



PUBLIC WORKS COMMITTEE AGENDA

September 24, 2024 at 5:30 PM

Municipal Service Building - Training Room, 2026 New Jersey Avenue

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 Department of Public Works at 920-459-3440. Persons other than council members who wish to participate remotely shall provide notice to the Public Works Department at 920-459-3440 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
3. Pledge of Allegiance
4. Introduction of Committee Members and Staff

MINUTES

5. Approval of Minutes: September 10, 2024

ITEMS FOR DISCUSSION & POSSIBLE ACTION

6. Direct Referral Res. No. 82-24-25 / A resolution authorizing the appropriate City officials to enter into contract with Bruce the Stump Guy, LLC, of Manitowoc for the removal, disposal and restoration following removal of tree stumps located throughout the City of Sheboygan.

NEXT MEETING DATE

7. Next Regular Meeting Date: October 15, 2024

ADJOURNMENT

8. Motion to adjourn

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

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

CITY OF SHEBOYGAN

PUBLIC WORKS COMMITTEE MINUTES

Tuesday, September 10, 2024

COMMITTEE MEMBERS PRESENT: Chair Dean Dekker, Vice Chair Angela Ramey, Alderperson Zach Rust, Alderperson Daniel Peterson, and Alderperson John Belanger

STAFF/OFFICIALS PRESENT: Director of Public Works Travis Peterson, City Engineer Kevin Jump, Superintendent of Streets and Sanitation Joel Kolste, Superintendent of Parks & Forestry Joe Kerlin, Superintendent of Facilities and Traffic Mike Willmas, City Forester Tim Bull, Marina Manager Nick Warminsky, Maywood Director Kendra Kelling, Administrative Coordinator Melissa Fassbender, Administrative Clerk Stacy Weseljak

OPENING OF MEETING

1. Call to Order

Chair Dean Dekker called the meeting to order at 5:30 PM

2. Roll Call
3. Pledge of Allegiance

The Pledge of Allegiance was recited.

4. Introduction of Committee Members and Staff

MINUTES

5. Approval of Minutes: August 27, 2024

MOTION TO APPROVE MINUTES FROM AUGUST 27, 2024

Motion made by Alderperson Rust, Seconded by Alderperson Peterson.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

ITEMS FOR DISCUSSION & POSSIBLE ACTION

6. Res. No. 68-24-25 / A resolution authorizing the appropriate City officials to enter into a contract extension with GFL Environmental LLC for refuse and recyclables material transfer and tipping services.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Rust, Seconded by Alderperson Peterson.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

7. Res. No. 74-24-25 / A resolution designating the City Forester as the City's Authorized Representative for the purpose of Wisconsin Department of Natural Resources (WI DNR) Urban Forestry Grants for calendar year 2025 and directing him to submit an Urban Forestry Grant Application.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Vice Chair Ramey, Seconded by Alderperson Rust.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

- 8. Res. No. 72-24-25 / A resolution authorizing the appropriate City Officials to enter into contract with Mueller Lawn Manicuring, LLC of Sheboygan for the removal and disposal of 227 trees located at Jaycee Quarryview Park in Sheboygan.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Peterson, Seconded by Alderperson Rust.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

- 9. Res. No. 71-24-25 / A resolution authorizing the appropriate City officials to execute a Lease Agreement between the City of Sheboygan, Ellwood H. May Environmental Park Association of Sheboygan County, Inc., and the Sheboygan Area School District.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Vice Chair Ramey, Seconded by Alderperson Rust.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

- 10. Res. No. 70-24-25 / A resolution authorizing the appropriate City officials to execute an Amendment to Lease Agreement between the City of Sheboygan, Ellwood H. May Environmental Park Association of Sheboygan County, Inc., and the Sheboygan County YMCA.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Rust, Seconded by Alderperson Peterson.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

- 11. Res. No. 69-24-25 / A resolution authorizing a contract between the City of Sheboygan and Molo, Inc. for marina management software regarding transient and annual marina slip leases at Harbor Centre Marina.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Peterson, Seconded by Alderperson Rust.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

- 12. Direct Referral Res. No. 75-24-25 / A resolution allowing ZWILLING Airstream to be parked in front of Relish Kitchen Store at 811 North 8th Street on October 5, 2024.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Vice Chair Ramey, Seconded by Alderperson Rust.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

NEXT MEETING DATE

- 13. Next Regular Meeting Date: September 24, 2024

ADJOURNMENT

14. Motion to adjourn

MOTION TO ADJOURN AT 5:47 PM

Motion made by Vice Chair Ramey, Seconded by Alderperson Rust.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A resolution authorizing the appropriate City officials to enter into contract with Bruce the Stump Guy, LLC, of Manitowoc for the removal, disposal and restoration following removal of tree stumps located throughout the City of Sheboygan.

