconsin Fund construction grants program, the CWFP, and the SDWLP.
- (o) The Municipality has met all terms and conditions contained herein and certifies that the Project funded through this agreement will result in the entire Service Line being lead-free and that no partial replacement will result in a service line that is still partially lead.
- (p) The Municipality represents that it has submitted to DNR a budget estimate and documentation related to individuals or firms hired to perform work for the Project, as required by DNR.
- (q) The representations of the Municipality in the Application are true and correct as of the date of this FAA and are incorporated herein by reference as if fully set forth in this place.
- (r) There has been no material adverse change in the financial condition or operation of the Municipality or the Project since the submission date of the Application.
- (s) The Municipality acknowledges that it is eligible to receive Financial Assistance in the form of a Loan of \$405,000 with Principal Forgiveness of \$405,000 for payment of Project Costs.

ARTICLE III FINANCIAL ASSISTANCE PROVISIONS

Section 3.01. <u>Financial Assistance Clause</u> Prior to disbursement, the Financial Assistance shall be held by the SDWLP. Earnings on undisbursed Loan funds shall be for the account of the SDWLP. Financial Assistance shall be disbursed only upon submission by the Municipality of disbursement requests and approval thereof as set forth in Section 3.02 hereof.

Section 3.02. Disbursement of Financial Assistance

- (a) Each disbursement request shall be delivered to DNR. Each request must contain invoices or other evidence acceptable to DNR and DOA that Project Costs for which disbursement is requested have been incurred by the Municipality.
- (b) The SDWLP, through its agents, plans to make disbursements of Financial Assistance on a semimonthly basis upon approval of each disbursement request by DNR and DOA. Such approval by DNR and DOA may require adjustment and corrections to the disbursement request submitted by the Municipality. The Municipality shall be notified whenever such an adjustment or correction is made by DNR or DOA.
- (c) Disbursements made to the Municipality are subject to pre- and post-payment adjustments by DNR or DOA.
 - (1) If the Financial Assistance is not yet fully disbursed, and SDWLP funds were previously disbursed for costs not eligible for SDWLP funding or not eligible under this FAA, the SDWLP shall make necessary adjustments to future disbursements.
 - (2) If the Financial Assistance is fully disbursed, including disbursements for any costs not eligible for SDWLP funding or not eligible under this FAA, the Municipality agrees to repay to the SDWLP an amount equal to the non-eligible costs within 60 days of notification by DNR or DOA.
- (d) The SDWLP or its agent shall disburse Financial Assistance only to the Municipality's account by electronic transfer of funds. The Municipality hereby covenants that it shall take actions and provide information necessary to facilitate these transfers. The Municipality agrees to pay Project invoices in a timely manner.
- (e) All requests for disbursement must be submitted to DNR no later than January 27, 2023, and such request for disbursement shall only include Project costs incurred on or before December 31, 2022.

Section 3.03. Remedies

- (a) If the Municipality:
 - (1) or any authorized representative is not complying with federal or state laws, regulations, or requirements relating to the Project, and following due notice by DNR the Project is not brought into compliance within a reasonable period of time; or
 - (2) is not complying with or is in violation of any covenant set forth in this FAA; or
 - (3) is not in compliance with the Statute or the Regulations;

then DNR may, until the Project is brought into compliance or the FAA non-compliance is cured to the satisfaction of DNR or DOA, impose one (1) or more of the following sanctions:

- (i) Disbursements otherwise due the Municipality may be withheld.
- (ii) Project work may be suspended.
- (iii) DNR may request a court of appropriate jurisdiction to enter an injunction or afford other equitable or judicial relief as the court finds appropriate.
- (iv) Other administrative remedies may be pursued.
- (b) If the Municipality fails to observe or perform any covenant, condition, or agreement on its part under this FAA for a period of thirty (30) days after written notice is given to the Municipality by DNR, specifying the default and requesting that it be remedied, the SDWLP is provided remedies by law and this FAA. These remedies include, but are not limited to, the following rights:
 - (1) Pursuant to s. 281.59(11)(b), Wis. Stats., DOA shall place on file a certified statement of all amounts due the SDWLP under this FAA. DOA may collect all amounts due the SDWLP by deducting those amounts from any State payments due the Municipality or adding a special charge to the amount of taxes apportioned to and levied upon the county in which the Municipality is located under s. 70.60, Wis. Stats.
 - (2) In the case of a joint utility system, the SDWLP may bill the users of the Municipality's system directly.
 - (3) The SDWLP may enforce any right or obligation under this FAA, including the right to seek specific performance or mandamus, whether such action is at law or in equity.

Section 3.04. <u>FAA Effective Date and FAA Term</u> This FAA shall become effective upon its execution and delivery by the parties hereto, shall remain in effect for a period of 3 years from the date of Final Completion.

ARTICLE IV CONSTRUCTION OF THE PROJECT

Section 4.01. Construction of the Project

- (a) The Municipality shall construct the Project, or cause it to be constructed, to Final Completion in accordance with the Application. The Municipality shall proceed with the construction of the Project in conformity with law and with all applicable requirements of governmental authorities having jurisdiction with respect thereto.
- (b) If a Lead Service Line, including both the public portion and the private portion of the line, cannot be replaced in its entirety at one time, the Municipality shall supply water filters to any affected homes to minimize any harmful effects; funding will not be disbursed until the replacement of the entire line is complete.

Section 4.02. Completion of the Project

- (a) The Municipality agrees that it shall undertake and complete the Project for the purposes and in the manner set forth in this FAA and in accordance with all federal, state, and local laws, ordinances, and regulations applicable thereto. The Municipality shall, with all practical dispatch and in a sound and economical manner, complete or cause to be completed, the construction of the Project. The Municipality shall obtain all necessary approvals from any and all governmental agencies prior to construction which are requisite to the Final Completion of the Project.
- (b) The Municipality shall notify DNR of the Substantial Completion of the Project. At or prior to completion of the Project, the Municipality shall cause to be prepared for the Project documentation identifying the addresses where Lead Service Lines were replaced, the depth and location of all new service lines, and the material of the new service lines.
- (c) The Municipality shall take and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently and in accordance with the terms of the contracts including, without limitation, the correcting of defective work.
- (d) Upon Final Completion of the Project, the Municipality shall complete and deliver to DNR the documentation described in section 4.02(b) above.

Section 4.03. No Warranty Regarding Condition, Suitability, or Cost of Project Neither the SDWLP, DOA, nor DNR makes any warranty, either express or implied, as to the Project or its condition, or that it shall be suitable for the Municipality's purposes or needs, or that the Financial Assistance shall be sufficient to pay the costs of the Project. Review or approval of any engineering reports, facilities plans, plans and specifications, or other documents, or the inspection of Project construction by DNR does not relieve the Municipality of its responsibility to properly plan, design, build, and effectively operate and maintain the Project as required by laws, regulations, permits, and good management practices. DNR or its representatives are not responsible for increased costs resulting from defects in any plans and specifications or other Project documents. Nothing in this section prohibits a Municipality from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing Project work.

ARTICLE V COVENANTS

- Section 5.01. <u>Application of Financial Assistance</u> The Municipality shall apply the proceeds of the Financial Assistance solely for Project Costs.
- Section 5.02. Operation and Maintenance After completion of the Project, the Municipality shall:
 - (a) at all times operate the Water System or otherwise cause the Water System to be operated properly and in a sound and economical manner, including proper training of personnel;
 - (b) maintain, preserve, and keep the Water System or cause the Water System to be maintained, preserved, and kept in good repair, working order, and condition; and
 - (c) periodically make, or cause to be made, all necessary and proper repairs, replacements, and renewals so that at all times the operation of the Water System may be performed properly. The Municipality shall not, during the term of this FAA, without the approval of DNR, discontinue operation of or sell or otherwise dispose of the Water System, except for portions of the Water System sold or otherwise disposed of in the course of ordinary repair and replacement of parts.
- Section 5.03. <u>Compliance with Law</u> At all times during construction of the Project and operation of the Water System, the Municipality shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, permits, and approvals, outstanding FAA requirements, including, without limitation, the Statute, the Regulations, and the Water Diversion Permit (if any), and with this FAA.
- Section 5.04. <u>Public Ownership</u> The Municipality shall at all times retain ownership of the Water System to which the Service Lines funded through this FAA are attached.

