

**AGREEMENT  
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND  
JT ENGINEERING, INC.  
FOR ENGINEERING DESIGN SERVICES FOR THE TAYLOR/WILGUS  
INTERSECTION IMPROVEMENTS**

This Agreement (“Agreement”) is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between the City of Sheboygan (the “City”), a municipal corporation, and JT Engineering, Inc. (“Consultant”).

WITNESSETH:

WHEREAS, the City desires to improve the intersection of Taylor Drive and Wilgus Avenue, in the City of Sheboygan, Wisconsin; and

WHEREAS, Consultant possesses the requisite knowledge, skill, and experience to design the intersection improvements for the City and desires to provide the City with the necessary services under the terms set forth in this Agreement.

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

**Article 1. Scope of Services**

Consultant shall provide the services identified in the Scope of Services, which is attached to this Agreement as Attachment A (the “Services”).<sup>1</sup> The City agrees to provide prompt written notice to Consultant whenever the City becomes aware of a development that affects the scope, timing, or performance of services. To the extent permitted by law, the City agrees to make available such drawings, specifications, and data, which is in the City’s possession and which the Consultant deems pertinent to completing its responsibilities under this Agreement.

**Article 2. Standard of Care**

Consultant shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances (“Standard of Care”). The City designated project manager, identified in Article 3 of this Agreement, shall be the sole judge of the adequacy of Consultant’s work in meeting the Standard of Care; however, the City shall not unreasonably withhold its approval as to the adequacy of Consultant’s performance. Upon notice to Consultant and by mutual agreement between the parties, Consultant will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

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<sup>1</sup> To the extent the Attachments conflict with the terms of this Agreement, the terms of this Agreement shall govern.

**Article 3. The City's Project Manager**

The Director of Public Works shall serve as project manager for purposes of this Agreement and he shall have the authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of the City.

**Article 4. Compensation**

The City shall pay Consultant a lump sum of \$57,940.00 (“Contract Amount”).

Consultant shall submit an invoice to the City on a monthly basis, based on the percentage of the Services described in Article 1 completed. Consultant shall provide sufficient information for the City to evaluate the percent of the Services completed. Invoices shall be sent via first class mail postage prepaid or via email and shall include a progress report documenting the extent of completed services. Invoices shall be sent to:

David Biebel  
City of Sheboygan  
2026 New Jersey Ave.  
Sheboygan, Wisconsin 53081  
david.biebel@sheboyganwi.gov

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

Payment will be remitted to Consultant within thirty (30) days of receipt of invoice. Payment shall not be construed as acceptance of unsatisfactory or defective services. The City may withhold payment of an invoice due to unsatisfactory or defective services.

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

**Article 5. Appropriation of Funds**

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

**Article 6. Schedule**

Consultant shall complete the Services in accordance with the Schedule identified in Attachment A or within such extra time as may have been allowed by a mutually agreed extension. Consultant's services are completed when the City's project manager notifies Consultant in writing that the services are complete and are acceptable.

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

**Article 7. Open Records**

- a. Both parties understand that the City is bound by the Wisconsin Public Records Law and, as such, this contract is subject to that law. Consultant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Consultant must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under the Agreement.
  
- b. Consultant shall maintain proper accounting records for the Services performed pursuant to this Agreement, and shall provide an accounting for all charges and expenditures as may be necessary for audit purposes. All such records shall be subject to inspection and examination by City representatives during reasonable business hours.

**Article 8. Termination**

The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon ten (10) calendar days written notice to Consultant. The City's Project Manager shall have the authority to provide this written notice. Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City shall pay Consultant for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. If the performance is restarted, an equitable adjustment shall be made to Consultant's compensation and the schedule of services. Consultant may terminate this Agreement upon thirty (30) calendar days written notice to the City in the event of nonpayment beyond 60 days' or in the event the City otherwise substantially fails to fulfill its obligations under this Agreement.

In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have ten (10) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

**Article 9. Ownership of Documents and Intellectual Property**

All documents, drawings, and specifications, including digital format files, prepared by Consultant, and furnished to the City as part of the Services shall become the property of the City. Consultant shall retain its ownership rights in its databases, computer software, and other proprietary property. Intellectual property developed or utilized in the performance of the Services shall remain the property of Consultant.

Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Consultant's promotional and professional materials. The Consultant shall be given reasonable access to the completed Project to make such representations. However, Consultant's materials shall not include the City's confidential or proprietary information if the City has advised the Consultant in writing of the specific information considered by the City to be confidential or proprietary. The City shall provide professional credit for the Consultant in the City's promotional materials for the project.

