

**VILLAGE OF SOMERS
7511 12th STREET
SOMERS, WI 53171**

**VILLAGE BOARD MEETING
AGENDA
01-14-20
5:30 P.M.**

1. Call to order
2. Pledge of Allegiance
3. Consent and Approval of Minutes of Regular meeting on 12-10-19; Vouchers dated 12-19-19, 12-26-19, 01-02-20 & 01-09-20, October & November 2019 ACH payments
4. Correspondence: none
5. Citizen Comments
6. Trustee Comments
7. Motion to authorize Village President and Village Clerk to execute Developer's Agreement in the form attached regarding Pritzker Military Archives Project once all exhibits have been approved by Village Staff
8. Motion to approve final payment in the amount of \$55,948.44 to Musson Brothers Construction for 52nd Avenue & 16th Place Sewer Rehabilitation Project
9. Action on proposed Ordinance No. 20-001 to Repeal and Recreate Section 11.03(G) and (H) of the Code of Ordinances to the Village of Somers Relating to Operator License and Provisional License Fees
10. Action on proposed Ordinance No. 20-002 to Repeal and Recreate Section 12.10(B)(1) of the Code of Ordinances to the Village of Somers Relating to Amusement Establishments License
11. Action on proposed Ordinance No. 20-003 to Repeal and Recreate Section 12.13(D)(1) of the Code of Ordinances to the Village of Somers Relating to Cigarette or Tobacco Product License
12. Approval of Operator Licenses: Clerk Recommends Approval: Keri M. Larsen
13. Adjourn

I hereby certify that as the designee of the chief elected official of the Village of Somers, I posted this notice of the Jan. 14, 2020 Village Board Meeting Agenda in 1 public place & on the Village website.

Dated this 10th day of Jan., 2019

Tim Kitzman, Clerk-Treasurer

Requests from person with disabilities who need assistance to participate in this meeting should be made to the Clerk's Office at 262-859-2822 with as much notice as possible. Notice is hereby given that members of the Village Board may participate telephonically. Notice is hereby given that members of the Town Board may be in attendance for the sole purpose of gathering information. A quorum may be present. However, no Board action will be taken.

User: jmartin
 DB: Somers

Check Date	Bank	Check	Vendor	Vendor Name	Amount
Bank POOL POOLED CASH					
12/19/2019	POOL	56836	ADVANCED	ADVANCED DISPOSAL	64,657.04
12/19/2019	POOL	56837	AEBUSINE	AE BUSINESS SOLUTIONS	603.00
12/19/2019	POOL	56838	AJG001	ARTHUR J GALLAGHER RISK MGMT	580.00
12/19/2019	POOL	56839	AJG001	ARTHUR J GALLAGHER RISK MGMT	412.00
12/19/2019	POOL	56840	BAXTER	BAXTER & WOODMAN	6,703.60
12/19/2019	POOL	56841	BEACON	BEACON ATHLETICS	462.20
12/19/2019	POOL	56842	BILLER	BILLER PRESS	3,404.68
12/19/2019	POOL	56843	CGENTERPRI	C.G. ENTERPRISES	900.00
12/19/2019	POOL	56844	EME001	EMERGENCY MEDICAL PRODUCTS INC	497.11
12/19/2019	POOL	56845	SMITHG	GERALD SMITH	229.68
12/19/2019	POOL	56846	HEARTLAND	HEARTLAND BUSINESS SYSTEMS LLC	15,195.71
12/19/2019	POOL	56847	HWY001	HIGHWAY C SERVICE INC	200.93
12/19/2019	POOL	56848	KWU002	KENOSHA WATER UTILITY	50,055.17
12/19/2019	POOL	56849	CLEANCO	KRISTIANSEN ENTERPRISES, INC	426.00
12/19/2019	POOL	56850	MEN001	MENARDS - RACINE	85.43
12/19/2019	POOL	56851	MLBULB	MILWAUKEE LIGHT BULB	85.00
12/19/2019	POOL	56852	NAP001	NAPA AUTO PARTS	88.40
12/19/2019	POOL	56853	OLENICZAK	OLENICZAK LAW LLC	173.25
12/19/2019	POOL	56854	PAR001	PARKSIDE TRUE VALUE HARDWARE	18.21
12/19/2019	POOL	56855	TWC001	SPECTRUM	124.98
12/19/2019	POOL	56856	REFUND TAX	STEVEN & COLLEEN ROETHE	264.48
12/19/2019	POOL	56857	THEJOURNAL	THE JOURNAL TIMES	36.58
12/19/2019	POOL	56858	UOC001	UNITED OCC MED &	102.00
12/19/2019	POOL	56859	WDT001	WI DEPT OF TRANSPORTATION	2,160.10
12/19/2019	POOL	56860	WAM001	WILLIAM A MORRIS	35.00

POOL TOTALS:

Total of 25 Checks:	147,500.55
Less 0 Void Checks:	0.00
Total of 25 Disbursements:	<u>147,500.55</u>

User: jmartin
 DB: Somers

Check Date	Bank	Check	Vendor	Vendor Name	Amount
Bank POOL POOLED CASH					
12/26/2019	POOL	56861	AEBUSINE	AE BUSINESS SOLUTIONS	576.00
12/26/2019	POOL	56862	TRI-VISA	CARDMEMBER SERVICE	472.40
12/26/2019	POOL	56863	EMC	EMC INSURANCE COMPANIES	14,900.73
12/26/2019	POOL	56864	POIRIER	KEVIN POIRIER	923.69
12/26/2019	POOL	56865	REFUND TAX	MARY E AIELLO	180.91
12/26/2019	POOL	56866	PETTYCAS	PETTY CASH	31.23
12/26/2019	POOL	56867	RICOHUSA	RICOH USA, INC	206.38
12/26/2019	POOL	56868	RITZHOLM	RITZ HOLMAN LLP	22,971.64
12/26/2019	POOL	56869	KUPFER	ROBERT KUPFER	307.03
12/26/2019	POOL	56870	REFUND TAX	ROGER & JANET WEGER	1,326.94
12/26/2019	POOL	56871	TWC001	SPECTRUM	17.76
12/26/2019	POOL	56872	TWC001	SPECTRUM	344.39
12/26/2019	POOL	56873	WEE001	WE ENERGIES	50.22
12/26/2019	POOL	56874	WIL002	WIL-KIL PEST CONTROL	74.50
12/26/2019	POOL	56875	REFUND TAX	WILLIAM GARNER	176.42

POOL TOTALS:

Total of 15 Checks:	42,560.24
Less 0 Void Checks:	0.00
Total of 15 Disbursements:	<u>42,560.24</u>

01/02/2020 02:58 PM
User: jmartin
DB: Somers

CHECK REGISTER FOR VILLAGE OF SOMERS
CHECK DATE FROM 01/02/2020 - 01/02/2020

Page: 1/1

Check Date	Bank	Check	Vendor	Vendor Name	Amount
Bank POOL POOLED CASH					
01/02/2020	POOL	56878	BRUM	ANN BRUMBACK	42.65
01/02/2020	POOL	56879	AAC001	ASSOCIATED APPRAISAL	7,221.99
01/02/2020	POOL	56880	AT&T001	AT&T	111.56
01/02/2020	POOL	56881	FIS001	CAROL J MATTEUCCI	186.10
01/02/2020	POOL	56882	REFUND TAX	CORELOGIC	831.97
01/02/2020	POOL	56883	EAGLEMEDIA	EAGLE MEDIA INC	240.89
01/02/2020	POOL	56884	EME001	EMERGENCY MEDICAL PRODUCTS INC	142.50
01/02/2020	POOL	56885	UHS001	FROEDTERT SOUTH INC	267.00
01/02/2020	POOL	56886	GAT001	GATEWAY TECHNICAL COLLEGE	190.00
01/02/2020	POOL	56887	STO001	GEORGE STONER	305.48
01/02/2020	POOL	56888	GIFTBRIC	GIFT BRICKS	39.10
01/02/2020	POOL	56889	SOR001	JOHN E SORENSEN	48.78
01/02/2020	POOL	56890	KEN002	KENOSHA COUNTY TREASURER	339.20
01/02/2020	POOL	56891	LIC001	LINCOLN CONTRACTORS SUPPLY INC	15,335.00
01/02/2020	POOL	56892	MEN001	MENARDS - RACINE	209.43
01/02/2020	POOL	56893	MOI001	MOTION INDUSTRIES	100.68
01/02/2020	POOL	56894	NAP001	NAPA AUTO PARTS	14.50
01/02/2020	POOL	56895	OLENICZAK	OLENICZAK LAW LLC	621.10
01/02/2020	POOL	56896	PAR001	PARKSIDE TRUE VALUE HARDWARE	23.55
01/02/2020	POOL	56897	TAP001	TAPCO	94.66
01/02/2020	POOL	56898	USA001	USABLUEBOOK	313.33
01/02/2020	POOL	56899	VANSENT	VAN'S ENTERPRISES, LTD	475.00
01/02/2020	POOL	56900	WICOURT	WI COURT FINES & SURCHARGES	1,170.28
01/02/2020	POOL	56901	WSESI	WISCONSIN SOCIETY OF EMERGENCY	440.00
01/02/2020	POOL	56902	REFUND TAX	ZACHARY & DONI BETH DAVIS	323.04

POOL TOTALS:

Total of 25 Checks:	29,087.79
Less 0 Void Checks:	0.00
Total of 25 Disbursements:	29,087.79

User: jmartin

DB: Somers

Check Date	Bank	Check	Vendor	Vendor Name	Amount
Bank POOL POOLED CASH					
01/09/2020	POOL	56903	REFUND TAX	AMY HANSEL	43.33
01/09/2020	POOL	56904	AT&T001	AT&T	261.42
01/09/2020	POOL	56905	BAT001	BATTERIES PLUS LLC	28.95
01/09/2020	POOL	56906	BAXTER	BAXTER & WOODMAN	146,321.64
01/09/2020	POOL	56907	BAXTER	BAXTER & WOODMAN	5,060.00
01/09/2020	POOL	56908	BEACON	BEACON ATHLETICS	114.84
01/09/2020	POOL	56909	BEA001	BEAR GRAPHICS INC	612.76
01/09/2020	POOL	56910	BOYSCOUTS	BOY SCOUTS OF AMERICA	440.00
01/09/2020	POOL	56911	COAST	COAST TO COAST COMPUTER PRODUCTS	242.97
01/09/2020	POOL	56912	REFUND TAX	CORELOGIC	3,278.41
01/09/2020	POOL	56913	REFUND TAX	DANIEL STEPLER & ROBYN FONK	456.77
01/09/2020	POOL	56914	EAGLEMEDIA	EAGLE MEDIA INC	214.83
01/09/2020	POOL	56915	EME001	EMERGENCY MEDICAL PRODUCTS INC	616.59
01/09/2020	POOL	56916	EMSAR	EMSAR, INC	437.00
01/09/2020	POOL	56917	HLK001	HOERNEL LOCK & KEY INC	124.10
01/09/2020	POOL	56918	SCRUGGS	JOE SCRUGGS	435.60
01/09/2020	POOL	56919	KENCNTIT	KENOSHA COUNTY INFORMATION	8,700.00
01/09/2020	POOL	56920	KWU001	KENOSHA WATER UTILITY	30,865.55
01/09/2020	POOL	56921	LWM001	LEAGUE OF WI MUNICIPALITIES	2,967.47
01/09/2020	POOL	56922	MEN001	MENARDS - RACINE	35.94
01/09/2020	POOL	56923	MOI001	MOTION INDUSTRIES	80.22
01/09/2020	POOL	56924	NAP001	NAPA AUTO PARTS	51.45
01/09/2020	POOL	56925	NFP001	NATIONAL FIRE PROTECTION ASSOC	1,495.00
01/09/2020	POOL	56926	PARAGON	PARAGON DEVELOPMENT SYSTEMS	15,560.00
01/09/2020	POOL	56927	PTS001	POMPS TIRE SERVICE INC	643.44
01/09/2020	POOL	56928	HAMM	ROBERT HAMM	235.00
01/09/2020	POOL	56929	SAMSMC	SAM'S CLUB MC/SYNCB	4,775.65
01/09/2020	POOL	56930	SHIELD	SHIELD SOLUTIONS LLC	95.45
01/09/2020	POOL	56931	TKITZ	TIMOTHY KITZMAN	150.00
01/09/2020	POOL	56932	TITAN	TITAN PUBLIC SAFETY SOLUTIONS	3,459.00
01/09/2020	POOL	56933	UOC001	UNITED OCC MED &	84.00
01/09/2020	POOL	56934	VILLSOM	VILLAGE OF SOMERS	472.19
01/09/2020	POOL	56935	WEE002	WE ENERGIES	36.74
01/09/2020	POOL	56936	WEE002	WE ENERGIES	1,727.11
01/09/2020	POOL	56937	WDR001	WI DEPT OF REVENUE	241.47

POOL TOTALS:

Total of 35 Checks:

230,364.89

Less 0 Void Checks:

0.00

Total of 35 Disbursements:

230,364.89

ACH PAYMENTS AND MISCELLANEOUS BANK CHARGES DURING THE MONTH OF OCTOBER 2019

DATE	CHECK#	PAYABLE TO	AMOUNT
10/01/2019		DENTAL INSURANCE	2,910.60
10/02/2019		WI ONLINE RECORD	252.00
10/11/2019		PAYROLL - NET	59,027.88
10/11/2019		IRS	21,648.56
10/11/2019		TRI CITY MAINTENANCE FEES	333.37
10/08/2019	56562	SECURIAN FINANCIAL GROUP, INC	1,412.54
10/11/2019	56560	SOMERS FIRE FIGHTERS	270.00
10/11/2019	56561	WI SCTF	326.31
10/15/2019		WI DEPT OF REVENUE - WITHHOLDING	4,043.52
10/17/2019		KWIK TRIP INC	2,797.59
10/24/2019		HEALTH INSURANCE	40,767.84
10/25/2019		PAYROLL - NET	54,686.67
10/25/2019		IRS	20,041.03
10/25/2019	56611	SOMERS FIRE FIGHTERS	270.00
10/25/2019	56612	WI SCTF	326.31
10/25/2019	56613	METLIFE	2,898.00
10/28/2019		AFLAC INSURANCE	732.58
10/29/2019		2015A BOND INTEREST	123,381.25
10/29/2019		TID#4 AMENDMENT FEE	2,000.00
10/31/2019		2016A BOND INTEREST	63,565.63
10/31/2019		2017B BOND INTEREST	61,437.50
10/31/2019		2017A BOND INTEREST	49,125.00
10/31/2019		2016B BOND INTEREST	24,925.00
10/31/2019		WI RETIREMENT SYSTEM	22,739.87
10/31/2019		WI DEPT OF REVENUE - WITHHOLDING	3,777.15
		TOTAL	563,696.20