Section 5.05. Establishment of Project Accounts

- (a) The Municipality shall maintain a separate account that reflects the receipt and expenditure of all SDWLP funds for the Project. All Financial Assistance shall be credited promptly upon receipt thereof and shall be reimbursement for or expended only for Project Costs. The Municipality shall:
 - (1) permit any authorized representative of DNR or DOA, or agents thereof, the right to review or audit all records relating to the Project or the Financial Assistance;
 - (2) produce, or cause to be produced, all records relating to any work performed under the terms of this FAA for examination at such times as may be designated by any of them
 - (3) permit extracts and copies of the Project records to be made by any of them; and
 - (4) fulfill information requests by any of them.
- Section 5.06. <u>Records</u> The Municipality shall retain all files, books, documents, and records relating to construction of the Project for at least three years following the date of Final Completion of the Project, or for longer periods if necessary due to any appeal, dispute, or litigation. Information about the locations of the lines replaced and the material composition of those lines shall be made part of the Municipality's permanent records.
- Section 5.07. <u>Project Areas</u> The Municipality shall permit representatives of DNR visual access to the Project and various related records at reasonable times and allow extracts and copies of Project records to be made by DNR representatives.

Section 5.08. Notice of Impaired System The Municipality shall promptly notify DNR and DOA in the case of: any material damage to or destruction of the Project or any part thereof; any actual or threatened proceedings for the purpose of taking or otherwise affecting by condemnation, eminent domain, or otherwise, all or a part of the Water System; any action, suit, or proceeding at law or in equity, by or before any governmental instrumentality or agency; or any other event that may impair the ability of the Municipality to construct the Project or operate the Water System.

Section 5.09. <u>Hold Harmless</u> The Municipality shall save, keep harmless, and defend DNR, DOA, and all their officers, employees, and agents, against any and all liability, claims, and costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property occurring in connection with or in any way incident to or arising out of the construction, occupancy, use, service, operation, or performance of work in connection with the Project, including acts or omissions of the Municipality's employees, agents, or representatives.

Section 5.10. Nondiscrimination Covenant

- (a) In connection with the Project, the Municipality agrees to comply with fair employment practices pursuant to subchapter II of ch. 111, Wis. Stats. This provision shall include, but is not 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. The Municipality agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provision of the nondiscrimination clause.
- (b) The Municipality shall incorporate into all Project contracts which have yet to be executed the following provision: "In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant because of age, race, religion, color, handicap, sex, physical condition, developmental disability, or national origin. The contractor further agrees to comply with fair employment practices pursuant to subchapter II of ch. 111, Wis. Stats. 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. The contractor further agrees to take affirmative action to ensure equal employment opportunities for persons with disabilities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause."
- Section 5.11. <u>Employees</u> The Municipality or its employees or agents are not employees or agents of the DNR or DOA for any purpose, including worker's compensation.
- Section 5.12. <u>Reimbursement</u> Any payment of Financial Assistance to the Municipality in excess of the amount determined by final audit to be due the Municipality shall be reimbursed to DOA within 60 days after DNR or DOA provides a notice of overpayment.
- Section 5.13. <u>Rebates</u> The Municipality agrees to pay to the SDWLP any refunds, rebates, credits, or other amounts received for Project Costs that have already been funded by the SDWLP.

Section 5.14. Maintenance of Legal Existence

- (a) Except as provided in par. (b), the Municipality shall maintain its legal existence and shall not dissolve or otherwise dispose of all or substantially all of its assets and shall not consolidate with or merge into another legal entity.
- (b) A Municipality may consolidate with or merge into any other legal entity, dissolve or otherwise dispose of all of its assets or substantially all of its assets, transfer all or substantially all of its assets to another legal entity (and thereafter be released of all further obligation under this FAA) if:

- (1) the resulting, surviving, or transferee legal entity is a legal entity established and duly existing under the laws of Wisconsin;
- (2) such resulting, surviving, or transferee legal entity is eligible to receive financial assistance under the Statute;
- (3) such resulting, surviving, or transferee legal entity expressly assumes in writing all of the obligations of the Municipality contained in this FAA and any other documents the SDWLP deems reasonably necessary to protect its environmental interests and its investment in the Project; and
- (4) the SDWLP shall have consented in writing to such transaction, which consent may be withheld in the absolute discretion of the SDWLP.

Section 5.15. <u>American Iron and Steel</u> The Municipality agrees to comply with the requirements for use of American Iron and Steel as mandated under EPA's Drinking Water State Revolving Fund program.

Section 5.16. <u>Wage Rate Requirements</u> The Municipality represents that it shall comply with Section 1450(e) of the Safe Drinking Water Act (42 USC 300j-9(e)), as applicable, which requires that all laborers and mechanics employed by contractors and subcontractors funded directly by or assisted in whole or in part with funding under this Loan shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 31 of title 40, United States Code. Detail regarding applicability is provided in the Project Manager Summary (Exhibit B).

ARTICLE VI MISCELLANEOUS

Section 6.01. <u>Notices</u> All notices, certificates, or other communications hereunder shall be sufficiently given, and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below:

- (a) Department of Administration
 Office of Capital Finance
 Environmental Improvement Fund
 101 East Wilson Street, 10th Floor
 Madison, WI 53702-0004
 or
 PO Box 7864
 Madison, WI 53707-7864
- (b) Department of Natural Resources Bureau of Community Financial Assistance 101 South Webster Street, 2nd Floor Madison, WI 53702-0005 or PO Box 7921 Madison, WI 53707-7921
- (c) City of Sheboygan 828 Center Avenue Sheboygan, WI 53081

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent, by giving written notice to the others. Any notice herein shall be delivered simultaneously to DNR and DOA.

Section 6.02. <u>Binding Effect</u> This FAA shall be for the benefit of, and shall be binding upon, the SDWLP and the Municipality and their respective successors and assigns.

Section 6.03. <u>Severability</u> In the event any provision of this FAA shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect any other provision hereof.

Section 6.04. <u>Execution in Counterparts</u> This FAA may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.05. <u>Applicable Law</u> This FAA shall be governed by and construed in accordance with the laws of the State, including the Statute.

Section 6.06. <u>Further Assurances</u> The Municipality shall, at the request of DNR and DOA, authorize, execute, acknowledge, and deliver such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments as may be necessary or desirable for obtaining funding for the Project and better assuring, conveying, assigning, and confirming the rights, security interests, and agreements granted or intended to be granted by this FAA.

Section 6.07. <u>Termination</u> This FAA may be terminated in whole or in part pursuant to one or more of the following:

- (a) The SDWLP and the Municipality may enter into an agreement to terminate this FAA at any time. The termination agreement shall establish the effective date of termination of this FAA, the basis for settlement of termination costs, and the amount and date of payment of any sums due either party.
- (b) If the Municipality wishes to terminate all or any part of the Project work unilaterally for which Financial Assistance has been awarded, the Municipality shall promptly give written notice to DNR. If the SDWLP determines that there is a reasonable basis for the requested termination, the SDWLP may enter into a termination agreement, including provisions for FAA termination costs, effective with the date of cessation of the Project work by the Municipality. If the SDWLP determines that the Municipality has ceased work on the Project without reasonable basis, the SDWLP may unilaterally terminate Financial Assistance or rescind this FAA, or both.

Section 6.08. <u>Rescission</u> The SDWLP may rescind this FAA prior to the first disbursement of any funds hereunder if it determines that:

- (a) there has been substantial non-performance of the Project work by the recipient without justification under the circumstances;
- (b) there is substantial evidence this FAA was obtained by fraud;
- (c) there is substantial evidence of gross abuse or corrupt practices in the administration of the Project;
- (d) the Municipality has failed to comply with the covenants contained in this FAA; or
- (e) any of the representations of the Municipality contained in this FAA were false in any material respect.

IN WITNESS WHEREOF, the SDWLP and the Municipality have caused this FAA to be executed and delivered, as of the date and year first written above.

CITY OF SHEBOYGAN
By: Ryan Sorenson
Mayor
Attest:
Meredith DeBruin City Clerk
STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION
By:Authorized Officer
STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
By.

Authorized Officer

EXHIBIT A

PROJECT BUDGET SHEET SUMMARY

CITY OF SHEBOYGAN SDWLP Project No. 4901-10

	Total Project Costs	Costs NOT Eligible for LSL PF	Total LSL Principal Forgiveness Amount
Force Account	0	0	0
Engineering	0	0	0
Construction/Equipment	594,510	189,510	405,000
Contingency	0	0	0
Miscellaneous Costs	0	0	0
TOTAL	\$594,510	\$189,510	\$405,000

EXHIBIT B

PROJECT MANAGER SUMMARY

CITY OF SHEBOYGAN SDWLP Project No. 4901-10

1. Project Description: The City of Sheboygan is completing LSL replacements both as part of a municipally-bid contract and utilizing a list of prequalified plumbers/contractors. Replacements on St. Clair Avenue: 10th to 14th Street, New York Avenue: 9th to 10th Street, Ontario Avenue: 9th to 10th Street, and South 12th Street: Georgia to Alabama Avenue are being completed under the municipal contract while emergency repairs and other spot replacements are contracted directly by the homeowner with a plumber/contractor from the prequalified list. Funding under this agreement is expected to cover approximately 48 replacements under the municipal contract and an estimated 127 spot replacements for a total of 175 LSL replacements. Sheboygan was a participant in the previous Private LSL Replacement Program in 2017, 2018, and 2021.