REPORT PREPARED BY: Bernard R. Rammer Purchasing Agent

REPORT DATE: September 18, 2024

MEETING DATE: September 24, 2024

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: 400300-641150
Budget Summary: Capital Projects-
Public Works
Improvements Other
than Buildings
Budget Expenditure: \$65,656.50
Budgeted Revenue: N/A

Wisconsin Statues: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS: With the scourge of the Emerald Ash Borer responsible for the loss of hundreds of city-owned trees throughout the City of Sheboygan, the number of stumps left behind has become overwhelming for City staff to remove. The City received a grant from the State of Wisconsin Department of Natural Resources as a component of the Federal Inflation Reduction Act and the removal of stumps and restoration is an allowable use of the funds.

STAFF COMMENTS: The City issued Request for Bids # 2062-24 for the removal of 250 tree stumps and resulting landscape restoration throughout the City of Sheboygan. One bid was received in response and Staff has determined that the bidder has both the qualifications and capacity to complete the removal by the stated deadlines. The final bid of \$ 65,656.50 for the removal of all 250 stumps is well within the budgeted amount.

ACTION REQUESTED: A motion to recommend the Common Council adopt a resolution authorizing the appropriate City officials to enter into contract with Bruce the Stump Guy, LLC, of Manitowoc for the removal, disposal and restoration following removal of tree stumps located throughout the City of Sheboygan.

ATTACHMENTS:

- I. Res No. 82-24-25
- II. Agreement between City of Sheboygan and Bruce The Stump Guy LLC

**CITY OF SHEBOYGAN
RESOLUTION 82-24-25
DIRECT REFERRAL TO PUBLIC WORKS COMMITTEE**

BY ALDERPERSONS DEKKER AND RAMEY.

SEPTEMBER 24, 2024.

A RESOLUTION authorizing the appropriate City officials to enter into contract with Bruce the Stump Guy, LLC, of Manitowoc for the removal, disposal and restoration following removal of tree stumps located throughout the City of Sheboygan.

WHEREAS, the scourge of the Emerald Ash Borer has resulted in the loss of many mature trees in the City of Sheboygan. Many trees located primarily in the “terrace” area between the sidewalk and street curbs have already been removed leaving behind the stumps. Many of these stumps are in residential neighborhoods and the City is intent on removing the stumps to assure that these areas are returned to a pleasing and safe condition; and

WHEREAS, the City desires to have the stumps removed in a safe and expeditious manner; and has received a grant to fund the removal from the State of Wisconsin Department of Natural Resources; and

WHEREAS, the city issued Request for Bids #2062-24 specifying the requirements for the removal of the stumps and has divided the work into three phases based upon geographical location and timing limitations under the grant funding; and

WHEREAS, the City received bids for the project from vendors having the proper qualifications to perform the work and, following a review of the bids, staff has determined that the lowest bid submitted for each of the three project phases meets or exceeds all of the requirements.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are authorized to enter into contract with Bruce the Stump Guy, LLC for the removal of stumps, including lawful disposal and restoration in accordance with the specifications, in the amount of \$65,656.50.

BE IT FURTHER RESOLVED: That the appropriate City officials are authorized to draw funds in the amount of \$65,656.50 from Account No. 400300-641150 (Capital Projects-Public Works-Improvements Other Than Buildings) for the purchase.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

_____.

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

**AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN
AND
BRUCE THE STUMP GUY LLC
FOR THE REMOVAL OF TREE STUMPS AND RELATED LANDSCAPE
RESTORATION IN THE CITY OF SHEBOYGAN.**

This Agreement (“Agreement”) is made and entered into effective this ___ day of _____, 2024 (the “Effective Date”), by and between the City of Sheboygan (the “City”), a municipal corporation, with principal offices located at 828 Center Ave., Sheboygan, Wisconsin 53081, and Bruce The Stump Guy LLC located at 1009 N. 14th St., Manitowoc WI 54220 (“Contractor”).

WITNESSETH:

WHEREAS, the City owns many tree stumps throughout the City located primarily in the terrace area between the city sidewalk and the street curbs; and

WHEREAS, the City desires to have the stumps removed and the turf areas restored so as to return the terrace areas to a finished, pleasing appearance and safe condition; and

WHEREAS, the City issued Request for Bids # 2062-24 to obtain bids from qualified providers of Tree Stump Removal Services (“Services”); and

WHEREAS, The City has divided the work into three distinct phases based upon both geographic area as well as required completion dates to comply with funding sources, to wit

- PHASE 1 with all work completed by December 15, 2024 and 101 stumps;**
- PHASE II with all work completed by May 15, 2025, and 126 stumps;**
- PHASE III (Optional) with all work completed by May 15, 2025 and 23stumps**

WHEREAS, upon review, the City has determined that Contractor’s bid is the lowest responsive and responsible bid for the Services in Phase # 1, Phase # 2 and Phase # 3

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

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

Article 1. Scope of Services

Contractor shall provide all labor, machinery, equipment, licenses, permits, bonds, and travel expenses to safely and skillfully complete the Services as set forth in Exhibit 1, and shall dispose of all materials generated in the provision of Services in a lawful manner (the “Disposal”). Contractor shall be responsible for obtaining any and all applicable City permits and paying any and all

applicable permit fees prior to beginning work. The City of Sheboygan does not waive permitting fees for City of Sheboygan projects.