ACH PAYMENTS AND MISCELLANEOUS BANK CHARGES DURING THE MONTH OF NOVEMBER 2019

DATE	CHECK#	PAYABLE TO	AMOUNT
11/01/2019		DENTAL INSURANCE	2,910.60
11/04/2019		WI ONLINE RECORD	14.00
11/08/2019		PAYROLL - NET	57,795.70
11/08/2019		IRS	21,622.91
11/08/2019	56659	SOMERS FIRE FIGHTERS	270.00
11/08/2019	56660	WI SCTF	326.31
11/11/2019		TRI CITY MAINTENANCE FEES	397.42
11/13/2019	56694	SECURIAN FINANCIAL GROUP, INC	1,412.54
11/15/2019		WI DEPT OF REVENUE - WITHHOLDING	4,014.21
11/19/2019		KWIK TRIP INC	2,608.53
11/20/2019		2018 BANK NOTE	76,221.60
11/22/2019		PAYROLL - NET	57,518.97
11/22/2019		IRS	22,012.98
11/22/2019	56730	SOMERS FIRE FIGHTERS	270.00
11/22/2019	56731	WI SCTF	326.31
11/22/2019	56732	METLIFE	2,898.00
11/25/2019		HEALTH INSURANCE	40,767.84
11/26/2019		AFLAC INSURANCE	732.58
11/29/2019		2018B BOND INTEREST	80,551.25
11/29/2019		2018A BOND INTEREST	33,543.75
11/29/2019		2011A BOND INTEREST	18,256.25
11/29/2019		WI RETIREMENT SYSTEM	22,259.45
11/29/2019		WI DEPT OF REVENUE - WITHHOLDING	4,062.56
		TOTAL	450,793.76



**VILLAGE OF SOMERS
VILLAGE BOARD
MEETING ITEM MEMORANDUM**

MEETING DATE: January 14th, 2020

TO: Village President Stoner and Village Trustees

PREPARED BY: Jason J. Peters, Administrator

AGENDA ITEM: #7 Motion to authorize Village President and Village Clerk to execute Developer's Agreement in the form attached regarding Pritzker Military Archives Project once all exhibits have been approved by Village Staff

BACKGROUND:

The public hearing for the Pritzker Military Archives Project was held on September 16th. The main issue of contention at this meeting was the conditional use permit for the proposed outdoor shooting clays course. The overwhelming majority of the public testimony was against the granting of the conditional use permit. The Plan Commission voted (7-0) to recommend the following:

- Approval of the Requested Comprehensive Plan change from "Business/Industrial Park", "Secondary Environmental Corridor" and "Other Conservancy Land to be Preserved" to "Business/Industrial Park", "Park and Recreational", "Secondary Environmental Corridor" and "Other Conservancy Land to be Preserved";
- Approval of the Requested Rezoning from A-1 Agricultural Preservation Dist., A-2 General Agricultural Dist. and C-1 Lowland Resource Conservancy Dist. to PR-1 Park-Recreational Dist., I-1 Institutional Dist. and C-1 Lowland Resource Conservancy Dist; and
- Approval of the Site Plan.

The Plan Commission tabled the issue of the conditional use permit for the outdoor shooting clays course. On September 17th, the Village received an email from the Developer stating that they were going to remove outdoor shooting clays course from the proposed development. They also stated they were willing to hold a public information meeting regarding the remaining portions of the project. **There has been no change in this position and the clay shooting range is not an element to this project and is still specifically prohibited in the attached Developer's Agreement.**

On October 24th, the Developer held an informational meeting for the public at Maplecrest Country Club. In an effort to be transparent, the Developer also established a website where individuals can go to learn more about the project (<https://www.pritzkermilitaryarchives.com/>) and submit questions via email.

On November 1st, Administration added a news article item to our website to inform the public that this matter would be reviewed at our November 5th Work Session.

The Board reviewed the updated site plan and discussed this matter at our November 5th Work Session. Administration and legal counsel met with the Developer on November 6th to continue negotiations on a Developer's Agreement.

The Board approved the Developer's request for entitlements (subject to conditions) at our November 12th Board Meeting. One of these conditions was the execution of a final Developer's Agreement.

Staff continued discussion with the Developer after our November 12th Board Meeting regarding the Developer's Agreement. Based on these discussions, the Board held a Special Work Session on December 19th. On December 23rd, the Village's final position was relayed to Tawani's legal counsel.

Tawani has agreed to the terms that were provided. As Attorney Davison notes in his attached memo:

“There were no substantive changes relative to the prohibition on outdoor target ranges, payment of voluntary donations, payment of building permit fees, etc.

The only substantive change from prior discussions at the time of the conditional land use approvals on November 12 was the “cap” which the Village agreed to on the contributions for utilities by the developer. This contribution is now capped at \$14.5 million and the developer must deposit this amount with the Village no later than March 1, 2020.”

SUGGESTED ACTION/ACTION REQUESTED/COMMENTS:

Staff recommends the approval of the terms of the attached draft of the Developer's Agreement. In the event that the Village Board agrees with the suggested action, a suggested motion to approve would be as follows:

“Motion to authorize Village President and Village Clerk to execute Developer's Agreement in the form attached regarding Pritzker Military Archives Project once all exhibits have been approved by Village Staff”

ATTACHMENTS:

Memo from Attorney Davison

Draft of Developers Agreement

From: [Davison Law Office](#)
To: [Jason Peters](#)
Subject: Development Agreement between the Village and Archives and Armory PMML Wisconsin LLC
Date: Friday, January 10, 2020 2:12:59 PM
Attachments: [development agreement 1-8-20.pdf](#)

Jason:

Attached please find the most recent version of the Development Agreement (1/8/20) between the Village and the developer for the Pritzker Military Museum. There were some minor technical changes involving a change of dates of the agreement, allowing the Village to use “value engineering” or downsize the scope of the project for public utilities in order to save additional funds, if necessary, and the like. There were no substantive changes relative to the prohibition on outdoor target ranges, payment of voluntary donations, payment of building permit fees, etc.

The only substantive change from prior discussions at the time of the conditional land use approvals on November 12 was the “cap” which the Village agreed to on the contributions for utilities by the developer. This contribution is now capped at \$14.5 million and the developer must deposit this amount with the Village no later than March 1, 2020. Although the Village engineers have included a considerable amount in that estimate for potential cost overruns, the concern of the developer was that in the event that there was an extraordinarily greater amount spent on the utilities that they needed to have some assurance that they would not be obligated for a limitless amount. Because of the relatively short period of time between the more recent negotiations with the developer and their final closing date in early February on the parcels which form this project, there was not time to actually design, bid and ascertain actual utility costs. Hence, the “cap” at \$14.5 million. There is language in the agreement which provides that the Village may downsize the scope of the project and/or use “value engineering” to reduce costs if that becomes necessary.

Consistent with my letter dated December 23, 2019 to Attorney Timothy Geraghty, who represents the developer, you have received written confirmation from the developer that the developer will execute the Development Agreement in the format as attached hereto. It will be necessary to insert a new legal description for the project once the parcels have been purchased as they are to be combined under a new CSM. It will also be necessary for the engineers and staff of the respective parties to finalize the exhibits which are listed on page 31.

If you have any questions concerning the foregoing, please do not hesitate to contact me.

Jeffrey J. Davison

Davison Law Office, Ltd.

1207 55th Street

Kenosha, WI 53140

Phone: (262) 657-5165

**DEVELOPMENT AGREEMENT BETWEEN THE
VILLAGE OF SOMERS AND ARCHIVES AND
ARMORY PMML WISCONSIN LLC FOR “PRITZKER
MILITARY MUSEUM & LIBRARY ARCHIVAL CENTER”
A PROPOSED DEVELOPMENT BEING A PART OF
SECTION 18, TOWN 2 NORTH, RANGE 22 EAST**

WITNESS THIS AGREEMENT made and entered into this ____ day of _____, 2020, by and between the Village of Somers, Kenosha County, Wisconsin, the Village of Somers Utility District (“District”) and the Village of Somers Water Utility (“Utility”) (the Village of Somers, the Utility and the District are hereinafter collectively referred to as the “Village”) and Archives and Armory PMML Wisconsin LLC, a Wisconsin limited liability company organized and existing under the laws of the State of Wisconsin (referred to as “Developer”).

WHEREAS, the Developer has proposed to rezone and develop a development on parcels of land (the “Property”) described with more particularity on the attached Exhibit “C” which is incorporated herein by reference.

WHEREAS, the Developer has proposed a Development for the construction of buildings of varying dimensions and related improvements, the exact configurations of which cannot be determined at this time; and

WHEREAS, upon recording this Agreement shall continue to govern the entire property, although Amendments to this Agreement or separate Development Agreements for subsequent phases of development the Property may supplement this Agreement; and

WHEREAS, it is the proposal of the Developer, and the understanding and agreement of the Village, that the approval of the Site Plan, Zoning and Development will be subject to the requirements of this Agreement and such additional detail as is necessary shall be submitted for the review and approval of the Village to fulfill the requirements of this Agreement, as well as Wisconsin State Statutes, Wisconsin Administrative Code provisions, and Village of Somers ordinance provisions, prior to approval;

WHEREAS, the Village Plan Commission has reviewed proposed Building Design and Specifications (Exhibit “A”), the Site Plan (Exhibit “B”) and Development (Exhibit “C”) and has recommended to the Village Board that the Site Plan and Development, as amended from time to time, be approved and the Property be rezoned from A-1 Agricultural Preservation District, A-2 General Agricultural District, AO Airport Overlay District and C-1 Lowland Resource Conservancy District to I-1 Institutional District, PR-1 Park Recreational District, AO Airport Overlay District and C-1 Lowland Resource Conservancy District subject to the following terms and conditions:

I. INFRASTRUCTURE IMPROVEMENTS

A. SANITARY SEWER - VILLAGE CONSTRUCTED.

1. The Developer shall be responsible to pay the full cost for the design and construction of a sanitary sewer system as defined by Chapters 12 and 18 of the Village Ordinances and as depicted in Exhibit "E", as required for connection of the development to the sanitary sewer collection system of the Village of Somers Utility District, all of which plans must be reviewed and approved by the Village and are subject to further review and approval by the Kenosha Water Utility and the State of Wisconsin Department of Natural Resources. The Village's Consulting Engineer shall submit both electronic and paper form copies to the Developer's Consulting Engineer of the required plans and specifications. Village shall forward true and correct photocopies of all bids received pursuant to the construction bid specifications and photocopies of any contracts to Developer's Consulting Engineer for review. Village shall be responsible for obtaining all necessary permits required from the State of Wisconsin and the Kenosha Water Utility for such sanitary sewer approval. Construction shall commence not later than July 1, 2020 and will be completed no later than June 1, 2021.

2. Any bidder on public sanitary sewer improvement infrastructure shall be pre-qualified for such work in accordance with Chapter 22 of the Village Code of Ordinances. Upon the determination of a responsible bidder, the Village shall inform the Developer of the amount of such bid in written format and the contractor to whom contract shall be awarded. The Developer shall deposit with the Village one hundred twenty (120%) percent of the full amount of the estimated construction costs, engineering, administrative and legal fees in an irrevocable letter of credit in form acceptable to and approved by the Village Attorney for the public improvements to be constructed. Following the deposit of such letter of credit to cover all expenses to be incurred by the Village including construction costs, engineering reviews, field observations, legal and administrative fees and other contingencies, the Village shall then award the contract to a responsible bidder.

3. The Village shall provide all construction staking and the Village shall make all appropriate inspections of the onsite public sanitary sewer improvements. The Village shall prepare all record drawings and systems updates. The Village shall be responsible to create both paper and electronic copies of all plans and specifications. Village shall be responsible to provide a copy of all television inspections for the public sanitary sewer improvements. All related costs for these items shall be paid by the Developer.

4. Village shall allow Developer to locate sanitary sewer in easements under or adjacent to the private roads located in the Development. Such sanitary sewer and water lines will be run adjacent to the public and private streets with metering manholes and individual meters for the individual parcels and buildings based upon plans approved by the Village. Piping may cross under the onsite public and private roads to facilitate connections.

5. Village shall accept all public sanitary sewerage systems improvements constructed by Village located in the public right-of-way or in any easement lying within

Property upon (i) completion in accordance with approved plans and specifications, (ii) construction and delivery without defect, damage or non-conformance, (iii) delivery to Utility of certified copies of all tests of sanitary sewerage system, (iv) receipt of lien waivers from all contractors, (v) review and certification by Village Consulting Engineer of the above and (vi) receipt of recorded easement documents. Said acceptance shall be subject to approval by the Village Board. Upon acceptance by Village, Village shall be responsible for the operation and maintenance of the publicly owned portion of said sanitary sewerage system.

6. All buildings constructed in the Development shall be required to have individual sanitary sewer metering manholes which shall be approved by the Village.

7. Upon completion of the sanitary sewer construction by Developer, and verification by the Village Consulting Engineer that said sanitary sewer system has been constructed in accordance with plans and specifications submitted, the Developer shall vest all right, title and interest in the public portion of the sanitary system and any easements required for installation, and shall cause documents to be executed and delivered to Village which, in the reasonable opinion of counsel to the Village, shall be necessary to effectuate the purposes stated in this paragraph.

8. If any funds and/or "letter of credit" deposited by the Developer for construction, inspection, engineering, legal and/or administrative expenses, are not required, they shall be returned to the Developer. However, in the event additional or unforeseen costs or expenses are incurred which are in excess of the funds deposited by the Developer with the Village, then the Developer shall within thirty (30) days of demand by the Village reimburse to the Village all such costs and expenses so incurred.

B. MUNICIPAL WATER MAINS—VILLAGE CONSTRUCTED.

1. The Developer shall be responsible to pay the full cost for the preparation of plans and specifications and for the construction of public municipal water system as depicted in the attached Exhibit "D"—"Municipal Water Main Plan". The Developer shall also be responsible for the cost of all onsite private water mains within said development to service the buildings within the development and shall construct the water mains within public right-of-way or easements dedicated to the Village. The Village's Consulting Engineer shall prepare specifications and upon approval by the Village shall solicit bids for the construction of water main improvements. Village shall award construction of public water improvements only to contractor(s) who have been pre-qualified under Chapter 22 of the Municipal Code of the Village. Construction shall commence not later than July 1, 2020 and will be completed no later than June 1, 2021.