In Sheboygan, the entire service line, from the watermain to the connection point inside the building, is owned by the customer. The water utility offers a grant for 50% of the cost of the entire replacement, up to a cap of \$6,000. The remaining portion can be covered by a 0% loan for up to 72 months. Funding under this agreement is only being applied to the portion of the service line between the curb stop and the connection point inside the building; the entire \$6,000 may be applied to the customer side.

Eligible replacements consist of the replacement of the Service Line from the curb stop of a municipallyowned water main or service line to the meter, or other water utility service terminal on private residential property, a pre k–12 school, or a licensed and/or certified daycare center.

All private LSL replacements must result in <u>complete</u> removal of <u>all</u> lead components between the watermain and the connection point inside the building. Galvanized service lines, on the public or the private side, are considered lead for the purpose of determining whether a Lead Service Line has been completely replaced.

If a Lead Service Line, including both the public portion and the private portion of the line, cannot be replaced in its entirety at one time, resulting in a service line that is temporarily composed partially of lead, the water utility is required to provide the customer with point-of-use filtration. Filters must be models that have been tested and certified to NSF/ANSI 53 for the reduction of lead. Funding through this FAA shall not be disbursed for those lines until all lead components have been completely replaced, and such replacement should be completed within 45 days of the initial replacement of a portion of the Lead Service Line, unless the public side of the Lead Service Line was replaced prior to participation in the Private LSL Replacement Program. Please refer to the LSL Replacement Best Practices document attached as Exhibit C.

2. Ineligible Costs: Contracted costs for the portion of the service line from the watermain through the curb stop: \$189,510.

In general, costs that are ineligible for the Private LSL Replacement Program include:

- Private LSL replacements where the public side has not been replaced (partial replacements);
- Premise plumbing, which includes anything downstream of the normal connection point inside the home;
- The curb stop, or any other components of the utility side of the service line;
- Costs for engineering or administration unless the recipient's population is 3,300 or less.
- 3. DBE Good Faith Effort: The Sheboygan Water Utility and the prime contractor met Disadvantaged Business Enterprise (DBE) solicitation requirements by placing bid ads with language soliciting DBEs. DBE solicitation language was also included in the RFQ advertisement when the list of prequalified plumbers/contractors was developed.

4. Davis-Bacon Wage Rate Requirements: For projects where the work was bid as a municipal contract, all work must comply with Davis-Bacon and Related Acts requirements.

For projects where the homeowner contracts directly with a plumber or contractor from a prequalified list, Davis-Bacon and Related Acts requirements apply under the following conditions:

- The property is owned in the name of a business;
- The plumber/contractor is <u>not</u> a sole proprietor or a partnership where the owners perform <u>all</u> the work on the project; and
- The cost of the replacement is greater than \$2,000.

It is the municipality's responsibility to verify property ownership or plumber/contractor employee status in order to determine if Davis-Bacon requirements apply.

- 5. Environmental Review Conditions: Sheboygan has been submitting documentation for the environmental assessment process for one or two properties at a time, other than for replacements along the properties related to the contracted costs. At the time of this FAA, all sites have been cleared as Categorical Exclusions with no construction requirements, though standard invasive species guidance has been provided. Archaeological/historical clearance has also been given with no issues identified. Any additional sites that have not been cleared at the time of this FAA will still be submitted for review.
- 6. Closeout Documentation: At Project completion the municipality will submit to DNR the documentation described in section 4.02(b) of this FAA: the addresses where Lead Service Lines were replaced, the depth and location of all new service lines, and the material of the new service lines.
- 7. Final Disbursement Submittal Date: The final date to submit a Request for Disbursement (form 8700-366) under this FAA is Friday, January 27, 2023. This is the submittal deadline for disbursements that will be made on February 8, 2023. We strongly encourage all recipients to submit their final Request for Disbursement by no later than Friday, January 13, 2023, in order to allow time if any questions arise on that disbursement request or any adjustments need to be made.

No Requests for Disbursement will be accepted after January 27, 2023. If a Request for Disbursement for costs incurred on or before December 31, 2022 is not submitted by the deadline, those costs will need to be covered by the municipality or the property owner.

EXHIBIT C

BEST PRACTICES FOR LEAD SERVICE LINE REPLACEMENTS

The Federal Lead and Copper Rule Revisions (LCRR) are now in effect. All public water systems must be in compliance with the LCRR by October 16, 2024.

Note that public water systems may choose, but are not required, to meet these requirements prior to October 16, 2024.

Under the LCRR, any public water system that conducts lead service line removal must meet all of the requirements listed below. Note that under the LCRR, these requirements apply to all of the following activities: full and partial lead service line replacement; replacement of a galvanized service line that is currently, or was ever formerly, downstream of a lead service line; and removal of a lead gooseneck, pigtail, or connector.

For participants in the Private Lead Service Line Replacement Program, these steps are suggested, but not required, for participation in the program.

Lead Service Line Replacement Requirements under the LCRR

- 1. **Notice and Public Education.** Provide notice to the owner of the affected service line as well as non-owner resident(s)² served by the affected service line within 24 hours of completion of the replacement. The notice must include all the following information, in accordance with §141.85(a) of the LCRR.
 - Explain that consumers may experience a temporary increase of lead levels in their drinking water due to the replacement.
 - Provide information about the health effects of lead.
 - Provide information about actions consumers can take to minimize their exposure to lead in drinking water,
- 2. **Flushing Information.** Provide information about service line flushing before the replaced service line is returned to service.
- 3. **Filters.** Provide the consumer(s)³ with a pitcher filter or point-of-use device certified by an American National Standards Institute accredited certifier to reduce lead, six months of replacement cartridges, and instructions for use before the replaced service line is returned to service.
- 4. **Follow-up Sampling.** Offer to the consumer to take a follow up tap sample between three months and six months after completion of the replacement and provide the results of the sample to the consumer in accordance with paragraph (d) of this section.

¹ In addition to the requirements listed above, any water system that plans to partially replace a lead service line in coordination with planned infrastructure work must provide notice to the owner of the affected service line, or the owner's authorized agent, as well as non-owner resident(s) served by the affected service line at least 45 days prior to the replacement. The notice must explain that the system will replace the portion of the line it owns and offer to replace the portion of the service line not owned by the water system. However, the water system is not required to bear the cost of replacement of the portion of the affected service line not owned by the water system.

² In instances where multi-family dwellings are served by the lead service line to be replaced, the water system may elect to post the information at a conspicuous location instead of providing individual notification to all residents.

³ If the lead service line serves more than one residence or non-residential unit (e.g., a multi-unit building), the water system must provide a filter and six months of replacement cartridges and use instructions to every residence in the building.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 49-22-23, A Resolution authorizing the appropriate City officials to enter into a contract with the Sheboygan Water Utility to contribute American Rescue Plan Act – State and Local Fiscal Recovery Funds to the Raw Water Intake Project.

REPORT PREPARED BY: Chad Pelishek, Director of Planning and Development

REPORT DATE: August 3, 2022 **MEETING DATE:** August 8, 2022

FISCAL SUMMARY: STATUTORY REFERENCE:

Budget Line Item: Wisconsin N/A

Budget Summary: N/A Statutes:

Budgeted Expenditure: N/A Municipal Code: N/A

Budgeted Revenue: N/A

BACKGROUND / ANALYSIS:

In October 2021, the Common Council obligated \$9,550,000 of the City's \$22,006,000 American Rescue Plan Act (ARPA) funding a pass-through grant towards the Sheboygan Water Utility's Raw Water Intake Project.

In order to spend ARPA dollars on infrastructure projects the city needs to justify that the funding will assist with the negative effects of COVID-19. With these funds being applied to the approximately \$43 million project, the effect on the residents will be minimized versus the entire project being funded by increased rates and will help with keep water bills lower for city water users.

The City Finance Department has transferred the \$9,550,000 to the water utility in June 2022, so they could award the contract for the work. This contract will outline the terms and conditions the water utility needs to follow based on receiving these funds consistent with the city's terms and conditions from the Treasury Dept.

STAFF COMMENTS:

For administration purposes the city is considering the Water Utility a subrecipient to federal funds and require the Water Utility to follow the necessary requirements.