Contractor shall be responsible for furnishing, erecting, and maintaining suitable barricades, warning signs, flashers, fencing, and other protective equipment to properly protect and safeguard its personnel and the public during all phases of the Services.

Contractor will need to plan the work in advance of mobilization and coordinate with the City's Representative. The majority of the work is located in the terrace areas between the city sidewalk and the street curbs in primarily residential neighborhoods.

For the avoidance of doubt, the scope of services to be provided includes:

- Provision of all permits, licensing, insurance and bonding necessary for the project.
- Complete removal and disposal of the tree stumps in each phase of the work.
- The proper handling of all materials generated during the removal process, which may include wood chips, roots, soil, turf and/or a commingling of the above.
- The removal and lawful disposal of all materials. The regulations governing this handling can be found in the Request for Proposals.
- The restoration of the stump sites following removal to include filling and compaction of voids, addition of screened topsoil and finish raking and grading of the soil so it is level with surrounding areas as detailed in the Request for Bids.
- The planting or spreading of high-quality turf grass seed and covering of same with a suitable mulch to assist in rapid germination of the seed.
- The repair or replacement, if needed of any city concrete curbs, sidewalks or driveway approached that are inadvertently damaged during the stump removal process.
- Upon completion of the work, the City expects the contractor to return the site to the same or similar condition as it was preceding the work.

Article 2. Standard of Care

Contractor shall be responsible for completing the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The City's Representative shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the City's Representative shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care which appear within a period of one year from the date of final payment of the Contract.

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

Article 3. City's Representative

The City designates Timothy Bull, City Forester, as the City's Representative for purposes of this Agreement. If the City's Representative deems it appropriate, the City's Representative may consult

with other employees of the City, or may retain an appropriate outside expert to assist with the management of this Project.

If the City's Representative or designee observes any work performed by the Contractor to not be in conformity with the Agreement, the City's Representative(s) will report that to the Contractor. The City's Representative(s) will have authority to stop any portion of the work not in conformity with the Agreement until the City has investigated and decided upon an appropriate procedure.

Article 4. Compensation

The City shall pay Contractor for the Services an amount not to exceed \$ 65,656.50("Contract Amount"). Invoices shall be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within sixty (60) days of invoice receipt. Contractor shall submit an invoice to the City on a monthly basis that is based on the percentage of each quadrant completed. The invoice shall be sent to:

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

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

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

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

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

- Payments that may be earned or due for just claims for labor or materials furnished in and about the work.
- Defective work.
- Failure of Contractor to make payments due to subcontractors, material suppliers, or his/her employees.
- Damage to the City or a third party.

- The probable filing of claims by other parties against Contractor which may adversely affect the City.
- Reasonable doubt that the Agreement can be completed for the balance then unpaid.
- Liquidated damages due to the City.

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

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

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

Article 5. Appropriation of Funds

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty. The City agrees that it will make its best effort to obtain sufficient funds for the Agreement to meet its obligations hereunder in full.

Article 6. Performance and Payment Bond

Contractor shall, within ten (10) days of the execution of this Agreement by the Common Council of the City of Sheboygan, provide the City with a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the contract amount.

Failure by Contractor to perform the work in a timely or satisfactory fashion may result in forfeiture of Contractor's Performance Bond. Failure by Contractor to make necessary payments to suppliers or subcontractors may result in forfeiture of Contractor's Payment Bond.

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

Article 7. Schedule

Contractor shall commence work after receiving a Notice to Proceed from the City. All work shall be coordinated with the City's Representative. No work may occur on weekends or holidays without prior approval from the City's Representative.

Contractor shall complete the services within 90 calendar days of commencement, or within such extra time as may have been allowed by a mutually agreed extension (the "Deadline"). Due primarily to manufacturer lead time for materials, the City's Representative shall have the authority to consent to an extension of the Deadline on behalf of the City and waive any associated penalties with liquidated damages.

Article 8. Liquidated Damages

In the event that Contractor does not complete the Services by the Deadlines or the alternative final agreed upon completion date, there shall be deducted from any monies due or that may become due to Contractor, for each and every calendar day that the work remains uncompleted, a sum of One Hundred and 00/100 Dollars (\$100.00) per calendar day.