2. Upon receipt of the construction bids and the determination of a responsible bidder, the Village shall inform the Developer of the amount of such bid and the Contractor to whom contracts shall be awarded. The Village shall review and confirm the qualifications of the prospective Contractor pursuant to Chapter 22 of the Village Ordinances. The Developer shall deposit cash or a letter of credit with the Village in the amount of one hundred twenty (120%)

percent of the estimated expenses to be incurred for construction, engineering, legal and administrative expenses by the Village for the public portion of improvements to be constructed. Such deposit or letter of credit shall be in a form acceptable to the Village Attorney. Following the delivery of such funds and/or letter of credit to cover all expenses to be incurred by the Village for construction, engineering, legal and administrative fees and other contingencies, the Village shall then award the contract to a responsible bidder.

3. Upon completion of the public portion of the water main improvements within the Property, as shown on Exhibit "D", and verification by the Village Consulting Engineer that said water system has been constructed in accordance with plans and specifications, all right, title and interest in such improvement, and in any easements required for the installation by the Water Utility, shall be vested in the Utility for the public portion of such improvements without further documentation. The Developer shall assign to the Water Utility any easements or rights-of-way required for the installation of water lines, and shall cause documents to be executed and delivered to Village which, in the reasonable opinion of counsel to the Village, shall be necessary to effectuate the purposes stated in this paragraph.

4. Any funds and/or letter of credit deposited by the Developer that are not required following completion of construction, shall be returned to the Developer. However, in the event additional or unforeseen costs or expenses are incurred by the Village which are in excess of the funds deposited by the Developer with the Village, then the Developer shall within thirty (30) days of demand by the Village reimburse to the Village all such costs and expenses so incurred.

5. The Village shall provide all construction staking and the Village shall make appropriate inspections of all public water main improvements. The Village shall prepare all record drawings and system map updates for the public mains. All related costs shall be paid by Developer.

6. Upon completion of onsite public water main improvements, the Village shall allow Developer to connect to the municipal water system of Village, all at the cost and expense of Developer. Village shall cooperate with Developer and shall assist in obtaining all necessary permits required from the State of Wisconsin and the Kenosha Water Utility for such municipal water systems, extensions and connections.

7. Village shall allow Developer to locate public water main in easements.

8. The Village shall accept the public portion of all onsite municipal water systems improvements located in the public or private roadway or in any easement lying within Property upon (i) completion in accordance with approved plans and specifications, (ii) construction and delivery without defect, damage or non-conformance, (iii) delivery to Utility of certified copies of all tests of the municipal water system, (iv) receipt of lien waivers from all contractors, and (v) review and verification by Village Consulting Engineer of the above. Said acceptance shall be subject to approval by the Board of Water Commissioners. Upon acceptance by Village, Village shall be responsible for the operation and maintenance of the public portion of said water system.

C. LIMIT ON DEVELOPER OBLIGATIONS.

Notwithstanding anything in this Agreement to the contrary, the parties agree that the Developer's total costs for the design and construction of the sanitary sewer system and for the public and municipal water system as described in paragraphs I.A. and I.B. above shall not exceed the total sum of \$14.5 million. In the event the cost to construct said systems exceeds \$14.5 million, the Village and its utility districts shall be solely responsible for paying the costs which exceed the \$14.5 million. The total letters of credit or funds to be deposited by the Developer with the Village for the costs for the design and construction of the sanitary sewer system and municipal water system, as described above, shall not exceed \$14.5 million and shall be paid to or deposited with the Village no later than March 1, 2020. Village reserves the right to utilize "value engineering" or reduce the scope of the size of the municipal sanitary sewer and/or water projects described in paragraphs I.A. and I.B., above, in the event that the total collective costs for the municipal sanitary sewer and water exceed \$14.5 million. In the event that the Village chooses to reduce the scope of the size of the municipal sanitary sewer and/or water projects described in paragraphs I.A. and/or I.B., above, or utilize "value engineering" in order to reduce the total project costs to less than \$14.5 million, the Village will do so in consultation with the Developer and warrants and represents that any such reductions in scope or utilization of "value engineering" will not impact the ability to provide municipal sanitary sewer service and municipal water to the Developer's property.

D. PRIVATE INTERNAL ROADWAYS AND STORM SEWERS.

1. Required Improvements. The Developer shall be responsible to pay for and shall proceed with the preparation of complete plans and specifications for all private internal roads prepared by Developer's engineer, including road bed preparation and storm sewer construction which shall be as set forth in Exhibit "G" attached hereto and incorporated herein by reference. For purposes of this Section D, all references to road or roads shall include curbs and gutters, all in accordance with Exhibit "G" attached hereto. No construction of said roads shall be commenced until plans and specifications have been reviewed by the Village Consulting Engineer and approved by Village. All internal road improvements, once constructed, shall be privately owned by Developer. The Village shall allow such private roads or parking lots to be used after construction has been completed and Developer has certified to the Village that the private street is in compliance with the specifications provided herein. The entire cost for the construction of all private roads within the Development including fees for Village services, (inspection, engineering, legal, etc.) shall be paid by the Developer. The Developer's Engineer shall submit to the Village both paper and electronic copies of private street plans and specifications.

2. Long-Term Maintenance. Developer shall be responsible for the maintenance of all internal roadways within the Development including crack filling, pavement markings, filling of potholes and pavement replacement where necessary. An annual inspection shall be conducted to determine when such maintenance may be required.

E. EXTERNAL TRAFFIC IMPROVEMENTS.

1. General. Developer agrees to timely pay for or reimburse the Village for monies expended by the Village for expenses paid to the State of Wisconsin and/or the County of Kenosha by Village for all the costs, fees and expenses of the design of the traffic improvements and for the construction of such improvements described on Exhibit "F". Developer shall be responsible for the improvements described on Exhibit "F" and required by the WDOT and/or the County of Kenosha. Attached hereto is Exhibit "F" and incorporated herein by reference as the requirements set by the WDOT and Kenosha County for the public, off-site road improvements, to be completed by the Developer at Developer's cost as part of its development of the Property.

2. Required Improvements. The Developer shall be responsible to pay for and shall proceed with the preparation of complete plans and specifications prepared by Developer's Engineer for road, roadbed preparation, and road right-of-way acquisition for the construction of public roadways with all streets constructed as depicted on Exhibit "F" attached hereto. For purposes of this Section E, all references to road or roads shall include concrete curbs and gutters in accordance with Exhibit "F". No construction of public roads shall be commenced until plans and specifications have been reviewed and approved by the WDOT, Kenosha County and the Village Consulting Engineer. The public roads which are not owned by Kenosha County shall be accepted by the Village upon (i) completion in accordance with the approved plans and specifications, (ii) construction and delivery without defect, damage or non-conformance, (iii) delivery to Village of certified copies of all tests of the road surface of such roads, (iv) receipt of lien waivers from all contractors, (v) acceptance by the WDOT and Kenosha County and verification by Village Consulting Engineer of all of the above. Upon acceptance by Village, Village shall be responsible for the operation and maintenance of the public portion of the road not owned by Kenosha County so constructed. The entire costs for the construction of said roads including fees for Village services (inspection, engineering, legal, etc.) shall be borne by the Developer. The Developer's Engineer shall submit to the Village both paper and electronic copies of all roadway plans and specifications:

- (a) Upon receipt of the construction bids and determination of the responsible bidder, the Village shall inform the Developer of the amount of such bid and the contractor to whom contract shall be awarded. Any successful contractor shall be qualified pursuant to Chapter 22 of the Village Code of Ordinances. The Developer shall deposit cash or a letter of credit with the Village in the amount of one hundred twenty (120%) percent of the estimated expenses to be incurred by the Village for construction, engineering, legal and administrative expenses. Such deposit or letter of credit shall be in a form acceptable to the Village Attorney. Following the delivery of such funds and/or letter of credit to cover all expenses to be incurred by the Village for construction, engineering, legal and administrative fees and other contingencies, the Village shall then award the contract to a responsible bidder.

- (b) The Developer shall provide all construction staking and the Village Consulting Engineer shall provide all appropriate inspections of the public street graveling, paving and stormwater improvements. All inspections which are performed for the improvements contemplated herein shall be made by the Village Consulting Engineer.

F. GRADING, EROSION CONTROL AND SURFACE WATER DRAINAGE.

1. The Developer shall provide a complete design for grading, erosion control and surface stormwater drainage facilities which shall be adequate to serve the development and shall be in compliance with requirements and specifications as set forth in §18.32(F) of the Somers Subdivision and Platting Ordinance. Storm and surface waters shall be retained on Property to the extent necessary to assure that the rate of storm and surface water runoff from Property, during the construction and after completion of construction of improvements, shall not be greater than the rate of runoff allowed in Chapter 18 of the Code of Ordinances. Stormwater drainage shall be accomplished by the construction of a stormwater collection system in accordance with the subdivision stormwater plan, Exhibit "G" attached hereto. All such plans and specifications referred to above shall be reviewed by the Village Consulting Engineer and approved by the Village, such costs of review to be paid by Developer.

2. The Developer shall prepare a Storm Water Pollution Prevention Plan (SWPPP) which shall address the concerns associated with storm water pollution during mass grading and site preparation during construction of the initial phase of the development. Upon completion of construction of the storm water detention facilities, the Developer's Engineer will certify that such construction is in conformance with the subdivision storm water plan, Exhibit "G" incorporated herein by reference. No occupancy permit shall be issued for any building until such time as a topographic survey of the phase of the development containing such building shall have been obtained by the Developer and submitted to the Village Consulting Engineer which shall confirm conformance with the subdivision site plan and subdivision storm water plan.

3. All underground storm and surface water conveyance systems and outlet structures for storm and surface water shall meet Village's and State's requirements. Developer shall submit plans, specifications and calculations for such storm and surface water drainage system to Village Consulting Engineer and obtain written approval from the Village, which shall not be unreasonably withheld or delayed prior to construction. All stormwater facilities shall be retained by Developer and shall be maintained in accordance with the schedule described in the attached Exhibit "I", which is incorporated herein by reference. Developer shall be responsible for maintenance, replacement or repair of all storm and surface water conveyance systems and outlet structures lying within Property and on adjacent stormwater detention parcel. Developer shall provide Village with a maintenance easement for the storm and surface water drainage facilities and the Village may specially assess Developer for any service performed by the Village or at its instance.

4. Developer shall enter into a maintenance agreement to provide for the maintenance of stormwater detention facilities for a period of forty (40) years in accordance with Exhibit "I". The maintenance agreement or a recordable document memorializing that agreement shall be recorded in the office of the Register of Deeds for Kenosha County, Wisconsin, so that it is binding upon all subsequent owners of land served by the stormwater management detention facilities. The maintenance agreement shall contain, at a minimum, the following information and provisions:

- (a) Identification of the stormwater facilities and designation of the drainage area served by the facilities.
- (b) A schedule for regular maintenance of each aspect of the stormwater management system consistent with Exhibit "I".
- (c) Identification of the Developer or property owner's association responsible for long-term maintenance of the stormwater management practices identified in the stormwater plan required hereunder.
- (d) Authorization for the Village to access the Property to conduct inspections of stormwater detention facilities as necessary to ascertain that the facilities are maintained and in accordance with the agreement.
- (e) Provisions that the Developer repair any maintenance problems which require correction, the specified corrective actions to be taken within thirty (30) days of written notice to Developer (or Developer's approved designee) of the problem (unless after written notice from Developer to Village seeking a longer period of time for compliance for good cause, approval of an extension is granted by Village, which approval will not be unreasonably withheld).
- (f) Authorization for the Village at its discretion to perform the corrective actions if the Developer does not make the required action within the specified time period listed in subsection (e) above together with the provision that the Village may enter the amount due on the tax rolls and collect the money as a special charge against the Property benefitted by such action by the Village pursuant to §66.0703, Wis. Stats.

5. The entire development shall be graded and restored to the proposed elevations shown on the approved grading plan.

6. The Developer will pay for all costs associated with the grading, erosion control and stormwater drainage facilities including the Village's administrative, legal and engineering costs.

7. The Developer's Engineer shall prepare plans and specifications for grading, erosion control and surface stormwater drainage which shall be approved by the Village

Consulting Engineer. All appropriate inspections of the grading, erosion control and surface stormwater drainage improvements and construction staking shall be conducted by the Developer's Engineer.

II. ADDITIONAL REQUIRED DEVELOPER IMPROVEMENTS AND DESIGN STANDARDS FOR SAME

A. LANDSCAPING.

1. In conjunction with its application for Development approval, Developer has provided plans and specifications to the Village, for landscaping for all areas of the proposed development which are in accordance with the landscaping standards stated hereafter. The Village acknowledges that such plans are in compliance with this Section II.A. It is hereby acknowledged that Exhibits "H" satisfies the requirements set forth herein. Plans shall show plant lay-out, and shall specify a species and size. All landscaping shall be sprinkled from May 1 through September 30 of each year, except those areas designated and depicted on Exhibit "H" to be "non-sprinkled".

2. The total of the area surface of the Development which shall be devoted to green space shall be as is depicted on the exhibits attached hereto or referred to in other documents or incorporated herein by reference. For purposes of this Agreement, "green space" shall be defined as areas which do not constitute impervious or otherwise improved surface areas. For purposes of calculating "green space" area for compliance with applicable Village imposed requirements, any offsite contiguous lands acquired by Developer either in fee simple or by permanent easement for the sole purpose of complying with stormwater drainage requirements stated herein shall be included in such calculation. The landscaping standards contained herein establish a point system to determine the appropriateness and effectiveness of plant installation. The system recognizes that the installation and maintenance of live plants is essential to creating a healthy, safe and aesthetically pleasing environment. The system places priority on the planting of deciduous shade trees which results in the highest level of environmental impact mitigation. As such all real property proposed for development shall be landscaped as follows:

- (a) Planting designs shall concentrate on shading building roofs, parking lots, pedestrian facilities and the adjoining public streets. Equally important are foundation and screening plantings intended to soften the transition from the ground plane to the vertical plane.
- (b) Landscaping shall be provided based on the following requirements or point schedules. Landscaping is defined as living plants normally cultivated or used on residential and business sites. These requirements supercede any other landscaping or screening requirements of the zoning ordinance. The requirements of each of the following categories are additive and must be satisfied independently except in the following circumstances: (1) on corner lots, one-half of the trees provided to meet the street frontage requirement may be credit toward

satisfying the landscape point/tree requirements of the paved areas standard if said street frontage trees meet the location requirements of both the street frontage and paved areas sections; and (2) the landscape point totals associated with landscaping planted to meet the buffer yard requirements shall be credit toward the point totals required to meet any other landscape requirement provided the buffer yard plants meet the location requirements of both the buffer yard section and the section for which credit is requested.