ACTION REQUESTED:

Motion to recommend Common Council to approve Res. No. 49-22-23 authorizing the appropriate City officials to enter into contract with the Sheboygan Water Utility to contribute American Rescue Plan Act -State and Local Fiscal Recovery funds to the Raw Water Intake Project.

1

ATTACHMENTS:

Res. No. 49-22-23

26

Res. No. 4 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski. August 1, 2022.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with the Sheboygan Water Utility to contribute American Rescue Plan Act - State and Local Fiscal Recovery funds to the Raw Water Intake Project.

WHEREAS, the City owns and operates the Sheboygan Water Utility (the "Utility"); and

WHEREAS, the Utility collects, processes, and sells water to customers located within the City and to the City of Sheboygan Falls and the Village of Kohler; and

WHEREAS, the Utility collects raw water from Lake Michigan via an intake system consisting of an intake pipe located 2000 feet from shore, shore well, and a low lift pump station; and

WHEREAS, the Utility has determined that the intake system requires reconstruction as it can no longer meet demands, is vulnerable to winter icing and run off, and because the low lift pump station has been detrimentally impacted by Lake Michigan water levels; and

WHEREAS, the Utility has entered into a contract for services with CD Smith for the improvements; and

WHEREAS, the Utility intends to fund the improvements via an increased water rate, the Safe Drinking Water Loan Program, Water Utility Revenue Bonds; and

WHEREAS, the City has received American Rescue Plan Act ("ARPA") Local Fiscal Recovery funds, which are intended to address negative economic impacts and inequities perpetuated by the COVID-19 pandemic; and

WHEREAS, ARPA fund recipients are authorized by the Interim Final Rule published in May, 2021, and by final rule made effective April 1, 2022, to use funds to make necessary investments in water infrastructure; and

WHEREAS, the parties agree that the improvements qualify as "necessary" under the Interim Final Rule because they are designed to provide an adequate minimum level of water service and are unlikely to be made using privately sourced funds; and

WHEREAS, the City desires to contribute ARPA funds to the improvements in order to reduce the amount of borrowing and rate increases otherwise necessary to facility the improvements; and

WHEREAS, the City approved contributing \$9,550,000.00 of ARPA funds to the improvements via Res. No. 71-21-22, adopted on October 19, 2021; and

WHEREAS, the parties desire a contract executing the October 19, 2021 obligation of ARPA funds.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized to enter into the attached Agreement for the expenditure of \$9,550,000.00 in ARPA-Local Fiscal Recovery funds for the Raw Water Intake Project.

Account	No.:	202000-	580100			
Account	Name:	Federal	Grant	Fund-	Contributions/	Grants
					,	
					•	

I HEREBY CERTIFY that the Common Council of the City of, 20,	= 17	
Dated	20	, City Clerk
Approved	20 .	, Mayor

AGREEMENT BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND THE SHEBOYGAN WATER UTILITY FOR THE PROVISION OF AMERICAN RESCUE PLAN ACT FUNDS IN SUPPORT OF THE RAW WATER IMPROVEMENTS PROJECT

The parties to this Agreement are the City of Sheboygan, Wisconsin ("City"), a municipal corporation with principal offices at 828 Center Avenue, Sheboygan, Wisconsin 53081; and the Sheboygan Water Utility ("Utility"), a public water utility owned by the City and operated by the Board of Water Commissioners, with principal offices at 72 Park Avenue, Sheboygan, Wisconsin 53081.

WITNESSETH:

WHEREAS:	The	City owns and	operates the	Sheboygan	Water Utility; and

- WHEREAS: The Utility collects, processes and sells water to customers located within the City and sells water wholesale to the City of Sheboygan Falls and the Village of Kohler; and
- WHEREAS: The Utility currently collects raw water from Lake Michigan via an intake system consisting of a 1959 intake pipe located 2000 feet from shore and a 1909 intake pipe located 5,000 feet from shore, a shore well, and a low lift pump station; and
- WHEREAS: The Utility has determined that the intake system requires reconstruction as the 1909 intake pipeline and shorewell have reached normal working lifetimes, and the 1959 intake pipeline is highly vulnerable to winter icing and run off, and because the low lift pump station has been detrimentally impacted by Lake Michigan water levels; and
- WHEREAS: The Utility has entered into a contract for services with CD Smith for the improvements, attached and incorporated herein as Exhibit A; and
- WHEREAS: The Utility intends to fund the improvements via an increased water rate, the Safe Drinking Water Loan Program, and a federal directed spending appropriation; and
- WHEREAS: The City has received American Rescue Plan Act ("ARPA") local fiscal recovery funds, which are intended to address negative economic impacts and inequities perpetuated by the COVID-19 pandemic; and
- WHEREAS: ARPA fund recipients are authorized by the Interim Final Rule published in May, 2021, and by final rule made effective April 1, 2022, to use funds to make necessary investments in water infrastructure; and
- WHEREAS: The parties agree that the improvements qualify as "necessary" under the Interim Final Rule because they are designed to provide an adequate minimum level of water service and are unlikely to be made using privately sourced funds; and
- WHEREAS: The City desires to contribute ARPA funds to the improvements in order to reduce the amount of borrowing and rate increases otherwise necessary to fund the improvements; and

WHEREAS: The City approved contributing \$9,550,000.00 of ARPA funds to the improvements

via Resolution 71-21-22, adopted on October 19, 2021, attached and incorporated

herein as Exhibit B; and

WHEREAS: The parties desire a contract executing the October 19, 2021 obligation of ARPA

funds.

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

- 1. <u>Effective Date and Term</u>. The effective date of this Agreement shall be June 16, 2022 and the term of this Agreement shall continue in full force and effect until project completion and final reporting made to the United States Treasury. The parties agree on behalf of themselves and their successors in interest and assigns, notwithstanding any contrary provision of law or equity, that this Agreement shall continue in full force and effect throughout its term.
- 2. <u>Authority.</u> This Agreement is entered into between the parties pursuant to Wis. Stat. § 66.0301 authorizing cooperation between a municipality and a water utility district and by Resolution No. 71-21-22 establishing the City's intention for spending \$9,550,000.00 of the American Rescue Plan Act ("ARPA")- Local Fiscal Recovery Funds the City received to support the Utility's Raw Water Intake Project ("Project").
- 3. Federal Assistance Notice. This Agreement is a subrecipient agreement funded with a federal assistance award to the City of Sheboygan from the US Department of Treasury under Sections 602(b) and 603(b) of the Social Security Act, as added by section 9901 of ARPA Coronavirus State and Local Fiscal Recovery Fund ("LFRF"). The award is documented in the Award Terms and Conditions, signed by the Mayor on May 19, 2021, attached and incorporated herein as Exhibit C. The parties agree to comply with the applicable requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act and guidance issued by the Treasury Department as well as the Federal Terms & Conditions Addendum attached and incorporated herein as Exhibit D.
- 4. <u>City Responsibilities</u>. The City shall provide the Utility with \$9,550,000.00 ("transferred funds") by wire transfer. The City shall include this obligation and expense in its regular reporting to the United States Treasury in accordance with the Treasury's June 17, 2022 Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds.
- <u>Utility Responsibilities</u>. The Utility shall only use the transferred funds in support of the Project.
 The Utility shall provide all data, information and documentation as requested by the City in order to facilitate accurate and complete reporting to the Treasury.
- 6. <u>Schedule</u>. The Utility shall expend the funds provided to it by the City no later than December 1, 2024. Any funds not expended by that time shall be returned to the City by December 31, 2024.
- 7. <u>Severability</u>. If any provision in this Agreement is determined to be void and unenforceable for any reason, the remaining provisions shall remain in full force and effect unless the removal of the severed provision would substantially impair the ability of either party to perform the essential purpose of this Agreement.

8. <u>Notices</u>. Any notices required or permitted hereunder shall be given in writing and shall be delivered (a) in person, with proof of service (b) by U.S. mail or (c) by electronic mail, and such notices shall be addressed as follows:

City of Sheboygan
Attn: Kaitlyn Krueger
828 Center Ave.
Sheboygan, WI 53081
Kaitlyn.Krueger@sheboyganwi.gov

Sheboygan Water Utility Attn: Joe Trueblood 72 Park Ave. Sheboygan, WI 53081

Joetrueblood@sheboyganwater.org

- 9. <u>Assignment</u>. No party may assign any of their rights or obligations under this Agreement in whole or part without the prior written consent of the other parties, which may be withheld in any party's sole discretion.
- 10. <u>Interpretation</u>. This Agreement shall not be subject to the rule of interpretation construing ambiguities against the drafter, this Agreement being the product of the negotiation and drafting by attorneys for all the parties.
- 11. <u>Headings</u>. Headings in this Agreement are for reference only and are not to be considered substantial provisions.
- 12. <u>Authorization</u>. Each person signing this Agreement represents and warrants to the other party that he/she has been duly authorized by all necessary action to execute and deliver this Agreement and bind the party for which they purport to sign to the terms of this Agreement.
- 13. <u>Counterparts & Signatures</u>. This Agreement may be signed in counterparts. Facsimile and electronic signatures shall have the same effect as original signatures.
- 14. <u>Entire Agreement</u>. This Agreement constitutes the entire understanding between the parties relating to their relationship and supersedes all prior understandings, oral agreements, negotiations, representations, and agreements relating to the same subject matter.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement for the provision of American Rescue Act funds in support of the Raw Water Intake Project as of the last date set forth below, made retroactively effective June 16, 2022.