**Article 10. Identity of Consultant**

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

**Article 11. Independent Contractor Status**

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

**Article 12. Indemnification**

Consultant hereby agrees to indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature in any manner directly caused, contributed to in whole or in part, by reason of but only to the extent attributable to any negligent act, or omission, or fault, of Consultant or of anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, and volunteers, and each of them, shall be applicable to the extent liability is apportioned to Consultant its appointed officials, officers, employees, agents, representatives, and volunteers by a court of competent jurisdiction. Consultant shall reimburse the City, its elected and

appointed officials, officers, employees, agent or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The parties shall be responsible for their own defense.

In the event that Consultant employs other persons, firms, corporations, or entities (collectively Subcontractor) as part of performing its obligations under this Agreement, it shall be Consultant's responsibility to require and confirm that each Subcontractor enters into an Indemnity Agreement in favor of the City, its elected and appointed officials, officers, employees, agents, representatives, and volunteers, which is identical to this Indemnity Agreement.

This indemnity provision shall survive the termination or expiration of this Agreement.

### **Article 13. Insurance**

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

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

- a. Commercial General Liability Insurance – Consultant shall acquire and maintain, for the duration of the Agreement, Commercial General Liability Insurance of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate.
- b. Automobile Liability Insurance – Consultant shall acquire and maintain, for the duration of the Agreement, Automobile Liability Insurance of at least \$1,000,000.
- c. Workers' Compensation Insurance – Consultant shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements. In the event this Agreement authorizes any work to be sublet, Consultant shall require any contractor to similarly provide Workers' Compensation Insurance in accordance with all statutory requirements.
- d. Umbrella Liability Insurance – Consultant shall acquire and maintain, for the duration of the Agreement, Umbrella Liability Insurance of at least \$5,000,000 per occurrence.
- e. Professional Errors and Omissions Insurance – Consultant shall acquire and maintain, for the duration of the Agreement, Professional Errors and Omissions Insurance of at least \$1,000,000 per claim, with a deductible of no more than \$100,000. If such policy is a "claims made" policy, all renewals thereof during the life of this Agreement shall include "prior acts coverage" covering at all times all claims made with respect to Consultant's work performed under the Agreement. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.

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

The proof of insurance referenced above shall require the insurance company to notify the City at least 30 days prior to the expiration, cancellation, non-renewal, or material change in the coverage. The Certificate Holder on the proof of insurance should be listed as:

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

The insurance coverage required must be provided by an insurance carrier with the “Best” rating of “A-VII” or better.

Approval of the insurance by the City shall not relieve or decrease the extent to which Consultant may be held responsible for payment of damages resulting from Consultant’s provision of the Services or its operations under this Agreement. If Consultant fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City the required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

**Article 14. Conflict of Interest**

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

**Article 15. Waiver**

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

**Article 16. Severability**

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

**Article 17. Assignment**

Neither the City nor Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party.

**Article 18. Third Party Rights**

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

**Article 19. Governing Law and Venue**

This Agreement shall be governed by the laws of the State of Wisconsin. Should a dispute arise under this Agreement, the parties agree to attempt to reach a negotiated resolution. Such attempt shall include at least two face-to-face meetings or less if the Dispute is resolved. Venue of any unresolved disputes arising under this Agreement shall be in the Sheboygan County Circuit Court, Wisconsin.

**Article 20. Non-Discrimination**

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

**Article 21. Compliance with Laws**

In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state, and local statutes, ordinances, plans, and regulations.

The City reserves the right to cancel this Agreement if Consultant fails to follow the requirements of Wis. Stat. 77.66 and related statutes regarding certification for collection of sales and use tax.

Consultant affirms that it is not presently listed on any debarment list or similar list prohibiting it from contracting with a governmental entity of any kind. In the event that Consultant shall become listed on any debarment list or similar list, the City may terminate this Agreement.

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

**Article 22. Notices**

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

**City:**

**Consultant:**

City Clerk	Brian Chlopek, PE
City of Sheboygan	JT Engineering, Inc.
828 Center Ave.	1077 Centennial Centre Blvd.
Sheboygan, Wisconsin 53083	Hobart, Wisconsin 54155-8820

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

**Article 23. Intent to be Bound**

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

**Article 24. Force Majeure**

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

In the event the Consultant believes the time for completion of the Services in this Agreement should be extended under this Article, Consultant shall provide written notice to the City as soon as possible, but not later than seven (7) calendar days after such an event. The notice shall include any justification for an extension of time and shall identify the extension the Consultant believes is necessary as a result of the force majeure event.

**Article 25. Integration and Modification**

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

**Article 26. Non-Collusion**

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

- a. The prices in its quote were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition as to any other matter relating to such prices with any other competitor.

- b. No attempt was made to induce any other person, partnership, or corporation to submit or not submit a quote to the City for these Services for the purpose of restricting competition.