- (1) One (1) large deciduous tree shall be planted for each fifty (50') feet of property line along a public street right-of-way. Said trees shall be planted in the public terrace equidistant from the curb and the normal sidewalk line or on the private site and within ten (10') feet of the property line adjoining the public right-of-way. The preference for tree locations is on private property. The trees should be planted as near as possible at intervals of fifty (50') feet on center although the clustering of trees for valid design purposes may be allowed.
- (2) One hundred fifty (150) points of landscaping shall be planted for each three thousand (3,000') square feet of paving. At least one-half of the landscape points required shall be satisfied by the planting of large deciduous trees. Paving is defined as all hard surfaced areas within the ground plane including but not limited to parking stalls, driveways, trash enclosure pads, loading docks, sidewalks, plazas and patios. Plants required by this section shall be installed in landscape islands within or extending into the paved area or generally within fifteen (15') feet of the perimeter of the edges of the paved area. Parking lots containing more than seventy-five (75) stalls shall incorporate at least one-third (1/3) of the required landscaping within planting islands that are located within the interior of the parking lot. Such islands shall be a minimum of ten (10') feet wide back of curb to back of curb and three hundred sixty (360') square feet in area and shall contain at least one (1) large deciduous. Said islands should be evenly dispersed throughout the parking lot. Emphasis should be placed creating islands that function positively with respect to plant physiology, vehicle maneuvering and overall site maintenance. Linear islands located between rows of parking stalls are preferred rather than small islands located at the ends of parking rows.
- (3) Four hundred (400) points of landscaping for each one hundred (100') lineal feet of exterior building wall. Plants required by this section must generally be installed within twenty (20') feet of the building foundation. Large deciduous trees will not be used as foundation plantings.
- (4) There shall be provided and maintained a permanent twenty (20') foot wide buffer yard screening element along any perimeter boundary of the Development, all public right-of-ways, any boundary of a commercial,

office or business zoned property and any residential zone district. Said buffer yard screening element is intended to visually screen the office or business use from the adjoining residential district. The buffer yard screen shall be located within twenty-five (25') feet of the common property line between the commercial, office or business use and residential property. A buffer yard screen shall consist of any combination of an earth berm, opaque fence constructed of materials compatible with the materials of buildings within the development and/or landscape plantings and shall be designed to provide a permanent all-season visual screen that will be a minimum of five (5') feet tall. If plantings are used, such elements must be a minimum of three (3') feet high and wide at the time of planting and of a species that will attain a height and width of at least five (5') feet within four (4) years following planting. When such buffer yard planting is located within the required building setback from a public street right-of-way the height of the plants within that setback area must be maintained at thirty (30') inches or less. The location of the buffer yard planting should be offset from the property line a distance equal to any utility easement of any nature that may be located along and encompassing said line.

- (5) Development sites shall satisfy the Street Frontage landscaping requirements and shall be graded to a mowable condition and seeded with an acceptable lawn mix. Development sites are defined as any land area that is a separate site, lot, parcel or a vacant portion of a larger site that is included within a development but which is intended to be developed in the future for building, parking or other physical improvement purposes.

(c) Credit for landscaping will be granted based on the following schedule:

- (1) Large deciduous tree - one hundred fifty (150) points per tree
- (2) Small deciduous tree - sixty (60) points per tree
- (3) Evergreen or conifer tree - sixty (60) points per tree
- (4) Shrub - twenty (20) points per shrub
- (5) Annual/perennial bed - twenty (20) points per twenty (20') square feet of planted bed

(d) Landscaping elements are defined as follows:

- (1) A large deciduous tree is any deciduous tree that will attain a mature height exceeding twenty-five (25') feet, is classified as having a hardiness zone standard of 2 - 5 and is at least three (3") inches in diameter at the

time of planting. Large deciduous trees planted within the public street right-of-way shall be a species normally classified as Street trees. Trees will be downsized appropriately when overhead utility lines exist within the terrace area.

- (2) A small deciduous tree is any deciduous tree that will attain a mature height less than twenty-five (25') feet, is classified as having a hardiness zone standard of 2 - 5 and is at least two to two and one-half (2" - 2½") inches in diameter at the time of planting.
 - (3) Evergreen or conifer trees are any upright conifer that will attain a mature height exceeding twelve (12') feet, is classified as having a hardiness zone standard of 2 - 5 and is at least six (6') feet tall at the time of planting.
 - (4) Shrubs are plants that are both deciduous or evergreen in character, attain mature heights between two (2') and eight plus (8+') feet, are classified as having hardiness zone standards of 2 - 5 and that are at least eighteen (18") inches in height or five (5) gallon sizing at the time of planting.
 - (5) Annual/perennial beds are any planting area containing annual and perennial bedding plants or other ground covers such as creeping evergreens, that are intensively planted to form a continuous planting mass and are at least twenty (20') contiguous square feet in area and shall be a minimum of one (1) gallon sizing each.
- (e) Green areas of the site not used for landscaping shall be seeded or sodded with an acceptable maintainable lawn seed mix. Mulch of plantings or planting beds is acceptable provided that such mulching consists of organic or natural materials. Mulches shall be installed so that they will not erode, fall, be plowed or otherwise transported into walks, drives, streets or other hard surfaced portions of the site. Functional weed barriers will be installed in all areas to be mulched.
- (f) All landscaping shall be installed consistent with industry accepted standards for each building, which shall be completed prior to the issuance of a Certificate of Occupancy for each building, unless such occupancy occurs during winter, in which case a temporary Certificate of Occupancy shall be issued and landscaping shall be completed by the following July 1, at which time a Certificate of Occupancy shall be issued.
- (g) Landscaping required by this Section II.A. is intended to be a permanent site improvement just as any other building, structure or infrastructure that is necessary to facilitate the intended use of the site. As such, all landscaping shall be continually maintained in a live state. Maintenance shall included periodic and timely watering, fertilizing, pruning and any other such normally required horticulture activity necessary to keep all landscaping in a healthy, safe and

aesthetically pleasing state. Recognizing that over time plants may mature and die or otherwise expire because of natural or unnatural causes, maintenance shall include the removal and replacement of dead or dying plants. Such replacement shall occur within the same year in which a plant dies or in the spring planting season of the following year. Developer shall place the sum of Twenty-five Thousand (\$25,000.00) Dollars in an escrow account not later than October 1, 2020, to be maintained by the Village for the purpose of providing a source of funding for the replacement of landscape plants in the event that Developer, its successors, agents or assigns fails to replace failed plantings. All interest accrued on such account shall be added to the principal balance and the escrow shall be maintained for a period of twenty (20) years at which time all remaining funds shall be donated to the Village Park Fund or fund of similar purpose.

- (h) Planting in utility easements should be avoided. If such planting does occur, it is at the risk of the property owner. Any plants that must be removed because of utility work within such easements shall be replaced by the Property owner(s) at their cost. Replacement landscaping shall satisfy the minimum standards of this title.
- (i) All plantings contained within Exhibit "H", with the exception of those designated as "future", shall be installed with the initial construction of the subdivision. "Future" plantings shall be installed at the time contiguous lot uses are constructed.
- (j) All plantings within the private roadways, "future" or otherwise, shall be credited to the interior lots for planting requirements as specified in this section.

B. EXTERIOR LIGHTING AND ILLUMINATION

1. In conjunction with its application for Development approval, Developer has provided plans, specifications and photometrics to be approved by the Village for the exterior lighting and illumination of each element of the development, a true and correct copy of which is attached hereto as Exhibit "Q". The Village acknowledges that such plans are in compliance with this Section II.B. Developer shall be responsible for all costs associated with construction and installation of all exterior lighting and illumination.

2. The intent of the following standards is to mitigate the impact of exterior illumination related to development on surrounding properties, particularly in areas proximal to residential uses, while providing safe, healthy and visually attractive nighttime environments. In order to achieve that, good lighting design shall be practiced. Good lighting design is characterized by: illumination levels appropriate for the visual task; reasonably uniform illumination levels on adjoining sites; an absence of glare and consideration of the compatibility and aesthetics of illumination and the mechanical improvements that create it as those relate to surrounding properties and the character of the community.

In order to insure that proper lighting design occurs, the following standards shall apply to all development within the district.

- (a) All exterior lighting fixtures shall be full cut-off fixtures as defined by the Illuminating Engineering Society of North American (IESNA) and shall be of the same design and theme throughout the development. All lighting shall be designed and fixtures selected to prevent glare. The Developer, with the advance written approval of the Village, shall modify the cutoff fixture requirement for security lighting in areas where the exterior lights are not visible from a residential area or a public street.
- (b) Illumination of sites and improvements thereon shall be designed to avoid competition with illumination on adjoining or neighboring properties.
- (c) Illumination levels shall be appropriate for the intended improvement area and/or function to be illuminated. In general, illumination levels should follow the guidelines and recommendations of the IESNA.
- (d) In no event shall any exterior illumination exceed an average illumination level of twenty (20') foot-candles for the surface to be illuminated unless approved otherwise by the Village Plan Commission as part of a conditional use permit.
- (e) The illumination uniformity ratio (the ratio of the average illumination to the minimum illumination) for the surface to be illuminated shall not exceed 4:1.
- (f) The illumination level at any property line shall not exceed one-half (0.5') foot-candle above the ambient lighting conditions on a cloudless night.
- (g) In no instance shall an outdoor lighting fixture be mounted or oriented such that the lighting element is visible from any residence located in a residential zone district.
- (h) The following shall be the maximum mounting height for the respective lighting fixture. The mounting height shall be measured from the surface to be illuminated to the bottom of the light fixture.
 - (1) Parking lot light fixtures in lots - twenty-five (25') feet.
 - (2) Building or security lighting - twenty-five (25') feet.
 - (3) Any other site lighting fixture - twenty-five (25') feet or as determined appropriate and consistent with the intent of this title by the Village Administrator.

- (i) When a use is not in operation, only building mounted security lighting and up to twenty-five (25%) percent of all other outdoor lighting fixtures may remain illuminated.
- (j) Exterior illumination of wall, building or ground signs, architecture, landscaping, site amenities or other specialty illumination of any kind shall be designed consistent with the intent of this Section II.B.
- (k) Alternatives to these standards may be proposed to incorporate the use of a particular architectural style or theme or to incorporate innovative or unique illumination techniques. Such alternatives shall be presented to the Village Plan Commission and Village Board with supportive evidence sufficient to determine that the proposal is consistent with intent of the heretofore-established standards. Approval of an alternative illumination plan is at the discretion of the Village Administrator.
- (l) A lighting plan, specifications for all proposed fixtures and photometric plan or other plans delineating illuminance levels that evidence compliance with the established standards are required for all developments in order to determine compliance with these standards.
- (m) The Village may in the future pass an ordinance requiring that certain properties allow the Village to install video surveillance cameras and related equipment on light poles in parking areas and driveways (“Security Camera Equipment”), which could affect all or a portion of the Property. If such an ordinance is passed by the Village, the owner of any portion of the Property subject to such ordinance shall reasonably cooperate with the Village in the Village’s installation and maintenance of reasonably sized wireless Security Camera Equipment on light poles on the Property. The Village is hereby granted a non-exclusive, non-transferable license for the Village and its agents and contractors to enter upon the driveways and parking lots of all of the Property for reasonable access for the Village to install and maintain Village Security Camera Equipment, at the Village’s expense, on such light poles.

C. INTERNAL TRAFFIC CONTROL.

The Developer, at Developer’s cost, shall install, pursuant to plans and specifications approved by the Village, such traffic signs and other parking control signs on the private roads in the development at such locations as are required on the approved plan. Developer shall be responsible for the costs of maintenance and upkeep of such stop signs and traffic control signs as are installed in the private roads in the development.

D. BUILDING DESIGN STANDARDS.

The Developer shall install and maintain improvements upon the Property in accordance with the plans and specifications which have been approved by the Village and which may be approved in the future by the Village and in accordance with the following standards:

1. **Exterior Elements.**

- (a) All drip caps on building shall be of thirty-six (36) gauge or thicker so that warping does not occur and shall be made of aluminum material that is warp resistant. All drip caps shall be applied over underlayment or equivalent code compliant installation. Plastic is not acceptable.
- (b) All railings shall be superior series 9000 railings.
- (c) All exterior siding shall be of maintenance free materials with at least fifty (50) year guaranty. Village agrees that LP Smartside, shall meet this criteria. Any worn material shall be upgraded with new materials of similar quality following an inspection by the Village Building Inspector.
- (d) Snow storage shall be as approved by the Village.
- (e) Cement and blacktop walks and bike paths shall be constructed and maintained as depicted on the Site Plan.
- (f) Any deviation from prior submittals of exterior materials which have been approved by the Village shall be submitted to the Village for final approval prior to installation.
- (g) All fences, screens and other enclosures around or on the Property shall be maintained in a structurally sound condition and plumb, unless specifically designed to be other than vertical, with a uniform construction, in good repair and free from hazards.
- (h) Any retaining wall which is constructed shall be structurally sound and plumb, unless specifically designed to be other than vertical and shall be maintained in good repair and free from hazards.
- (i) All exterior columns, walls and their components shall be maintained in good repair, weather-tight and free from loose or unsecured objects and materials. The protective or decorative finishes of all exterior surfaces shall be maintained in good repair so as to prevent deterioration that affects the appearance of the building or structure. Any markings, stains, graffiti, painted slogans, smoke damage or other markings or defacement appearing on any exterior surface shall be removed, and, if necessary to maintain the exterior surface, the surface of these

areas shall be restored, resurfaced and coordinated to the exterior finish of the building or structure.

- (j) All canopies, marquees, awnings, screens, grilles, stairways, pipes, ducts, standpipes, air conditioners and all similar equipment, attachments and their supporting members shall be maintained in good repair, properly anchored and protected from the elements, so as to prevent decay and rust, by paint or other protective coating.
- (k) All stairs, verandas, porches, decks, loading docks, ramps, balconies, fire escapes and other similar structures and all treads, risers, guards, handrails, supporting structural members or other appurtenances attached to them shall be maintained free from defects and hazards, capable of supporting all loads to which they may be subjected, and in a clean, safe and sanitary condition and in good repair.
- (l) All aerials, satellite dishes, lightening arresters and other similar structures and their supporting members shall be maintained in a safe condition and in good repair. Any chimney, smoke or vent stacks and other similar roof structures and their supporting members shall be maintained in good repair and free from defects.
- (m) Every roof of the building and all of its components shall be weather-tight and free from leaks, loose, unsecured or unsafe objects and materials, dangerous accumulation of ice and snow or any other hazard. All roof decks, catwalks and related guards shall be maintained in good repair.
- (n) Every eave, trough, roof gutter, all flashing and any downpipes shall be protected by suitable finishing materials and shall be maintained free from leaks, defects, obstructions and hazards, water-tight and in good repair.