City	of Sheboygan		
By:			
•	Ryan Sorenson, Mayor	Date Signed	
By: _			
<i>- y</i> · _	Meredith DeBruin, City Clerk	Date Signed	
Sheb	oygan Water Utility		
By: _			
, —	Joe Trueblood, Superintendent	Date Signed	

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1317-256229 November 2021

SECTION 005214.16 - AGREEMENT

Sheboygan Water Utility

Raw Water System Improvements

AGREEMENT

THIS AGREEMENT made a	s of the	day of February	in the year 20 <u>22</u> by and
betweenSheboygan V	Vater Utility		
acting through its			
hereinafter called OWNER ar	ndC.D. Smith C	onstruction, Inc.	
with legal address and princip	oal place of busines		re, Fond du Lac, WI 54935 ONTRACTOR. OWNER and
CONTRACTOR in considera	tion of the mutual	covenants hereinafter set	forth, agree as follows:
ARTICLE 1. WORK			
1.1 CONTRACTOR shall pe Work is as described in SECT	rform the Work as TON 011000.	specified or indicated in	the Contract Documents. The
ARTICLE 2. ENGINEER			
2.1 The Project has been desig	gned by CDM Smi NEER in connection	th, 125 South Wacker Dr	ive, Suite 700, Chicago, IL Work in accordance with the

ARTICLE 3. CONTRACT TIME

Contract Documents

- 3.1 The Contract Times shall commence on the date indicated in the Notice to Proceed. The following Contract Times shall apply:
- 3.1.1 Substantial Completion for Work shall be achieved in a total time of 630 Calendar Days.
- 3.1.2 Final Completion shall be achieved in 690 Calendar Days.
- 3.2 CONTRACTOR agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Time stated above. It is expressly understood and agreed, by and between CONTRACTOR and OWNER that the Contract Time is reasonable for the completion of the Work, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

ARTICLE 4. CONTRACT PRICE.

- 4.1 OWNER will pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds at the Contract Price agreed upon in the CONTRACTOR's Bid Form attached to this Agreement.
- 4.2 OWNER will determine the final Contract Price by selected the Base Bid and any Alternative Bids at the Owner's discretion.

ARTICLE 5. APPLICATIONS FOR PAYMENT

5.1 CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the Conditions of the Contract. Applications for Payment will be processed by ENGINEER as provided in the Conditions of the Contract.

ARTICLE 6. PROGRESS AND FINAL PAYMENTS

- 6.1 OWNER will make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, monthly during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in Paragraph 15.01. of the Conditions of the Contract.
- 6.2 Prior to the completion of 50% of the total Work of this Contract, progress payments will be in an amount equal to 90% percent of the value of the Work completed and 90% percent of the value of materials and equipment not incorporated in the Work but delivered and suitably stored, less, in each case, the aggregate of payments previously made.
- 6.3 Upon completion of 50% of the total Work of this Contract, further progress payments will be made in full to the contractor and no additional amounts will be retained unless, in the opinion of the OWNER, the job is not proceeding satisfactorily, but amounts previously retained will not be paid to the contractor. If after completion of 50% of the total Work of this Contract the Contractor forecasts a failure to complete the project within the allotted Contract time, as specified in Article 3 above, and, subsequently, in the opinion of the OWNER, fails to make a good faith effort to recover, then progress payments may be reduced to 90%.
- 6.4 Upon final inspection and acceptance of the Work, in accordance with Paragraph 15.06. of the Conditions of the Contract, OWNER will pay the remainder of the Contract Price as recommended by ENGINEER.

ARTICLE 7. LIQUIDATED DAMAGES

7.1 OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the Contract Time specified in Article 3 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$2,000 per day for each calendar day of delay until the Work is complete.

- Item 7.
- 7.2 Provided, that CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is for reasons included in Paragraph 4.05. of the General Conditions.
- 7.3 Provided, further, that CONTRACTOR shall furnish OWNER the required notification of such delays in accordance with Paragraph 11.06. of the General Conditions.

ARTICLE 8. ASSURANCE

- 8.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, State and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 8.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in Article 5 of the Supplementary Conditions.
- 8.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in the above paragraph as CONTRACTOR deems necessary for the performance of the Work at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required for such purposes.
- 8.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 8.5 CONTRACTOR has given ENGINEER written notice of any conflict, error or discrepancy that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 8.6 CONTRACTOR agrees that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.
- 8.7 In accordance with Section 215 of the Clean Water Act, and implementing EPA regulations and guidelines, CONTRACTOR agrees that preference will be given to domestic construction material by CONTRACTOR, subcontractors, materialmen and suppliers in the performance of this Contract.

ARTICLE 9. CONTRACT DOCUMENTS

- 9.1 The Contract Documents which comprise the Contract between OWNER and CONTRACTOR are attached hereto and made a part hereof and consist of the following:
- 9.1.1 Invitation To Bid.
- 9.1.2 Instructions To Bidders.
- 9.1.3 Bid Form.
- 9.1.4 This Agreement.

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1317-256229 November 2021

- 9.1.5 Performance Bond, Engineers Joint Contract Documents Committee (EJCDC) Document C-610, 2013 edition, Payment Bond, EJCDC Document C-615, 2013 edition.
- 9.1.6 General Conditions, EJCDC Document No. C-700, Standard General Conditions of the Construction Contract, 2013 edition.
- 9.1.7 Supplementary Conditions Parts I and II.
- 9.1.8 Specifications as listed in Table of Contents.
- 9.1.9 Drawings, as listed on the Sheet G-1.
- 9.1.10 Addenda numbers _____ to ____6 ___, inclusive.
- 9.1.11 Any modification, including Change Orders, duly delivered after execution of Agreement.

ARTICLE 10. MISCELLANEOUS

- 10.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings assigned in the General Conditions.
- 10.2 Neither OWNER nor CONTRACTOR shall, without the prior written consent of the other, assign or sublet in whole or in part any interest under any of the Contract Documents; and, specifically but without limitation, CONTRACTOR shall not assign any monies due or to become due without the prior written consent of OWNER. In case CONTRACTOR assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to CONTRACTOR shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 10.3 OWNER and CONTRACTOR each binds themselves, their partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.4 The Contract Documents constitute the entire agreement between OWNER and CONTRACTOR and may only be altered, amended or repealed by a Change Order.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in sextuple. Four copies each have been delivered to OWNER and one copy each to CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement shall become effective on _____April 14____, 202.

CONTRACTOR

C.D. Smith Construction, Inc.

OWNER A
Sheboygan Water Utility

Raw Water Improvements Sheboygan, Wisconsin Agreement 005214.16 - 4 Bid Set © 2021 CDM Smith All Rights Reserved 1317-256229 Item 7. November 2021

(CORPORATE SEAL)	(CORPORATE SEAL)
Attest	Attest
Address for giving notices	Address for giving notices
125 Camelot Drive	
Fond du Lac, WI 54935	

Note: If CONTRACTOR is a corporation, an affidavit giving the principal the right to sign the Agreement must accompany the executed Agreement.

END OF DOCUMENT 005214.16



RECORD OF CORPORATE RESOLUT

Item 7.

I, Christopher Smith, as Corporate Secretary of C.D. Smith Construction, Inc., a company organized and existing under the laws of the State of Wisconsin, do hereby certify that (a) the following is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors of C.D. Smith Construction, Inc. duly held and convened on January 20, 2022, at which meeting a duly constituted quorum of the Board of Directors was present and acting throughout, (b) that upon motions duly made, seconded, and unanimously carried, the following resolutions were adopted, and (c) that the following resolutions have not been modified, rescinded or revoked, and are at present in full force and effect:

BE IT RESOLVED that the execution of the Agreement by and between the Sheboygan Water Utility and C.D. Smith Construction, Inc. for the Sheboygan Water Utility Raw Water System Improvements project is affirmed and approved; and

BE IT RESOLVED that Justin Smith and Robert Seibel are the officers of the corporation hereby authorized and directed to execute any and all documents, including the Agreement and the Payment and Performance Bonds, which are necessary or required to effect the execution of such contract.