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

Article 9. Quality of Materials

All material used shall be clean, free of stones, rocks, clay and foreign matter and appropriate for such use. Fill materials shall not include hazardous materials or materials that reasonably could be expected to negatively impact recreational or Maintenance activities at the Property. Equipment used in the performance of Services shall be appropriate for the activities undertaken therewith.

Article 10. Safety Requirements

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

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

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

Article 11. Open Records

Both parties understand that the City is bound by the Wisconsin Public Records Law and, as such, this contract is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of Final Payment under the Agreement.

Article 12. Termination

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

If the City fails to make payment through no fault of the Contractor for a period of 30 days after such payment is due in accordance with the Contract Documents, the Contractor may, upon 7 days written notice to the City, terminate the Agreement and recover from the City payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, and construction equipment and machinery, including reasonable profit and damages.

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

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

Article 13. Default

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

- Failure to begin the work under this Agreement within the time specified.

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

The City shall send Contractor a written notice of default. If Contractor, within a period of seven (7) days after such notice, fails to remedy the default, then the City shall have full power and authority, without violation of the Agreement, to take the prosecution of the work out of the hands of Contractor, as set forth in this Agreement.

Article 14. Identity of Contractor

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

Article 15. Independent Contractor Status

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

Article 16. Indemnification

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

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

Contractor shall reimburse the City for any costs, expenses, judgments, and attorney's fees paid or incurred, by or on behalf of the City, its officials, agents, or employees, or paid for on behalf of the City, its officials, agents, or employees by insurance purchased or self-insurance provided by the City.

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

Article 17. Insurance

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

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

Please refer to Exhibit # 2 Insurance and Bonding Standards for specific Limits of coverage.

Article 18. Conflict of Interest

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

Article 19. Waiver

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

Article 20. Severability

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

Article 21. Assignment

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

Article 22. Third Party Rights

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

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

Article 23. Governing Law and Venue

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

Article 24. Non-Discrimination

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

Article 25. Compliance with Laws

In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans, and regulations. This includes all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

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

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

Article 26. Notices

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

City:	Contractor:
City Clerk	Bruce The Stump Guy LLC
City of Sheboygan	Mr. Bruce Stuffle, Owner
828 Center Ave.	1009 N. 14 th Street
Sheboygan, Wisconsin 53083	Manitowoc, WI 54220

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

Article 27. Intent to be Bound

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

Article 28. Force Majeure

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

Article 29. Integration and Modification

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

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

1. This Agreement and its Attachments and Exhibits
2. Any Written Amendment to the Agreement which may be delivered or issued after the Effective Date of the Agreement (including Change Orders)
3. The Request for Bids # 2062-24 (including all attachments)
4. All Addenda to the Request for Bids
5. All Other Submittals by Contractor
6. The Performance and Payment Bonds
7. Terms and Conditions

(collectively “the Contract”).

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

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

Article 30. Non-Collusion

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

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

Article 31. Other Provisions

1. Material Safety Data Sheet. If any item(s) on an order(s) resulting from this Agreement is a hazardous chemical, as defined under 29 C.F.R. 1910.1200, Contractor shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
2. Advertising and News Releases. Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City's Representative. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City's Representative.
3. Foreign Corporation. A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Wis. Stat. Ch. 180 relating to a foreign corporation, and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority.
4. Guaranteed Delivery. Failure of the Contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the Agreement price when alternate procurement is necessary. Excess costs shall include the administrative costs and other costs attributable to the delay.

- 5. Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.
- 6. Intent of Contract Documents.
 - a. The intent of this Agreement is to include in the contract price the cost of all labor and materials, water, fuel, tools, plants, equipment, light, transportation, and any other expenses that may be necessary for the proper execution and completion of the work included in the Agreement.
 - b. In interpreting the Agreement, words describing materials that have a well-known technical or trade meaning shall be construed in accordance with such well known meanings unless otherwise specifically defined

Article 33. 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 contract between the City of Sheboygan and the contractor, and that term or condition has not been expressly included or incorporated, it is included or incorporated by reference.

To the extent Contractor is required, by this contract or by any applicable federal statute, regulation, or executive order, to include or incorporate any clause or condition into its subcontracts or Contractor agrees to ensure that any term.

Article 34: Exhibits

The following Exhibits are attached hereto and made part of this agreement:

- Exhibit # 1 Request for Bids # 2062-24
- Exhibit # 2 Bid submission by Contractor including Bid Security
- Exhibit # 3 Insurance and Bonding standards
- Exhibit # 4 Performance and Payment Bonds

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

CITY OF SHEBOYGAN, WISCONSIN

BRUCE THE STUMP GUY LLC

BY: _____
Ryan Sorenson, Mayor

BY: _____
Bruce Stuffle, Owner

ATTEST: _____
Meredith DeBruin, City Clerk

ATTEST: _____

DATE: _____

DATE: _____