2. **Structural Elements.**

- (a) Every part of a building or structure shall be maintained in good repair and in structurally sound condition so as to be capable of safely sustaining its own weight and any load to which, normally, it might be subjected. All such buildings or structures shall be capable of safely accommodating all normal structural movements without damage, decay or deterioration and shall be designed so as to prevent the entry of moisture that would contribute to the damage, decay or deterioration.
- (b) Foundation walls, basements, cellars and crawlspaces and other supporting members of a building or structure shall be maintained in good repair and structurally sound. For purposes of this section, "structure" includes a fence, shed or other small building on the Property.

- (c) Exterior openings for doors, windows and skylights shall:
- (1) Be fitted with doors or windows that are maintained in a weather-tight condition to prevent drafts or leakage and protected by suitable materials to prevent the entry of rodents, vermin and insects; and
 - (2) Any openings that are not protected by a door or window shall be maintained in a weather-tight condition to prevent drafts or leakage and protected by suitable materials to prevent the entry of rodents, vermin and insects; and
 - (3) All openings, including basement hatchways, storm doors and storm windows, shall be maintained in good repair and free from defects and any missing component shall be replaced; and
 - (4) All windows in the dwelling unit that are capable to being opened shall be fitted and equipped with screens that are maintained in good repair and free from defects and missing components; and
 - (5) All windows capable of being opened and all exterior doors shall be free from defective hardware and be capable of being locked or otherwise secured from inside the building; and
 - (6) All glazed doors, windows or transparent surfaces shall be reasonably cleaned in order to prevent unimpeded visibility and unrestricted passage of light.
- (d) All drainage shall be accomplished through a rainwater collection system or, if not so provided, the drainage from all roof surfaces of buildings shall discharge into an eaves trough or roof gutter and then into a downpipe that discharges directly into the building drain not more than six (6) inches above grade. Any above-ground discharge from the downpipe or pipes shall be directed to a discharge and shall be contained on the Property in a manner that is not likely to cause damage to any adjoining property or any stairway, sidewalk or street.

3. **Miscellaneous.**

- (a) The Village Building Inspector shall be allowed to inspect the complex on an annual basis for exterior failures and failures so discovered shall be discussed with the on-site manager and repaired within a reasonable period of time to be agreed upon between the Village Building Inspector and the on-site manager.
- (b) All trash areas shall be washed down not less than once a month or more frequently as needed. Weather conditions shall be taken into account in consideration of the implementation of this requirement

- (c) All interior roads and parking lots shall be kept in good repair and shall be based upon the state WISLR program and maintained at least to a level six (6) based upon the criteria under such program.
- (d) All property shall at all times be kept free of all rodents, vermin, insects and other pests and from conditions which may encourage pest infestation.
- (e) No machinery, boats, trailers or parts of such items that are in a wrecked, discarded, dismantled, inoperative or abandoned condition, or any other junk or rubbish shall be kept or allowed to remain in the parking area or garage. For purposes of this paragraph, inoperative shall mean incapable of being operated on the public roads of the State of Wisconsin either because of conditioning or licensing, in addition to functional conditions which prevent such vehicle from operation.

4. **Screening.**

- (a) All ground-mounted and wall-mounted mechanical equipment, refuse containers and any permitted outdoor storage shall be fully concealed from on-site and off-site ground level views, with materials identical to those used on the building exterior or concealed by landscaping as depicted in Exhibit "H".
- (b) All rooftop mechanical equipment shall be screened by parapets, upper stories, or other areas of exterior walls or roofs so as to not be visible from public streets adjacent or within one thousand (1,000') feet of the subject Property. Fences or similar rooftop screening devices may not be used to meet this requirement.

E. **TRAFFIC IMPACT.**

- 1. The project shall have direct access to C.T.H. "E" (12th Street) and 100th Avenue.
- 2. Vehicle access shall be designed to accommodate peak on-site traffic volumes without disrupting traffic on public streets or impairing pedestrian safety. This shall be accomplished through adequate parking lot design and capacity; access drive entry throat length, width, design, location, and number; and traffic control devices; and sidewalks.

F. **PARKING.**

Parking lots shall conform to the parking displayed and depicted on the Developer's plans submitted in conjunction with its request for approval of the development

G. **BICYCLE AND PEDESTRIAN FACILITIES.**

1. The entire development shall provide for safe pedestrian and bicycle access to all uses within the development, connections to existing and planned public pedestrian and bicycle facilities, and connections to adjacent properties.

2. Pedestrian walkways shall be provided from all building entrances to existing or planned public sidewalks or pedestrian/bike facilities. The minimum width for sidewalks shall conform to the proposed sidewalks displayed and depicted on the Developer's plans submitted in conjunction with its request for approval of the development.

3. Where applicable, landscapes adjoining sidewalks shall match the landscaping used for the street frontages.

4. Crosswalks shall be distinguished from driving surfaces to enhance pedestrian safety.

5. The development shall provide secure, integrated bicycle parking within the site.

6. The development shall provide exterior pedestrian furniture in appropriate locations as depicted on the attached exhibits or as may be agreed upon in the future by the parties hereto.

H. OUTDOOR STORAGE USES AND AREAS.

Exterior storage structures or uses, including the parking or storage of equipment, containers, crates, pallets, merchandise, materials, fork lifts, trash, recyclables, and all other items shall be prohibited. Trash and recycle areas shall be constructed of masonry or precast materials.

I. SIGNAGE.

All signage shall comply with the requirements contained in the Village General Zoning and Shoreland/Floodplain Zoning Ordinances. In addition, Developer shall:

1. Maintain all signage in a good state of repair. To this end, any fastening or supporting members that are damaged, broken or excessively weather or faded, or that have a worn, peeled or cracked finish, shall be removed or shall be refinished so that all signs are free from defects or faded lettering.

2. Any signs or signage which is not used for the purpose intended, or which falls into a state of disrepair shall be discarded and removed from the Property.

3. All signage shall be maintained so that the information conveyed by the sign color, form, graphic, illumination, symbol or writing is clearly eligible.

J. MAINTENANCE OF IMPROVEMENTS.

Developer shall be responsible for maintaining the appearance of the entire development including, but not limited to, all parking areas, sidewalks and landscape features in accordance with Exhibit "I" attached hereto and Chapter 22 of the Village of Somers Code of General Ordinances. Developer shall be responsible for the collection of debris and for snow plowing throughout the entire Property and shall periodically clean and maintain all paved surfaces. Any debris collected shall be disposed of in accordance with all federal, state and local laws. Developer acknowledges that if, after thirty (30) days written notice from Village (unless after written request from Developer to Village seeking a longer period of time for good cause, approval of an extension is granted by Village, which approval will not be unreasonably withheld), maintenance has not yet been performed in accordance with the provisions of this paragraph then the Village may proceed to maintain or hire an independent contractor of its choice to maintain the Property or parts thereof and impose the costs of such maintenance upon the benefitted property as a special assessment. Developer may, after review and approval by Village, assign the responsibilities for maintenance and cleaning under this paragraph for all or portions of the development to a third party provided such third party is financially responsible to discharge such obligations.

K. PROHIBITION ON OUTDOOR SHOOTING RANGES/SPORTING CLAYS RANGES.

Developer understands and agrees that in consideration of the terms of this Agreement, Developer shall not apply for and will not receive approvals from the Village for the construction of any outdoor shooting range, outdoor sporting clays range or similar facility on any portion of the Property.

III. DEVELOPER WARRANTIES AND OBLIGATIONS

A. SUBDIVISION AND CONDOMINIUM PLATTING ORDINANCE.

The Developer represents that it has been provided with a copy of the Somers Subdivision and Condominium Platting Ordinance as revised and will complete the improvements set forth herein in compliance with the Subdivision and Platting Ordinance, and its revisions and further agrees to comply therewith, except as may be modified by the terms of this Agreement. Developer agrees no earth moving activity, construction or sale of lots shall take place until this Development Agreement approved by the Village for the Property has been recorded.

B. DECLARATION OF RESTRICTIONS.

It is agreed that the Developer shall furnish the Village with a complete copy of any Declaration of Restrictions which, following review and approval by Village, which shall not be unreasonably withheld or delayed and which shall be recorded by Developer. Said Declaration

shall define all restrictions and shall identify whose responsibility it will be to monitor and enforce the restrictions. The terms of the Declaration of Restrictions shall not conflict with the terms of this Development Agreement.

C. BUILDING PERMITS.

1. It is agreed that, except as is provided hereafter, there shall be no building permits issued by the Somers Building Inspector until that Inspector shall be satisfied that all the terms and conditions of this Agreement and of the Somers Subdivision and Platting Ordinance have been fully complied with regarding such proposed building and that all requirements for public improvements under this Agreement, private utilities and gravel roadways and storm sewer necessary to serve such building have been or are in the process of being installed. No occupancy permits will be issued until all public improvements for such building have been completed.

D. INDEMNIFICATION.

Developer shall, during the term of this Agreement, indemnify, defend and hold harmless Village and officers, consulting engineers, attorneys, agents, representatives and employees thereof from and against any and all claims, damages, judgments, costs and expenses and attorney fees which any of them may pay, sustain or incur should any person or party incur personal injury, property loss or damage arising out of wrongful, negligent, improper or deficient conduct of Developer in the design or construction of any of the public improvements on the Property, including the design and construction of all onsite sanitary sewer systems, the design and construction of onsite municipal water systems, the design and construction of onsite underground storm and surface water drainage facilities relating to this proposed development or as a result of any claim for labor, materials or improvements in connection with the construction of the same other than any act or omission by Village, its agents or contractors, provided that Village shall provide notice of any claim it has under this provision, will afford the Developer the right to defend, prosecute and settle such claim, will make full disclosure of all relevant facts and circumstances, and shall cooperate with Developer and Developer's legal counsel in defending against any such claim, at Village's expense if by separate counsel, to the extent permitted by Developer's insurance company. Any costs or expenses including actual attorney fees, which the Village incurs as a result of any claim indemnified herein shall be reimbursed to the Village either through a cash deposit, any letter of credit posted by the Developer in connection with this Agreement, other assurance or through such other means as the Village, in the Village's sole discretion, deems appropriate. This indemnity shall not include liability for the negligence, fraud, or willful acts of the Village or its agents. If the Village seeks to enforce this agreement and incurs costs, this indemnity shall only apply if the Village prevails.

E. SITE PLAN APPROVAL AND ZONING; PERMITS AND ASSESSMENTS.

1. The Site Plan attached hereto as Exhibit "B" and incorporated herein by reference has been approved by the Village Board and the zoning for the Property shall not be changed, modified or altered without the prior written consent of the Developer. The rights to develop the

Property under this Development Agreement and current zoning are hereby vested on the date the parties have executed this Development Agreement.

2. Any amendment to this Development Agreement shall not require any amendment of the zoning unless a different use is requested and this Development Agreement may be modified or amended as provided herein.

3. The Village agrees that all special assessments, permit fees, connection fees and other charges by the Village and Utility shall not be charged against any portion of the Property or its users, in a manner which would be in excess of those charged generally for commercial development in the Village.

4. The Site Plan and zoning approvals granted by virtue of this Agreement shall be in effect for an initial period of one (1) year from the date of this Agreement. In the event that the Developer fails to obtain approval for the construction of at least the public museum and four (4) adjacent archival buildings and commence construction on such building(s) within one (1) year of the date of this Agreement and all buildings depicted on the Site Plan within three (3) years of the date of this Agreement, then, after notice and hearing before the Village Board, the Village may choose to revoke such Site Plan and zoning approvals for such improvements for which construction has not commenced. Developer understands and agrees that every building proposed on the Property must undergo a review and approval by the Village for conformance with this Agreement prior to issuance of building permits for the same.

IV. REIMBURSEMENT TO VILLAGE AND TO DEVELOPER FOR CERTAIN FEES AND INFRASTRUCTURE IMPROVEMENTS, PAYMENT OF CERTAIN FEES BY DEVELOPER AND TAX-EXEMPT STATUS

Village and Developer acknowledge that Tax Increment District No. 6 (“TID”) has been created and that said TID includes but is not limited to the geographical area comprising the Property. Commitments of both the Village and the Developer to fund infrastructure and other expenses under this Agreement are made in reliance upon certain distributions to be made pursuant to this Article IV. The reimbursements to Village and to Developer described hereafter shall not bear interest.

A. RECAPTURE OF A PORTION OF COSTS BY DEVELOPER FROM BENEFITTED PROPERTY FOR MUNICIPAL SANITARY SEWER.

1. For purposes of this section A, benefitted properties are those parcels defined as land outside of the Property and described with more particularity on the attached Exhibit “U”, which will, subsequent to the execution of this Agreement, be benefitted by the construction of the proposed sanitary sewer improvements.

2. The expense of construction of the sanitary sewer main improvements shall be determined and paid for as set forth in this Agreement, and the parties have agreed that the

remaining total costs of the sanitary sewer improvements shall be fairly allocated among the benefitted properties pursuant to Wisconsin Statute and as described in the attached Exhibit "U". The benefitted properties, including the Developer's Property, shall pay a share of the total costs and any amounts shall be based upon the "as built" costs as determined by the Village Engineer.

3. Subject to the provisions of this section A, above, relating to construction costs incurred by the Developer, the Village shall collect from the property owners of the benefitted properties, their successors or assigns, the recapture costs as set forth in subparagraph 2 above, if and only if such benefitted properties or part thereof, shall utilize the sanitary sewer improvements, obtain a change in land use (i.e. rezoning) or subdivide a benefitted parcel within a forty (40) year period from the date of execution of this Agreement. At such time or times as benefitted properties owners seek connection to the sanitary sewer improvements, obtain a change in land use (i.e. rezoning) or subdivide a benefitted parcel, the Village shall collect from each such owner or owners, the amount of the Developer's reimbursement based upon "as built" and administrative costs. The Village agrees not to issue any change in use (i.e. zoning) or to allow any division of any benefitted property unless and until such recapture costs have been paid by the benefitted owner or owners. Such recapture costs, when paid, shall be first applied to the total outstanding "as built" and Village administrative costs until paid in full (in the event that, for whatever reason, any such costs have not been paid by the Developer and have been incurred by the Village). Thereafter, all recapture costs collected by the Village pursuant to this Agreement up to the maximum delineated in paragraphs IV.A.6. and IV.C., below, shall be paid to the Developer or to its successor or assigns (as they may be designated in writing), within thirty (30) days after collection. The Village shall cooperate with the Developer by allowing full and free access to all books or records referring to the development of parcels of property benefitted, and the costs of recapture costs thereof.