IN WITNESS WHEREOF, the undersigned Corporate Secretary has affixed his signature on this 22nd day of February, 2022.

/Christopher J. Smith
Christopher J. Smith
Corporate Secretary

Item 7.

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PERFORMANCE BOND

CONTRACTOR (name and address): C.D. Smith Construction, Inc. 125 Camelot Drive Fond du Lac, WI 54935 SURETY (name and address of principal place of business): Federal Insurance Company 202B Halls Mill Road, PO Box 1650 Whitehouse Station, NJ 08889-1650

OWNER (name and address): Sheboygan Water Utility, 72 Park Avenue, Sheboygan, WI 53081

CONSTRUCTION CONTRACT	
Effective Date of the Agreement: February 25, 20	22
Amount: \$41,289,000.00	
Description (name and location): Sheboygan Water U	tility Raw Water System Improvements
Sheboygan, WI	
BOND	
Bond Number: K40318835	
Date (not earlier than the Effective Date of the Agreement of Amount: \$41,289,000.00	the Construction Contract): February 25, 2022
Modifications to this Bond Form: x None	See Paragraph 16
Wodineations to this bolla form.	
Surety and Contractor, intending to be legally bound h this Performance Bond to be duly executed by an auth	ereby, subject to the terms set forth below, do each cause orized officer, agent, or representative.
,,	
CONTRACTOR AS PRINCIPAL	SURETY
C.D. Smith Construction, Inc. (seal)	Federal Insurance Company (seal)
Contractor's Name and Corporate Seal	Surety's Mame and Corporate Seal
ву:	By: A C
Signature	Signature (attach power of attorney)
JUSTIN A. SMITH	Matthew M. Spaude
Print Name	Print Name
PRESIDENT/CED	Attorney-in-Fact
Title O	Title // />
Attest: Coffulf	Attest:
Signature Signature	Signature
COLORATE SECRETARY	Witness
Title	Title
Notes: (1) Provide supplemental execution by any addition	al parties, such as joint venturers. (2) Any singular reference to
Contractor, Surety, Owner, or other party shall be considered	
· · · · · · · · · · · · · · · · · · ·	Performance Bond
* * *	Engineers, American Council of Engineering Companies, il Engineers. All rights reserved.

- 1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
- 2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
- 3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:
 - The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
- 4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
- 5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the

Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

- 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
 - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than

the Owner or its heirs, executors, administrators, successors, and assigns.

- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including

allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

- 14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
- 14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
- 14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.
- 15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
- 16. Modifications to this Bond are as follows:

Item 7.

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PAYMENT BOND

CONTRACTOR (name and address): C.D. Smith Construction, Inc. 125 Camelot Drive Fond du Lac, WI 54935

SURETY (name and address of principal place of business): **Federal Insurance Company** 202B Halls Mill Road, PO Box 1650 Whitehouse Station, NJ 08889-1650

OWNER (
OWNER (name and address): Sheboygan Water Utility, 72 Park	Avenue, Sheboygan, WI 53081
CONSTRUCTION CONTRACT	
Effective Date of the Agreement: February 25, 20	22
Amount: \$41,289,000.00	
Description (name and location): Sheboygan Water Utili Sheboygan, WI	ty Raw Water System Improvements
BOND	
Bond Number: K40318835	
Date (not earlier than the Effective Date of the Agreement of	the Construction Contract): February 25, 2022
Amount: \$41,289,000.00 Modifications to this Bond Form: X None	See Paragraph 18
Woulder of this bolla Forms [2] Notice	
Surety and Contractor, intending to be legally bound he	ereby, subject to the terms set forth below, do each cause
this Payment Bond to be duly executed by an authorize	
CONTRACTOR AS PRINCIPAL	SURETY
C.D. Smith Construction, Inc. (seal)	Federal Insurance Company (seal)
Contractor's Name and Corporate Seal	Surety's Name and Corporate Soal
0 KS	11 110
By:	Ву://
Signature	Signature (attach power of attorney)
JUSTIN A. SMITH	Matthew M. Spaude
Print Name	Print Name
REGIDENT/CEO	Attorney-in-Fact
Title 0 1	Title
Q_{i} , Q_{i}	(). \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
Attest:	Attest: ()
Signature	Signature
CORPORATE SECRETARY	Witness
Title (Titl	e
Notes: (1) Provide supplemental execution by any additiona	al parties, such as joint venturers. (2) Any singular reference
to Contractor, Surety, Owner, or other party shall be conside	
FICDC® C-615	. Payment Rond

- The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
- If the Contractor promptly makes payment of all sums due
 to Claimants, and defends, indemnifies, and holds
 harmless the Owner from claims, demands, liens, or suits
 by any person or entity seeking payment for labor,
 materials, or equipment furnished for use in the
 performance of the Construction Contract, then the Surety
 and the Contractor shall have no obligation under this
 Bond.
- 3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
- 4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
- 5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of nonpayment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).

- If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
- 7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
- The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- 9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
- 10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

- 11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
- 14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- 15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

- 16.1 **Claim:** A written statement by the Claimant including at a minimum:
 - 1. The name of the Claimant;
 - The name of the person for whom the labor was done, or materials or equipment furnished;
 - A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - A brief description of the labor, materials, or equipment furnished;
 - The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;

- The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
- 7. The total amount of previous payments received by the Claimant; and
- The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.
- 17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
- 18. Modifications to this Bond are as follows:

CHUBB.

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company Westchester Fire Insurance Company | ACE American Insurance Company

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 16th day of June, 2021.

Down you chlored

Dawn M. Chloros, Assistant Secretary



STATE OF NEW JERSEY County of Hunterdon

SS.

Hum of adu

Stephen M. Haney, Vice President

On this 16th day of June, 2021 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros and Stephen M. Haney, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros and Stephen M. Haney, being by me duly sworn, severally and each for herself and himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal



KATHERINE J. ADELAAR NOTARY PUBLIC OF NEW JERSEY No. 2316585 Commission Expires July 16, 2024

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-infact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

(i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,

(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

25th day of kebrury, 20:



Daur M. Chlorex

Dawn M. Chloros, Assistant Secretary

C.D. Smith Construction, Inc.

To:

1317-256229 November 2021

Item 7.

SECTION 006116 NOTICE OF INTENT TO AWARD

125 Camelot Drive Fond du Lac, WI 54935 Project Description: Construction of an approximately 4,250 GSF Pump Station, shore well, new intake and intake inlet structure in Lake Michigan, yard piping, site improvements, and other work as indicated in the Contract Documents. The OWNER has considered the BID submitted by you for the above described WORK, in response to its Notice to Bidders, dated November 12, 2021 and Instructions to Bidders. You are hereby notified that your BID will be accepted, contingent upon Wisconsin Department of Natural Resources (WDNR) approval, for items in the amount of \$41,289,000.00 You will be required by the Instructions to Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of the final Notice to be sent upon WDNR approval, to you. Feb. 2, 2022 Dated this day of **OWNER** Title: Utility Superintendent

OFFICE OF THE CITY CLERK Sheboygan, Wisconsin City Hall

I hereby certify that this is a true copy of a document from the Common Council proceedings of the City of Sheboygan.



Res. No. 1 - 21 - 22. By Alderpersons Mitchell and Filicky-Peneski.
October 4, 2021.

A RESOLUTION expressing the Common Council's intent regarding funds received by the City of Sheboygan through the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act, and authorizing the expenditure of ARPA funds for Administrative Expenses.

WHEREAS, in March 2021, the American Rescue Plan Act ("ARPA"), which included \$65 billion in recovery funds for cities across the country, became law; and

WHEREAS, ARPA funds are intended to provide support to state, local, and tribal governments in responding to the impact of COVID-19 and in their efforts to contain COVID-19 in their communities, residents, and businesses; and

WHEREAS, approximately \$22.8 million has been allocated to the City of Sheboygan; and

WHEREAS, in the first tranche the City has received \$11,003,103; and

WHEREAS, the City's current intent is to allocate the ARPA funds as follows:

Clean Water: Centralized wastewater collection
and conveyance - Southside Interceptor
Sanitary Sewer Project \$9,950,000

Drinking Water: Source - Raw Water Intake Project \$9,550,000

Aid to Tourism, Travel and Hospitality \$563,489

Housing Support: Affordable Housing \$2,076,511

Small Business Economic Assistance \$160,000

Administrative Expenses \$100,000

WHEREAS, the use of ARPA funds (rather than increasing the wastewater rate) for the Clean Water project is expected to save the average household approximately \$22.50 per quarter; and

WHEREAS, the use of ARPA funds toward the Drinking Water project is also expected to provide savings compared to solely funding the Drinking Water project through an increased water rate; and

WHEREAS, these savings to utility customers are a direct benefit of using ARPA funds towards these projects; and

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WHEREAS, the City intends to allocate \$563,489 to aid tourism, travel and hospitality, equivalent to the room tax revenue losses the city experienced during 2020 compared to the baseline 2019 amounts; and

WHEREAS, the City will continue the Small Business Emergency Assistance program for businesses hit by revenue losses related to the pandemic; and

WHEREAS, given the meaningful reporting obligations associated with the ARPA funds, it is appropriate to allocate a portion of the ARPA funds toward administrative expenses; and

WHEREAS, City Staff continues to monitor information regarding the spending of ARPA funds from the U.S. Treasury Department and the State of Wisconsin in order to: (1) ensure compliance with all applicable state and federal requirements and (2) not create overlap with other funding programs released from the federal or state government.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council hereby expresses its intent to use its portion of the ARPA funds as follows:

Clean Water: Centralized wastewater collection
and conveyance - Southside Interceptor
Sanitary Sewer Project \$9,950,000
Drinking Water: Source - Raw Water Intake Project \$9,550,000
Aid to Tourism, Travel and Hospitality \$563,489
Housing Support: Affordable Housing \$2,076,511
Small Business Economic Assistance \$160,000
Administrative Expenses \$100,000

BE IT FURTHER RESOLVED: That, for the avoidance of doubt, the Common Council notes that any number of factors - including new guidance from the federal government - could make it in the best interest of the City for the actual expenditures of ARPA funds to differ from the Common Council's current intent identified above.

BE IT FURTHER RESOLVED: That the Common Council authorizes the appropriate City officials to use up to \$100,000 of the ARPA Funds for Administrative Expenses, including staff time spent ensuring the City's compliance with the state and federal requirements associated with the ARPA Funds.

Tethich lenoch

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the 18th day of October 2021.

Dated October 19, 2021. Mullitables City Clerk

Approved October 19, 2021. My Socces, Mayor

Published October 23, 2021. Certified October 19, 2021 to - Fin. Dir.; CA.; Atty.



U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Recipient name and address:	DUNS Number: 076144153
City of Sheboygan	Taxpayer Identification Number: 396005599
828 Center Avenue	Assistance Listing Number: 21.019
Sheboygan, Wisconsin, 53081-4494	

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

DocuSigned by:		
Recipient: Ryan Sorenson 234B824E97DA470 Authorized Representative Ryan Sorenson		
Authorized Representative: Ryan Sorenson		
Title: Mayor		
Date signed: 5/19/2021		
U.S. Department of the Treasury:		
Authorized Representative:		
Title:		
Date:		

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND AWARD TERMS AND CONDITIONS

1. Use of Funds.

- a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
- 2. <u>Period of Performance</u>. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
- 3. <u>Reporting</u>. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.

4. Maintenance of and Access to Records

- a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
- c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
- 5. <u>Pre-award Costs.</u> Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
- 6. <u>Administrative Costs.</u> Recipient may use funds provided under this award to cover both direct and indirect costs.
- 7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
- 8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

- 9. Compliance with Applicable Law and Regulations.
 - a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
 - b. Federal regulations applicable to this award include, without limitation, the following:
 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
 - c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- 10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.
- 11. <u>Hatch Act.</u> Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
- 12. <u>False Statements</u>. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
- 13. <u>Publications</u>. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.

- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed the federal government must be paid promptly by

Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
- 17. <u>Increasing Seat Belt Use in the United States</u>. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- 18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the "Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

- 1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
- 2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.
- 3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit http://www.lep.gov.

- 4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
- 5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

- 6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.
- 7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
- 8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
- 9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

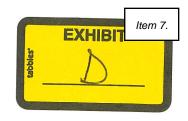
Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

City of Sheboygan	5/19/2021
Recipient	Date
DocuSigned by: Kyan Sovenson 234B824E97DA470.	

Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.



CITY OF SHEBOYGAN

TERMS AND CONDITIONS FOR ALL CONTRACTS FUNDED WITH FEDERAL GRANTS SUBJECT TO THE UNIFORM GUIDANCE

In the event of a conflict between the below terms and conditions and the terms of the main body of the Contract or any exhibit or appendix, these federally required contract terms shall govern.

- 1. **Amendment Permitted.** This list of Federally Required Contract terms may be amended by City in the event that the applicable federal grant providing funding for this Agreement contains additional required terms.
- 2. Debarment and Suspension. Contractor represents and warrants that, as of the execution of this Contract, neither Contractor nor any subcontractor or sub-consultant performing work under this Contract (at any tier) is included on the federally debarred bidder's list listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." If at any point during Contract's term Contractor or any subcontractor or sub-consultant performing work at any tier is included on the federally debarred bidder's list, Contractor shall notify City immediately. Contractor's completed Vendor Debarment Certification is attached hereto and incorporated herein.
- 3. **Record Retention.** Contractor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Contractor further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of five (5) years after it receives City notice that City has submitted final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed. Unless Contractor is functioning as a sub-recipient of grant funding, rather than as a contractor, this requirement is in addition to, and not in place of, City's public records retention requirements set forth elsewhere herein. In the event of conflict between local and federal retention periods, the longer retention requirement shall control.
- 4. Procurement of Recovered Materials (Applies Only if the Work Involves the use of Materials). Pursuant to 2 CFR §200.323, Contractor represents and warrants that in its performance under the Contract, Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 5. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended. If this is a contract or sub-grant in excess of \$150,000, Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act

- (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 6. **Energy Efficiency**. Contractor certifies that it will comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 7. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352). Contractor certifies that:
 - 7.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
 - 7.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor shall request from City and provide, completed, to City the "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
 - 7.3. Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
 - 7.4. Contractor's completed Byrd Anti-Lobbying Certification is attached hereto and incorporated herein.
- 8. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (Applies Only to Funding Over \$100,000, When Laborers or Mechanics are Used). Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Contractor must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- 9. **Right to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any applicable implementing regulations.
- 10. **Federal Government is Not a Party**. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to City, Contractor, or any other party pertaining to any matter resulting from the Contract.
- 11. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** If this is a "prime construction contract," in its performance under the Contract, Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor is required to pay wages not less than once a week. **Note: this paragraph is not applicable to contracts paid for solely with ARPA SLFRF moneys.**
- 12. **Copeland "Anti-Kickback" Act (40 U.S.C. 3145)**. If this is a "prime construction contract" in excess of \$2,000, Contractor shall, in its performance of the contract, comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- 13. **Equal Employment Opportunity.** Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by EO 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 14. **Termination for Convenience**. If this Contract is for an amount in excess of \$10,000 and it lacks a termination for convenience clause, the following applies: City may terminate this Contract at any time for any reason by giving at least thirty (30) days' notice in writing from City to Contractor. If Contractor is terminated for convenience by City, Contractor will be paid for services actually performed or commodity actually provided.
- 15. **Termination for Cause.** If this Contract is for an amount in excess of \$10,000 and it lacks a termination for cause clause, the following applies: If Contractor shall fail to fulfill in timely and proper manner any of its obligations or violate any of the provisions of this Contract; City shall have the right to terminate this Contract. City shall notify Contractor of its intent to terminate, by giving Contractor prior written notice at least five (5) business days before the effective date of the termination, identifying the alleged deficiencies in Contractor's performance, and shall give Contractor thirty (30)

days to cure such deficiencies prior to termination. In such event, all deliverables completed by Contractor as of the date of termination shall, at the option of City, become property of City. Notwithstanding the above, Contractor shall not be relieved of liability to City for damages sustained by City by virtue of any breach of the Contract, and City shall retain its remedies under law.