4. The Developer shall defend and hold harmless the Village, its officials, officers, employees, engineers, attorneys, agents or representatives from any and all costs connected with or resulting from any claim or suit brought by any benefitted owner or interested person, contesting the Village's right to collect the Developer's recapture costs under the terms of this Agreement, other than any act of omission by the Village, its agents or contractors. The Village shall cooperate with the Developer in defending any such claim or action, at the Village expense if by separate counsel, to the extent permitted by Developer's insurance company.

5. The recapture provisions of this agreement shall be in full force and effect for a period of forty (40) years from the date upon which it is executed by all parties.

6. Reimbursement to Developer for all municipal sanitary sewer improvements shall not exceed the total sum of all "as built" costs less the amounts benefitting Developer's Property.

B. RECAPTURE OF A PORTION OF COSTS BY DEVELOPER FROM BENEFITTED PROPERTY FOR MUNICIPAL WATER.

1. For purposes of this section B, benefitted properties are those parcels defined as land outside of the Property and described with more particularity on the attached Exhibit "V",

which will, subsequent to the execution of this Agreement, be benefitted by the construction of the proposed water improvements.

2. The expense of construction of the water main improvements shall be determined and paid for as set forth in this Agreement, and the parties have agreed that the remaining total costs of the water improvements shall be fairly allocated among the benefitted properties pursuant to Wisconsin Statute and described in the attached Exhibit "V". The benefitted properties, including the Developer's Property, shall pay a share of the total costs and any amounts shall be based upon the "as built" costs as determined by the Village Engineer.

3. Subject to the provisions of this section B, above, relating to construction costs incurred by the Developer, the Village shall collect from the property owners of the benefitted properties, their successors or assigns, the recapture costs as set forth in subparagraph 2 above, if and only if such benefitted properties or part thereof, shall utilize the water improvements obtain a change in land use (i.e. rezoning) or subdivide a benefitted parcel within a forty (40) year period from the date of execution of this Agreement. At such time or times as benefitted properties owners seek connection to the water improvements obtain a change in land use (i.e. rezoning) or subdivide a benefitted parcel, the Village shall collect from each such owner or owners, the amount of the Developer's reimbursement based upon "as built" and administrative costs. The Village agrees not to issue any change in use (i.e. zoning) or to allow any division of any benefitted property unless and until such recapture costs have been paid by the benefitted owner or owners. Such recapture costs, when paid, shall be first applied to the total outstanding "as built" and Village administrative costs until paid in full (in the event that, for whatever reason, any such administrative costs have not been paid by the Developer and have been incurred by the Village). Thereafter, all recapture costs collected by the Village pursuant to this Agreement up to the maximum delineated in paragraphs IV.B.6. and IV.C., below, shall be paid to the Developer or to its successor or assigns (as they may be designated in writing), within thirty (30) days after collection. The Village shall cooperate with the Developer by allowing full and free access to all books or records referring to the development of parcels of property benefitted, and the costs of recapture costs thereof.

4. The Developer shall defend and hold harmless the Village, its officials, officers, employees, engineers, attorneys, agents or representatives from any and all costs connected with or resulting from any claim or suit brought by any benefitted owner or interested person, contesting the Village's right to collect the Developer's recapture costs under the terms of this Agreement, other than any act of omission by the Village, its agents or contractors. The Village shall cooperate with the Developer in defending any such claim or action, at the Village expense if by separate counsel, to the extent permitted by Developer's insurance company.

5. The recapture provisions of this agreement shall be in full force and effect for a period of forty (40) years from the date upon which it is executed by all parties, and after said period, developer shall have no further right to recapture costs under this Agreement, unless extended or amended by mutual agreement.

6. Reimbursement to Developer for all municipal water improvements shall not exceed the total sum of all “as built” costs less the amounts benefitting Developer’s Property.

C. RESIDUAL REIMBURSEMENT TO DEVELOPER OF DEVELOPER CONTRIBUTIONS FOR MUNICIPAL SANITARY SEWER AND MUNICIPAL WATER IMPROVEMENTS.

To the extent that the Developer has not been fully reimbursed for municipal sanitary sewer improvements and/or municipal water improvements pursuant to paragraphs IV.A. and IV.B., above, then, on September 1, 2031, Developer shall be reimbursed for such costs in the manner described in this paragraph. Under no circumstances shall the Village be obligated to reimburse or make payments to Developer for reimbursements that are in excess of the amounts described in paragraphs IV.A. and IV.B., above. Village warrants that it will make such supplemental reimbursement to Developer from Fund Balances, borrowings or tax appropriations or a combination thereof as is determined within the sole discretion of the Village until Developer has received the maximum amounts set forth in paragraphs IV.A. and IV.B. after first deducting the amounts of reimbursements previously received by Developer from special assessments paid by other property owners. This payment shall be made on September 1, 2031, provided Developer has made payment in full of (1) all taxes for any taxable property, (2) any special assessments levied against any property under §66.0701 through §66.0733, Wis. Stats., then due and payable, and (3) any special charges levied against properties owned by the Developer under §66.0627, Wis. Stats. In the event Residual Reimbursements are made to Developer under the terms of this paragraph IV.C. by TID #6, then all outstanding special assessments for benefitted properties for municipal sewer and/or municipal water shall be assigned to Village and Developer shall have no further reimbursement rights against such benefitted properties.

D. PAYMENT OF BUILDING PERMIT FEES, UTILITY CONNECTION FEES AND INSPECTION FEES–NON-REIMBURSABLE.

Developer shall pay for each building permit, utility connection fees and inspection fees pursuant to Chapters 13 and 18 of the General Code of Ordinances of the Village of Somers and inspection fees, at the time of issuance of each permit. These fees are not reimbursable.

E. TAX-EXEMPT PORTION OF PROPERTY.

Village acknowledges that a portion of the Property, generally comprising the public museum and four (4) adjacent archival buildings, all as depicted on the attached Exhibit “B” will be treated as tax-exempt from real estate taxes pursuant to the applicable laws of the State of Wisconsin so long as they are located on a statutorily exempt ten (10) acre footprint. Both Developer and Village acknowledge that there may be certain portions of such buildings which are not tax-exempt from real estate taxes if their use is not exempt. In consideration of the Developer paying for all costs associated with the construction of municipal sanitary sewer and municipal water improvements to service the Property pursuant to IV.A. and IV.B., above, the Village waives all rights to revenue under a PILOT Agreement or similar arrangement for the

real estate tax-exempt portion of the Property only so long as the tax-exempt portion of the Property retains tax-exempt status under Wisconsin laws. The remainder of the Property which is not tax-exempt, will be subject to the imposition of real estate taxes levied in a non-discriminatory, equalized fashion, as is required by Wisconsin law.

F. REIMBURSEMENT OF CERTAIN LAND USE FEES.

In acquiring the property, the Developer incurred certain land use fees which were paid by the Developer at the time of closing on the Property in order to realign certain properties in accordance with Village ordinance to facilitate the development contemplated herein in the total amount of One Hundred Forty-one Thousand Eight Hundred Sixty-six (\$141,866.00) Dollars. Village hereby agrees to reimburse Developer the sum of One Hundred Forty-one Thousand Eight Hundred Sixty-six (\$141,866.00) Dollars within thirty (30) days following completion of all sanitary sewer and municipal water improvements to be constructed pursuant to paragraphs I.A. and I.B.

G. VOLUNTARY PAYMENT IN LIEU OF IMPACT FEES.

Developer and Village agree that in lieu of the imposition of the fees delineated in Section 18.30 of the Code of Ordinances of the Village of Somers, including impact fees, the Developer shall make to the Village a donation in the sum of Seventy (70¢) Cents per square foot of constructed buildings, based upon approval by the Village to construct the buildings within the approved Development. Payments shall be due upon issuance of a building permit for each building. These permits shall apply to both taxable and tax-exempt improvements. The Developer and the Village hereby agree to be contractually bound by the terms and conditions of this paragraph, VI.E., in lieu of the terms and conditions of Section 18.30 of the Code of Ordinances, except as provided hereafter, and in consideration of such accommodation on the part of the Village, the Developer agrees to forever waive and relinquish any objection to any fees or the use of such fees by the Village whether such objection could be based upon Chapter 18 of the Code of Ordinances of the Village of Somers, Chapter 66 of the Wisconsin Statutes or otherwise. This waiver and acknowledgment shall be binding upon the legal successors and assigns of the Developer. Developer affirmatively represents that it is not necessary for the Village to expend the donations received under this Agreement in the year in which received and that the Village may use such donations for any lawful purpose without consulting with or advising the Developer as to how such donations are to be used. The voluntary donations referred to in this paragraph VI.F. shall not eliminate the requirements of municipal sanitary sewer and municipal water connection fees to be paid by users on the Property of those systems as required by Sections 18.30(L) and (R) and Appendix "C" of the Code of Ordinances of the Village as described hereafter.

H. FUTURE PUBLIC IMPROVEMENTS NECESSITATED BY FURTHER DEVELOPMENT.

Subject to payment of the amounts set forth in Sections IV.C. and IV.F. above, all Incremental TIF Revenues paid to the Village may be expended by Village (a) for application to

debt service on the Village's debt obligations related to TID #6, and (b) for future public improvements, incentives or relocations which, in the opinion of the Village, are necessary for the approval of further expansions to the development or adjacent areas including, but not limited to, sanitary sewer, offsite stormwater, offsite or onsite municipal water improvements such as booster stations or water storage facilities, additional public highway improvements, together with all costs for legal, engineering and administrative fees which may be associated with the review, approval and construction of the same.

The Village, in its absolute discretion, shall determine all aspects of the TID, including the geographical area in which it will encompass and must ascertain based upon projections provided by the Village Financial Consultants that any improvements to be constructed will be sufficient to sustain the issuance of bonds or other instruments in sufficient amounts so as to finance all of the direct and indirect costs associated with infrastructure construction throughout the TID which is not constructed by the Developer. The Village shall retain the exclusive authority to continue to determine all future activities of the TID not encompassed by this Agreement.

If the Developer seeks to develop one (1) or more portions of the Property beyond the scope of the improvements depicted on the Site Plan attached hereto as Exhibit "B" and the Developer seeks incentives for the creation of taxable increment for such project(s) on the Property, the Village will consider such request subject to the availability and limited to the use of TIF revenues generated by TID #6 for such incentive(s) for any future Developer project(s). In considering such request(s), the Village will consider such factors as the amount of additional tax increment to be generated by the project(s), the number of jobs created by the construction of additional taxable increment and the likelihood that such project(s) will, once constructed, create additional taxable increment either within or outside the geographical limits of TID #6.

If the Village and Developer have been paid or reimbursed for all amounts which were to have been paid under the terms of this Agreement, and all other TID indebtedness has been paid the parties agree to reasonably cooperate in terminating and closing the TID within a reasonable time thereafter. Nothing contained herein shall require the termination or closing of the TID sooner than statutorily required if the Village or Developer is still entitled to any reimbursements or payments from the TID funds under the terms of this Agreement.

V. LETTERS OF CREDIT/ESCROW

As a part of this Agreement the Developer has agreed to pay certain amounts for the installation of public roadway improvements, sanitary sewer and water mains which will be dedicated to the Village. In addition, the Village may incur estimated engineering, administrative and legal fees in connection with approvals for the public portion of improvements to be constructed in or adjacent to the development. In order to insure the Developer carries out its obligations for said items, the parties agree:

A. VILLAGE EXPENSES TO BE REIMBURSED.

To insure the payment to the Village of its expenses incurred in connection with any such improvements, including without limitation, road construction, sanitary sewer construction, municipal water improvements, engineering reviews, field observations, legal and administrative costs, the Developers shall deposit with the Village, either in cash funds or by an irrevocable letter of credit in a form reasonably acceptable to and approved by the Village Attorney (with the form attached hereto as Exhibit "L" being an acceptable form for such purposes) in the reasonably estimated amount of such expenses.

B. FORMAT OF LETTER OF CREDIT.

The Developer may submit one or more letters of credit, as long as each letter of credit conforms to the formal requirements of this Agreement. The Developer may, at any time, substitute a different letter of credit for a letter of credit previously provided, as long as the substitute letter of credit complies with the terms of this Agreement.

C. REDUCTIONS IN LETTER(S) OF CREDIT.

The Developer may submit written requests to the Village for a reduction in any letter of credit not more often than once per calendar month. Any such requests shall include an explanation as to why the letter of credit may be reduced, including without limitation, that the Developer has paid any such costs or expenses, the reasonable estimates of the Village's costs have been reduced, or the development has proceeded to an extent that the Village expenses are reasonably likely to be substantially lower than first estimated. The Village agrees to reasonably reduce any letter of credit in such circumstances. Any such letter of credit shall be released to the Developer or cancelled once the expenses for which such letter of credit were issued have been substantially completed.

D. ACCOUNTING FOR LETTER(S) OF CREDIT BY VILLAGE.

Any funds deposited with the Village under the terms of this Development Agreement shall be used by the Village only for the purposes designated for such funds. Reasonable expenses incurred by the Village which are to be paid out of said funds may be paid and the Village agrees to provide accountings to the Developer, as requested by the Developer, for the use of said funds and the expenses paid with said funds. The Village agrees to provide reasonable notice to the Developer whenever the Village has notice or knowledge that the funds deposited for a purpose are unlikely to be sufficient for such purpose and if more than ninety percent (90%) of said funds have been expended. Upon request of the Developer, the Village shall provide the Developer with all information regarding the payment of said expenses and why there may be an overcharge for any expenses.

VI. MISCELLANEOUS

A. ASSIGNMENT.

The Developer recognizes that this Agreement is based on Developer's presentation to the Plan Commission and Village Board and Developer shall not assign or transfer this Agreement to any other person or corporation other than a Permitted Assignee without prior written consent of the Village. A Permitted Assignee shall include a lender (for collateral purposes) or an entity wholly owned or controlled by the Developer.

B. MODIFICATION.

This Agreement supersedes all prior oral or written understandings or representations between the parties except as may be embodied by applicable state, county or Village statute, code or ordinance. Any modification to the terms of this Agreement shall only be enforceable if in writing signed by duly authorized representatives of each of the parties hereto in the same manner as this Agreement.

C. GOOD FAITH AND FAIR DEALING.

The parties agree that they shall deal with one another fairly and in good faith. If this Agreement provides that any approving party may grant or withhold its approval or consent, the approving party shall not unreasonably withhold, condition or delay its approval.