- 16. Executive Order 13202- Preservation of Open Competition and Government Neutrality Towards Contractors' Labor Relations on Federal and Federally Funded Construction Contracts. These requirements apply to recipients and sub-recipients of awards and cooperative agreements and to any manager of a construction project acting on their behalf. These individuals or employees of one of these organizations must ensure that the bid specifications, project agreements, and other controlling documents do not: (a) require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or (b) otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories, or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s). Contractors or subcontractors are not prohibited from voluntarily entering into agreements with one or more labor organizations.
- 17. **Domestic Preferences for Procurements.** Pursuant to 2 CFR §200.322, as appropriate, and to the extent consistent with law, Contractor should, to the greatest extent practicable under this Contract, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts and purchase orders for work or products under this Contract.
- 18. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** Contractor shall not use funds under this Contract to purchase, or enter into subcontracts to purchase, any equipment, services, or systems that use telecommunications equipment or services as a substantial or essential component of a system that is subject to 2 CFR § 200.216 (generally, video surveillance or telecommunications equipment produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, their subsidiaries or affiliates, or any entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by the government of a foreign country). In the event Contractor identifies covered telecommunications equipment or services that constitute a substantial or essential component of any system, or as critical technology as part of any system that is subject to 2 CFR § 200.216, during Contract performance, Contractor shall alert City as soon as possible and shall provide information on any measures taken to prevent recurrence.
- 19. **Prohibitions on Discrimination**. Contractor agrees to comply with the following as applicable:
 - 19.1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

- 19.2. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.
- 19.3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
- 19.4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.
- 19.5. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state or local governments or instrumentalities or agencies thereto.
- 19.6. Title IX of the Education Amendments of 1972 (Title IX), (20 U.S.C. 1681 et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 28, which prohibits discrimination on the basis of sex in any federally funded education program or activity
- 20. **Financial and Program Management** As subrecipient of federal funds, Contractor is required to comply with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, other than such provisions as Treasury may determine are inapplicable to this Agreement and subject to such exceptions as may be otherwise provided by Treasury.
 - 20.1. Financial Management: Contractor shall maintain records and financial documents sufficient to show compliance with section 603(c) of ARPA, Treasury's regulations implementing that section, and guidance issued by Treasury. Contractor shall grant the Treasury Office of Inspector General and the Government Accountability Office or their authorized representatives, the right of access to these records in order to conduct audits or other investigations. Financial records, supporting documents, statistical records and all other records pertinent to the services purchased pursuant to this Agreement shall be retained for a period of five (5) years after all of the City's funds have been expended or returned to the Treasury Department, whichever is later.
 - 20.2. Audit Requirements. Contractor agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) or upon request. Contractors who expend more than \$750,000 in federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F.
 - 20.3 Recipient Integrity and Perauformance Matters. Contractor agrees to provide any information requested by the City in order to comply with 2 CFR Appendix XII to Part 200

- 20.4 SAM.gov Requirements. Contractor is required to comply with 2 CFR Part 25 (System for Award Management ("SAM")) and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information) unless exempted pursuant to 2 CFR § 25.110.
- 21. **Drug-Free Workplace.** Contractor acknowledges that as a subrecipient of federal funds, it is subject to 31 CFR Part 20 (Governmentwide Requirements for Drug-Free Workplace)
- 22. **Relocation Assistance**. Where an agreement or project requires the relocation of persons or such person's personal property, Contractor is advised that 42 USC 4601-4655 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) may apply.
- 23. **Incorporation of Required Clauses and Conditions.** To the extent any applicable federal statute, regulation, or executive order requires any clause or condition to be included or incorporated into this Agreement between the City of Sheboygan and the Room Tax Commission, and that term or condition has not been expressly included or incorporated, it is included or incorporated by reference.

This form is required only for subrecipient funding of more than \$100,000

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of their knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Ch. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

	Date:	
Signature of Contractor's authorized official		
(Print name of person signing above)		
(Print title of person signing above)		

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

Federal Executive Order 12549 requires that all contractors receiving individual awards, using federal funds and all subrecipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from doing business with the Federal Government. By signing below, Contractor certifies that its organization and its principals are not debarred. Failure to comply or attempts to edit this language may disqualify your bid. Information on debarment is available at the following websites: www.sam.gov and https://acquisition.gov/far/index.html.

Your signature certifies that neither you nor your principal is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Date: ______

	Date:
Signature of Contractor's authorized official	
(Print name of person signing above)	
(Print title of person signing above)	



DIRECT REFERRAL TO FINANCE AND PERSONNEL COMMITTEE

R. O. No. 26 - 22 - 23. By FINANCE DIRECTOR. June 27, 2022.

Submitting a report in response to a request for direction from the Finance and Personnel Committee on the steps moving forward to complete the compensation study and wage scale adoption.

BACKGROUND / ANALYSIS:

In April 2021, the City contracted with the consulting firm, Carlson-Dettmann, to conduct a full classification and compensation study for all non-represented positions. This study's purpose was to determine the comparability of the City's wage rates with that of other municipalities and, to the extent possible, the private sector for the purposes of developing a new pay plan for the City. The result of this study was a proposed wage schedule that was presented to Department Heads, Finance and Personnel Committee and Common Council.

On Monday, June 20th, the Common Council considered R.C. No. 33-23-23, which would have adopted the updated wage classifications and steps as part of the 2022 City compensation program. It was voted to be referred back to this Committee for additional evaluation and review to gain the confidence of both Council and staff.

The below items have been communicated for staff to address:

- Human Resource professional involvement
- Request for a Council meeting with a representative on-site from Carlson-Dettmann available to answer questions and address concerns
- Communication of the process and results to Common Council and all affected staff
- Need for understanding related to data and formulas used to classify positions
- Explore if separate scales should be considered for different departments/areas
- Recognition of staff's seniority in the implementation plan
- Possible verbal interviews by consultant with staff
- Financial impact on the City's budget

STAFF COMMENTS:

To successfully move forward in this process, it is imperative to receive clear expectations and direction from Council members to alleviate any concerns surrounding the process or the results. Though the above listing has been compiled, the Finance and Personnel Committee may need to elaborate on all or some items to define minimum requirements needing to be met in order for confidence to be gained.



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Item	В.

ACTION	REOUESTED:

Staff is requesting well-defined direction from the Finance and Personnel Committee on the requirements to complete this study and come to an agreeable compensation plan.

Finance Director



DIRECT REFERRAL TO FINANCE AND PERSONNEL COMMITTEE

R. O. No. 52 - 22 - 23. By FINANCE DIRECTOR. August 8, 2022.

Submitting a report to the Finance and Personnel Committee regarding the progress of the Carlson-Dettmann Compensation Study.

BACKGROUND / ANALYSIS:

On June 27th, the Finance and Personnel Committee reviewed a report from the Finance Director requesting guidance on how to mitigate concerns/questions and complete the Carlson-Dettmann Compensation Study. As part of the discussion that day, it was requested by the Committee that a report be shared each meeting moving forward on the progress of various areas of concern. The following notes have been compiled in order to fulfill this request.

The below items were discussed and a brief status is listed below it:

• Human Resource professional involvement

The City received assistance from Sandra Matz, the previous Human Resources Director of Appleton, for the review meetings with Patrick Glynn and Department Heads. Sandra provided the City with recommendations for policy and procedure updates to guarantee consistent and fair pay scale adjustments in the future.

• Request for a Finance and Personnel Committee meeting with a representative on-site from Carlson-Dettmann available to answer questions and address concerns

This meeting occurred on July 25th.

• Communication of the process and results to Common Council and all affected staff

Staff will continue to communicate as necessary throughout the next steps of the process. A report will be given at every Finance & Personnel Committee meeting until study is completed.

An email has been sent on August 4^{th} to all employees affected by the study to give them a status update.

 Need for understanding related to data and formulas used to classify positions

Several presentations have been given throughout the review process to increase understanding related to the methods and results of the

compensation study. Additionally, City Administrator Wolf and I have been meeting with individuals as requested to go over questions and concerns.

• Explore if separate scales should be considered for different departments/areas

Based on research and industry standard, staff is recommending the Public Works scale remains consolidated within the new pay plan.

At the last Common Council meeting, it was suggested that the library be removed from the City non-represented compensation study and pay plan. It has been brought to my attention that several Alders are uncomfortable making decisions on behalf of another governing board. The Library Board has the sole power to decide wage and other related decisions without the input of Common Council due to Wisconsin State Statute Chapter 43.

Recognition of staff's seniority in the implementation plan

The Finance Director has prepared and presented different scenario calculations to the Committee. These scenarios will be available for discussion at the August 8th Committee meeting.

• Possible verbal interviews by consultant with staff

Six Department Heads met with Carlson-Dettmann for review of various positions on July 25th. Carlson-Dettmann is currently working through the necessary steps to review positions of concern and will provide final recommendations to the City as soon as available.

· Financial impact on the City's budget

Information will be presented at the August 8th Committee meeting.

Back Pay

The current version of Munis, the City's payroll system, does not allow for system-generated back pay and would result in many hours of manual labor for the Finance Department. With the current workload of the payroll staff, it is unfeasible to perform the back pay in the current version.

The Finance Department is currently testing within the upgraded version of Munis to determine how the system will function for back pay. The City will be upgrading to the new version August $12^{\rm th}$ and $13^{\rm th}$.

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STAFF	
STAHH	COMMENTS:

Staff will bring forward additional information at the August $22^{\rm nd}$ Finance and Personnel meeting for discussion and possible action.

ACTION REQUESTED:

Staff requests the Committee file this report.

Finance Director