D. TERM.

Except as otherwise provided herein, this Agreement shall be in effect from the date of execution hereof until December 31, 2059 and shall inure to the benefit of and be binding upon the successors in title and assigns of Developer and upon successor corporate authorities and successor municipalities of Village. However, the guarantee of improvements shall be for the period specified herein, whether or not such guarantee may extend beyond the term of Agreement, and any recorded restrictions shall have the life accorded to such restrictions under applicable state law.

E. ESTOPPEL CERTIFICATE.

Village agrees to provide to Developer upon request a written Estoppel Letter certifying that Developer is not in default under the terms of this Agreement.

F. DEFAULTS.

No default shall arise hereunder unless the non-defaulting party has provided the defaulting party with written notice and a reasonable cure period of at least thirty (30) business days. Following any default either party may exercise all rights and remedies allowed by law and this Agreement. In the event any default cannot reasonably be cured within said thirty (30) day

period, the party shall not be deemed in default as long as the party is acting reasonably and in good faith in curing such default.

G. SEVERABILITY.

If any provision, covenant, or a portion of this Agreement or its application to any person, entity or property is held to be invalid or unenforceable by a court of law or equity, such status shall not affect the application or validity of other provisions, covenants or portions of this Agreement which shall be given effect without the invalid provisions or applications, and to this end, the provisions and covenants of this Agreement are declared to be severable.

H. RECORDATION.

This Agreement shall be recorded in the office of the Register of Deeds for Kenosha County, Wisconsin. Such recordation may, at the discretion of the Village, omit some or all of the attached exhibits delineated in subsection L below.

I. EXECUTION OF COUNTERPARTS.

This Agreement may be executed as two (2) or more counterparts, with each acting as an original.

J. EXHIBITS INCORPORATED BY REFERENCE.

Each of the terms, conditions and specifications described, noted or depicted on the following Exhibits are hereby incorporated herein by reference:

- Exhibit "A" Building Design and Specifications - Group Exhibit "A"
- Exhibit "B" Site Plan
- Exhibit "C" Legal Description
- Exhibit "D" Municipal Watermain Plan
- Exhibit "E" Sanitary Sewer Plan
- Exhibit "F" Public Road Improvements
- Exhibit "G" Stormwater Plan and Private Road Plan
- Exhibit "H" Landscape Plan
- Exhibit "I" Maintenance Agreement
- Exhibit "L" Form of Letter of Credit
- Exhibit "Q" Photometrics
- Exhibit "U" Benefitted Properties – Sanitary Sewer
- Exhibit "V" Benefitted Properties – Municipal Water

K. CONDITIONS TO VILLAGE OBLIGATIONS.

Notwithstanding anything herein to the contrary, all of the obligations of the Village hereunder are expressly conditioned upon the successful operation of a Tax Incremental District (TID) comprising all or a portion of the real property. The Village, in its absolute discretion, shall determine all aspects of the TID, including the geographical area which it will encompass and must ascertain based upon projections provided by Developer and others and reviewed by the Village Financial Consultants that the improvements to be constructed by Developer and others will be sufficient to sustain the issuance of bonds in sufficient amounts so as to finance all of the direct and indirect costs associated with infrastructure construction which will service this and other developments. The Village shall retain the exclusive authority to continue to determine all future activities of the TID.

L. INTEGRATION.

This Development Agreement, including the exhibits hereto, and such other documents as are incorporated herein embodies the entire agreement and understanding among the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

M. CHOICE OF LAW AND VENUE.

This Development Agreement and all attached exhibits shall be construed and enforced according to the laws of the State of Wisconsin. The parties agree that any matter which may be brought or pursued in court hereunder shall be brought and maintained only in the Circuit Court for Kenosha County, Wisconsin, and each party consents to such venue and the court's personal jurisdiction over each party.

N. WAIVER OF BREACH OR VIOLATION NOT DEEMED CONTINUING.

Either party may, to the extent legally allowed, (a) extend the time for performance of any of the obligations or other acts of the other party(s), (b) waive any inaccuracies in the representations or warranties of the other party(s) hereto contained herein, or in any document delivered pursuant hereto and (c) waive any compliance by any of the other parties hereto with any of the agreements or conditions contained herein. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any or other subsequent breach or violation of any provision hereof. No breach or violation of any provision hereof shall be waived except by an agreement in writing signed by the waiving party.

O. CONSTRUCTION.

Each party to this Agreement and their respective legal counsel acknowledge that they have had the opportunity to participate equally in the drafting of this Agreement and that in the

event of a dispute, neither party shall be treated, for any purpose as the author of this Agreement nor have any ambiguity resolved against it on account thereof.

P. NOMENCLATURE.

The use of the male gender shall include the female, the individual shall include the corporate, and the singular shall include the plural, and visa versa, wherever such usage is appropriate to the context.

Q. NOTICES.

Except as otherwise specifically provided in this Agreement, all notices given in connection with this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be sent to the other party by personal delivery, by established overnight courier, fees prepaid, by certified or registered mail, postage prepaid and return receipt requested, or by facsimile transmission or email transmission to the party (provided that an original of said notice or communication is sent simultaneously by first class United States mail with postage prepaid). Any notice addressed to the Village shall be addressed to the attention of the Village Administrator, 7511- 12th Street, P.O. Box 197, Somers, Wisconsin 53171. Any notice addressed to the Developer shall be addressed to the attention of Mary Parthe, Chief Investment Officer/Chief of Staff, and Michelle Nakfoor, Tawani Enterprises, Inc., 104 S. Michigan Avenue, Suite 500, Chicago, Illinois 60603. Either party may give notice to the other, in accordance with the terms of this paragraph, of a change-of-address to which notices under this Agreement may be sent. Any notice given in accordance with this paragraph shall be effective upon delivery, if personally delivered, upon delivery by overnight courier, upon delivery by email or facsimile transmission if transmitted during regular business hours, or three (3) days after notice is deposited in the United States mail if sent by certified mail. Any facsimile or email transmission received after 5:00 pm (Kenosha, Wisconsin time) or on a day other than a normal business day shall be deemed delivered on the next normal business day.

R. NO THIRD PARTY BENEFICIARIES

This Agreement shall not benefit or be enforceable by any person other than the Village, the Developer and their respective successors and assigns. This Agreement shall be binding upon and be for the benefit of the Village, the Developer, and their respective successors and assigns only. Developer understands and agrees that in consideration of the terms of this Agreement, Developer shall not apply for and will not receive approvals from the Village for the construction of any outdoor shooting range, outdoor sporting clays range or similar facility on any portion of the Property.

S. UNAVOIDABLE DELAY.

If either party is in any way delayed or prevented from performing all of its obligations under this Agreement, other than the payment of money, due to fire, act of God, civil disorder, riots, insurrections, fuel shortages, failure of power, accidents, casualties, adverse weather

conditions, strikes, labor disputes, inability to procure materials, acts of the other party or other party's agent, or any other cause beyond a party's reasonable control, then the party so delayed or prevented from performing its obligations under this Agreement shall not be deemed to be in default under this Agreement as long as such party is acting reasonably and in good faith in performing under this Agreement, and the period of such delay or prevention shall allow for an extension period equal to the period of such delay, interruption or prevention to perform such obligation.

WITNESS OUR HANDS AND SEALS this _____ day of _____, 2020.

VILLAGE OF SOMERS

By: _____
George Stoner, President

Attest: _____
Timothy Kitzman, Clerk/Treasurer

STATE OF WISCONSIN)
) ss.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2020, the above named George Stoner, President and Timothy Kitzman, Clerk/Treasurer of the Village of Somers, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Printed Name: _____
Notary Public; State of Wisconsin
My Commission expires _____.



**VILLAGE OF SOMERS
VILLAGE BOARD
MEETING ITEM MEMORANDUM**

MEETING DATE: January 14th, 2020

TO: Village President Stoner and Village Trustees

PREPARED BY: Jason J. Peters, Administrator

AGENDA ITEM: #8 Motion to approve final payment in the amount of \$55,948.44 to Musson Brothers Construction for 52nd Avenue & 16th Place Sewer Rehabilitation Project

BACKGROUND:

Musson Brothers Construction, Inc. was the low bidder for the Sanitary Sewer Lining project on 52nd Avenue and 16th Place. The total final construction cost of the project was \$119,093.70. They have completed the project and have requested a final payment of \$55,948.44. Engineer Snyder has reviewed the invoice and recommends that the Village make this final payment.

PRIOR ACTION TAKEN:

A partial payment of \$63,145.26 was made in February of 2019. This final payment request for \$55,948.44 was reviewed at our January 7th Work Session.

SUGGESTED ACTION/ACTION REQUESTED/COMMENTS:

Staff recommends approval of the requested final payment in the amount of \$55,948.44. In the event that the Village Board agrees with the suggested action, a suggested motion to approve would be as follows:

“Motion to approve final payment in the amount of \$55,948.44 to Musson Brothers Construction for 52nd Avenue & 16th Place Sewer Rehabilitation Project”

ATTACHMENTS:

Engineer Snyder’s Report

December 9, 2019

Timothy Kitzman, Clerk
Village of Somers
7511 12th Street
Somers, WI 53171

Subject: 52nd Avenue and 16th Place Sewer Rehabilitation Project -- Payment Recommendation

Dear Tim,

Enclosed are an invoice, payment request worksheet, and final lien waiver from Musson Brothers Construction, Inc. for work performed for the 52nd Avenue and 16th Place Sewer Rehabilitation Project. The following is our opinion of the amount due and payable to the Contractor:

Contract Price	\$337,602.30
Final Construction Cost	\$119,093.70
Less Amount Retained	<u>(0.00)</u>
Subtotal	\$119,093.70
Less Previous Payments	<u>(\$63,145.26)</u>
Total Amount Due for Final Payment	\$55,948.44

We recommend payment to Musson Brothers, Inc. for \$55,948.44.

The final project cost differs from the contract price because the system on 52nd Avenue is PVC and a few of the sewer laterals on 16th Place were already replaced. Below is a listing of the addresses where the laterals were lined.

619 16 th Place	627 16 th Place	706 16 th Place
712 16 th Place	717 16 th Place	718 16 th Place
726 16 th Place	727 16 th Place	806 16 th Place

Sincerely,

BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS



Douglas R. Snyder, P.E.

DRS/drs

Cc with encl.: Jason Peters, Administrator (email)

Cc: Sam Huschen (email)



INVOICE

NUMBER
69556

P.O. Box 818 • Rhinelander, Wisconsin 54501 • (715) 365-8700 • (715) 369-9296

Bill to: Village of Somers
 7511 12th Street
 Somers, WI 53171

Ship to: 7511 12th Street
 Somers, WI 53171

Cust #	Customer Ref	Date	Due Date	Disc Date	Terms
2348	Pay Request #2 Final	08/16/19	09/15/19	09/10/19	Due in 30 Days

Mth/Trans	Line	Description	Contract	Item	Unit Price	Quantity	Amount
08/19 550	1	Cured-in-Place (Building Servi	918110	F5	3,230.00000	2.000	6,460.00
08/19 550	2	Additional Cured-in-Place (Bui	918110	F6	45.00000	129.000	5,805.00
08/19 550	3	Cured-in-Place (Building Servi	918110	G5	3,355.00000	3.000	10,065.00
08/19 550	4	Additional Cured-in-Place (Bui	918110	G6	45.00000	201.000	9,045.00
08/19 550	5	Cured-in-Place (Building Servi	918110	H5	3,355.00000	4.000	13,420.00
08/19 550	6	Additional Cured-in-Place (Bui	918110	H6	45.00000	174.000	7,830.00

Notes:

Project# 171224.40
 16th Place Sanitary Sewer Rehab.

Total	\$52,625.00
Sales Tax	
Less Retainage	
Total	\$52,625.00

Pay Request #1 Retainer	\$3,323.44
Total Due	\$55,948.44

All payments made by credit or debit card will incur an additional 4% service charge.

Bid Breakdown and Final Construction Cost Information
52nd Avenue and 16th Place Sanitary Sewer Rehabilitation
Village of Somers, WI

Part A - 52nd St (MH 52A-6 to MH 52A-1)									
Item No.	Description	Est. Qty	Unit	Bid Unit Price	Bid Price	PR#1	Total for PR#1	PR#2	Total for PR#2
1	Clean and Televiser Sanitary Sewer Mainline	53	LF	\$2.20	\$116.60				
2	Cured in Place Pipe (Mainline)								
	8-inch Diameter Pipe Sanitary Sewer Lateral	53	LF	\$24.20	\$1,282.60				
3	Cured in Place Sample Testing	1	EA	\$450.00	\$450.00				
				Total A	\$1,849.20				
Part B - 52nd St (MH 52A-1 to MH 52A-2)									
Item No.	Description	Est. Qty	Unit	Bid Unit Price	Bid Price	PR#1	Total for PR#1	PR#2	Total for PR#2
1	Clean and Televiser Sanitary Sewer Mainline	354	LF	\$2.20	\$778.80				
2	Clean and Televiser Sanitary Sewer Building Services	113	LF	\$8.00	\$904.00	113	\$904.00		
3	Building Service Cleanout (Vac-a-Tee)	3	EA	\$500.00	\$1,500.00				
4	Cured in Place Pipe (Mainline)								
	8-inch Diameter Pipe Sanitary Sewer Lateral	354	LF	\$24.20	\$8,566.80				
	Reinstatement	3	EA	\$165.00	\$495.00				
5	Cured-in-Place (Building Service)	3	EA	\$3,230.00	\$9,690.00				
6	Additional Cured-in-Place (Building Service)	53	LF	\$45.00	\$2,385.00				
7	Cured in Place Sample Testing	1	EA	\$450.00	\$450.00				
				Total B	\$24,769.60				
Part C - 52nd St (MH 52A-2 to MH 52A-3)									
Item No.	Description	Est. Qty	Unit	Bid Unit Price	Bid Price	PR#1	Total for PR#1	PR#2	Total for PR#2
1	Clean and Televiser Sanitary Sewer Mainline	296	LF	\$2.20	\$651.20				
2	Clean and Televiser Sanitary Sewer Building Services	203	LF	\$9.00	\$1,827.00	203	\$1,827.00		
3	Building Service Cleanout (Vac-a-Tee)	6	EA	\$500.00	\$3,000.00				
4	Cured in Place Pipe (Mainline)								
	8-inch Diameter Pipe Sanitary Sewer Lateral	296	LF	\$24.20	\$7,163.20				
	Reinstatement	6	EA	\$165.00	\$990.00				
5	Cured-in-Place (Building Service)	6	EA	\$3,230.00	\$19,380.00				
6	Additional Cured-in-Place (Building Service)	83	LF	\$45.00	\$3,735.00				
7	Cured in Place Sample Testing	1	EA	\$450.00	\$450.00				
				Total C	\$37,196.40				
Part D - 52nd St (MH 52A-3 to MH 52A-4)									
Item No.	Description	Est. Qty	Unit	Bid Unit Price	Bid Price	PR#1	Total for PR#1	PR#2	Total for PR#2
1	Clean and Televiser Sanitary Sewer Mainline	306	LF	\$2.20	\$673.20				
2	Clean and Televiser Sanitary Sewer Building Services	213	LF	\$9.00	\$1,917.00	213	\$1,917.00		
3	Building Service Cleanout (Vac-a-Tee)	6	EA	\$500.00	\$3,000.00				
4	Cured in Place Pipe (Mainline)								
	8-inch Diameter Pipe Sanitary Sewer Lateral	306	LF	\$24.20	\$7,405.20				
	Reinstatement	6	EA	\$165.00	\$990.00				
5	Cured-in-Place (Building Service)	6	EA	\$3,230.00	\$19,380.00				
6	Additional Cured-in-Place (Building Service)	93	LF	\$45.00	\$4,185.00				
7	Cured in Place Sample Testing	1	EA	\$450.00	\$450.00				
				Total D	\$38,000.40				
Part E - 52nd St (MH 52A-4 to MH 52A-5)									
Item No.	Description	Est. Qty	Unit	Bid Unit Price	Bid Price	PR#1	Total for PR#1	PR#2	Total for PR#2
1	Clean and Televiser Sanitary Sewer Mainline	265	LF	\$2.20	\$583.00				
2	Clean and Televiser Sanitary Sewer Building Services	132	LF	\$9.00	\$1,188.00	263	\$2,367.00		
3	Building Service Cleanout (Vac-a-Tee)	4	EA	\$500.00	\$2,000.00				
4	Cured in Place Pipe (Mainline)								
	8-inch Diameter Pipe Sanitary Sewer Lateral	265	LF	\$24.20	\$6,413.00				
	Reinstatement	4	EA	\$165.00	\$660.00				
5	Cured-in-Place (Building Service)	4	EA	\$3,230.00	\$12,920.00				
6	Additional Cured-in-Place (Building Service)	52	LF	\$45.00	\$2,340.00				
7	Cured in Place Sample Testing	1	EA	\$450.00	\$450.00				
				Total E	\$26,554.00				

Bid Breakdown and Final Construction Cost Information
52nd Avenue and 16th Place Sanitary Sewer Rehabilitation
Village of Somers, WI

Part F - 16th Place (MH 7 to MH 8)									
Item No.	Description	Est. Qty	Unit	Bid Unit Price	Bid Price	PR#1	Total for PR#1	PR#2	Total for PR#2
1	Clean and Televiser Sanitary Sewer Mainline	256	LF	\$2.20	\$563.20	256	\$563.20		
2	Clean and Televiser Sanitary Sewer Building Services	431	LF	\$9.00	\$3,879.00	431	\$3,879.00		
3	Building Service Cleanout (Vac-a-Tee)	6	EA	\$500.00	\$3,000.00				
4	Cured in Place Pipe (Mainline)								
	12-inch Diameter Pipe Sanitary Sewer	256	LF	\$32.73	\$8,377.60	256	\$8,377.60		
	Reinstatement	6	EA	\$165.00	\$990.00	6	\$990.00		
5	Cured-in-Place (Building Service)	6	EA	\$3,230.00	\$19,380.00			2	\$6,460.00
6	Additional Cured-in-Place (Building Service)	311	LF	\$45.00	\$13,995.00			129	\$5,805.00
7	Cured in Place Sample Testing	1	EA	\$450.00	\$450.00				
				Total F	\$50,634.80				
Part G - 16th Place (MH 8 to MH 9)									
Item No.	Description	Est. Qty	Unit	Bid Unit Price	Bid Price	PR#1	Total for PR#1	PR#2	Total for PR#2
1	Clean and Televiser Sanitary Sewer Mainline	247	LF	\$2.20	\$543.40	247	\$543.40		
2	Clean and Televiser Sanitary Sewer Building Services	441	LF	\$6.00	\$2,646.00	441	\$2,646.00		
3	Building Service Cleanout (Vac-a-Tee)	8	EA	\$500.00	\$4,000.00				
4	Cured in Place Pipe (Mainline)								
	12-inch Diameter Pipe Sanitary Sewer Lateral	441	LF	\$33.50	\$14,773.50	247	\$8,274.50		
	Reinstatement	8	EA	\$165.00	\$1,320.00	8	\$1,320.00		
5	Cured-in-Place (Building Service)	8	EA	\$3,355.00	\$26,840.00			3	\$10,065.00
6	Additional Cured-in-Place (Building Service)	281	LF	\$45.00	\$12,645.00			201	\$9,045.00
7	Cured in Place Sample Testing	1	EA	\$450.00	\$450.00				
				Total G	\$63,217.90				
Part H - 16th Place (MH 9 to MH 10)									
Item No.	Description	Est. Qty	Unit	Bid Unit Price	Bid Price	PR#1	Total for PR#1	PR#2	Total for PR#2
1	Clean and Televiser Sanitary Sewer Mainline	400	LF	\$2.20	\$880.00	400	\$880.00		
2	Clean and Televiser Sanitary Sewer Building Services	616	LF	\$5.00	\$3,080.00	616	\$3,080.00		
3	Building Service Cleanout (Vac-a-Tee)	10	EA	\$500.00	\$5,000.00				
4	Cured in Place Pipe (Mainline)								
	12-inch Diameter Pipe Sanitary Sewer Lateral	400	LF	\$33.50	\$13,400.00	400	\$13,400.00		
	Reinstatement	10	EA	\$150.00	\$1,500.00	10	\$1,500.00		
5	Cured-in-Place (Building Service)	10	EA	\$3,355.00	\$33,550.00			4	\$13,420.00
6	Additional Cured-in-Place (Building Service)	416	LF	\$45.00	\$18,720.00			174	\$7,830.00
7	Cured in Place Sample Testing	1	EA	\$450.00	\$450.00				
					\$76,580.00				
				Total H	\$318,802.30				
Part I - Additional Items									
Item No.	Description	Est. Qty	Unit	Bid Unit Price	Bid Price	PR#1	Total for PR#1	PR#2	Total for PR#2
1	Sanitary Sewer Building Service Excavation Point Repair	4	EA	\$4,500.00	\$18,000.00				
2	Trim Protruding Tap Sanitary Sewer Service Lateral	2	EA	\$400.00	\$800.00				
				Total I	\$18,800.00				
ADD	Building Service Cleanout (Vac-a-Tee) Change order	10	EA	\$ 1,400.00		10	\$ 14,000.00		
					Totals =		\$66,468.70		\$52,625.00
				Total Bid	\$337,602.30		Final Construction Cost =		\$119,093.70

Final Waiver of Lien

To All Whom It May Concern:

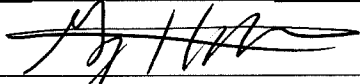
WHEREAS, the undersigned, Musson Bros., Inc. has contracted with Village of Somers to furnish labor and materials for 16th Place Sanitary Sewer Rehab for work associated with Project No. 171224.00, located at Village of Somers County of Kenosha of which Village of Somers is the Owner.

NOW, THEREFORE, this 9th day of December 2019 for and in consideration of the sum of \$55,948.44 paid simultaneously herewith, the receipt whereof is hereby acknowledged by the undersigned, the undersigned does hereby waive and release any lien rights to, or claim of lien with respect to and on said above described premises, and the improvements thereon, and on the monies or other considerations due to become due from the Owner, by virtue of said Work, on account of labor, services, materials, fixtures, apparatus of machinery heretofore or which may hereafter be furnished by the undersigned to or for the above described premises.

The undersigned further represents and warrants that he has paid for all labor, materials, equipment, and services that he has used or supplied or incorporated into the above premises were either taken from his fully paid or open stock or were fully paid for; and that the following are the names of all parties who have furnished material or labor, or both:

NAMES OF SUPPLIERS (if none, so state.)	WHAT SUPPLIED

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor, or other work of any kind done or to be done upon or in connection with said Work other than above stated.

Musson Bros., Inc.

Signature

TITLE: Vice President



**VILLAGE OF SOMERS
VILLAGE BOARD
MEETING ITEM MEMORANDUM**

MEETING DATE: January 14th, 2020

TO: Village President Stoner and Village Trustees

PREPARED BY: Jason J. Peters, Administrator

- AGENDA ITEM:**
- #9 Action on proposed Ordinance No. 20-001 to Repeal and Recreate Section 11.03(G) and (H) of the Code of Ordinances to the Village of Somers Relating to Operator License and Provisional License Fees
 - #10 Action on proposed Ordinance No. 20-002 to Repeal and Recreate Section 12.10(B)(1) of the Code of Ordinances to the Village of Somers Relating to Amusement Establishments License
 - #11 Action on proposed Ordinance No. 20-003 to Repeal and Recreate Section 12.13(D)(1) of the Code of Ordinances to the Village of Somers Relating to Cigarette or Tobacco Product License

BACKGROUND:

Administration directed Staff to review and compare “Clerical Fees” to communities of similar size and/or make up. This review was completed and recommendations on increases were made to the Board in the Fall of 2019. The attached ordinance represents the last code items that need to be updated to facilitate the recommended changes.

The changes are as follows:

- Item #9 Operator’s License
 - 11.03 G) increases fee from \$30 to \$50
- Item #9 Operator’s Provisional
 - 11.03 H) increases fee from \$10 to \$15
- Item #10 Amusement Device
 - 12.10 B) 1) increases fee from \$20 to \$25 for second device

Item #11 Cigarette

12.13 D) 1) increases fee from \$25 to \$100

PRIOR ACTION TAKEN:

Recommendations as to the increases of the fees were presented to the Board at our September 3rd, 2019 Work Session. The attached ordinances were reviewed at our January 14th Work Session.

SUGGESTED ACTION/ACTION REQUESTED/COMMENTS:

Staff recommends the approval of items 9, 10 and 11. In the event that the Village Board agrees with the suggested action, a suggested motion to approve would be as follows:

Item #9

“Motion to waive the first reading of Ordinance No. 20-001”

“Motion to Approve Ordinance No. 20-001 to Repeal and Recreate Section 11.03(G) and (H) of the Code of Ordinances to the Village of Somers Relating to Operator License and Provisional License Fees”

Item #10

“Motion to waive the first reading of Ordinance No. 20-002”

“Motion to Approve Ordinance No. 20-002 to Repeal and Recreate Section 12.10(B)(1) of the Code of Ordinances to the Village of Somers Relating to Amusement Establishments License”

Item #11

“Motion to waive the first reading of Ordinance No. 20-003”

“Motion to Approve Ordinance No. 20-003 to Repeal and Recreate Section 12.13(D)(1) of the Code of Ordinances to the Village of Somers Relating to Cigarette or Tobacco Product License”

ATTACHMENTS:

Item #9 Ordinance 20-001 relating to Section 11.03(G) and (H)

Item #10 Ordinance 20-002 relating to Section 12.10(B)(1)

Item #11 Ordinance 20-003 relating to Section 12.13(D)(1)

ORDINANCE NO. 2020-001

AN ORDINANCE TO REPEAL AND RECREATE SECTION 11.03(G) AND (H)
OF THE CODE OF ORDINANCES OF THE VILLAGE OF SOMERS
RELATING TO OPERATOR LICENSE AND PROVISIONAL LICENSE FEES

The Village Board of Trustees of the Village of Somers, Kenosha County,
Wisconsin, hereby repeals and recreates Section 11.03(G) and (H) of the Code of Ordinances of
the Village of Somers to read as follows:

(G) Operator's License (2 Year. Period) – \$50.00

(H) Provisional License – \$15.00

Dated at Somers, Wisconsin, this ____ day of _____, 2020.

VILLAGE OF SOMERS

By: _____
George Stoner, President

Attest: _____
Timothy Kitzman, Clerk/Treasurer

ORDINANCE NO. 2020-002

AN ORDINANCE TO REPEAL AND RECREATE SECTION 12.10(B)(1)
OF THE CODE OF ORDINANCES OF THE VILLAGE OF SOMERS
RELATING TO AMUSEMENT ESTABLISHMENTS LICENSE

The Village Board of Trustees of the Village of Somers, Kenosha County,
Wisconsin, hereby repeals and recreates Section 12.10(B)(1) of the Code of Ordinances of the
Village of Somers to read as follows:

(1) No person shall permit, keep or maintain an amusement device as herein defined without first obtaining a license to be issued by the Village Clerk/Treasurer upon approval of the Village Board. The annual fee for such license shall be Fifty (\$50.00) Dollars for the first device and Twenty-five (\$25.00) Dollars for each additional device located on the premises. In the event that the licensee shall add additional devices after obtaining the license, it shall be the licensee's responsibility to advise the Village Clerk/Treasurer of any increase in the number of such devices and pay the appropriate fee. All licenses shall expire on the thirtieth (30th) day of June each year and there shall be no proration or adjustment of a license fee for less than one (1) year.

Dated at Somers, Wisconsin, this _____ day of _____, 2020.

VILLAGE OF SOMERS

By: _____
George Stoner, President

Attest: _____
Timothy Kitzman, Clerk/Treasurer

ORDINANCE NO. 2020-003

AN ORDINANCE TO REPEAL AND RECREATE SECTION 12.13(D)(1)
OF THE CODE OF ORDINANCES OF THE VILLAGE OF SOMERS
RELATING TO CIGARETTE OR TOBACCO PRODUCT LICENSE

The Village Board of Trustees of the Village of Somers, Kenosha County,

Wisconsin, hereby repeals and recreates Section 12.13(D)(1) of the Code of Ordinances of the Village of Somers to read as follows:

(1) Pursuant to §134.65, Wis. Stats., which section is incorporated herein by reference in its entirety, no retailer shall sell, expose for sale, possess with intent to sell, exchange, barter, dispose or give away any cigarettes or tobacco products to any person until they have first obtained a license from the Village which shall be issued on July 1 of each year upon completion and filing of a proper written application and payment of the fee of One Hundred (\$100.00) Dollars to the Village Clerk/Treasurer before the license is issued. Each such license shall name the licensee and specifically described the premises where such business is to be conducted. Tobacco licenses shall not be transferable from one person to another nor from one premises to another and every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes and tobacco products. Such records shall be preserved on the licensed premises for two (2) years in such a manner so as to insure permanency and accessibility for inspection and shall be subject to inspection at all visible hours by authorized state and local law enforcement officials.

Dated at Somers, Wisconsin, this _____ day of _____, 2020.

VILLAGE OF SOMERS

By: _____
George Stoner, President

Attest: _____
Timothy Kitzman, Clerk/Treasurer