**Article 27. Other Provisions**

- a. Advertising and News Releases. Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City.
- b. Foreign Corporation. A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Wis. Stat. 180 relating to a foreign corporation, and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority.
- c. Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.

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

**CITY OF SHEBOYGAN, WISCONSIN**

**CONSULTANT**

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

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

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

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

Authorized by Res. No. \_\_\_\_\_

## **ATTACHMENT A**

### **SCOPE OF SERVICES COMMENTARY** for **ENGINEERING DESIGN SERVICES** **TAYLOR & WILGUS INTERSECTION IMPROVEMENTS** **CITY OF SHEBOYGAN** **SHEBOYGAN COUNTY**

January 6, 2023

This project includes the design for traffic signal improvements at the N Taylor Drive and Wilgus Avenue signal and intersection improvements, in the City of Sheboygan. Construction is scheduled to be completed no earlier than the 2024 construction season and will be let through the City of Sheboygan.

The scope of this contract is the design of the above project to meet current roadway design standards.

For the design of these projects, the scope is as follows:

- A. Survey
  1. Topographic Survey will be completed by the City of Sheboygan with base mapping provided to JT Engineering.
  2. No additional topographic survey is included.
- B. Geotechnical
  1. No geotechnical borings or investigations are included in this project.
- C. Environmental Coordination/Documentation/Permitting
  1. Environmental Document & Studies - No environmental document is anticipated and is not included in the scope of work.
  2. Wetland Delineation – not anticipated to be needed, not included in scope of work.
  3. Permitting – With total disturbed area expected to be less than 1 acre, no permits are included.
- D. Utility Coordination – included in the scope of work is the following:
  1. One initial notification of utilities to notify them of the projects and gather mapping information.
  2. One notification of utilities of the projects to provide the proposed project information for them to determine potential conflicts.
  3. Review of utility work plans related to these projects with recommendations to the city for the approval of permits.
- E. Storm Sewer
  1. Storm Sewer design is limited to the replacement/relocation of inlets in the areas where needed due to changes in the intersection geometry.
  2. A full analysis of the storm sewer system is not included, and no mainline storm sewer work is included.
- F. Permanent Signing
  1. Permanent signing plans will be limited to work necessary to replace any signs impacted by the proposed improvements.
- G. Roadway Design
  1. Roadway design includes the following:
    - i. Design of a new right turn lane from EB Wilgus to SB Taylor

- ii. Design of the SE quadrant of the intersection (NB Taylor to EB Wilgus) to determine if the existing pork chop island can be removed.
  - iii. Design of complete pavement replacement through the intersection (up through the concrete pavement on both Taylor Drive Approaches and through the larger curb radii on the Wilgus approaches). It is assumed the pork chop island in the NW quadrant will remain and the ped ramps will remain unchanged.
2. The design of up to three (3) pedestrian ramps is included.

#### H. Meetings

1. JT will attend one (1) meeting at the Sheboygan Public Works building to discuss the progress of the project.
2. JT will attend/host up to two (2) virtual meeting/conference calls with the City of Sheboygan to discuss the progress of the project.

#### I. Plans & Specifications.

1. JT will provide plans consisting of the following:
  - a. Title Sheet
  - b. General Notes
  - c. Special Construction Details
  - d. Pedestrian Ramp Details
  - e. Intersection Details
  - f. Erosion Control Plans
  - g. Signing & Pavement Marking Plans
  - h. Traffic Signal Removal Plan
  - i. Traffic Signal Plan
  - j. Construction Traffic Control plans (as needed)
  - k. Miscellaneous Quantity sheets
  - l. Plan and Profile Sheets
  - m. Cross Sections
  - n. Standard Detail Drawings
2. An engineer's estimate of construction costs will be provided in excel format with the final plan submittal.

#### J. Right of Way Plat – not included.

#### K. Traffic Signal Design

1. Design signals utilizing WisDOT specifications and Traffic Signal Design Manual.
2. Review the City's signal timing plans and provide changes as needed.

#### L. Traffic Analysis

1. Complete a simplified O/D study to determine the traffic usage/patterns at the intersection with respect to the adjacent STH 23 ramps
2. Complete modeling to determine the impacts of any proposed intersection geometric changes
3. Complete a Technical Memo with the findings of the simplified O/D study, modeling of proposed changes, and recommendations for the final intersection lane configuration.

#### M. Work Zone Traffic Control

1. Review traffic needs and provide recommendations for work zone traffic control including but not limited to stop control, temporary traffic signals, lane reductions, road closures, and detours.

#### N. PS&E and Letting

1. Provide the City a PS&E package for letting utilizing the City's standard format.

#### O. Design Schedule

1. The design will follow the schedule below if JT has received the Notice to Proceed by January 15, 2023.

Report/Meeting Title	Date
Project Kick-off Meeting	February 17, 2023
Intersection Improvement Technical Memo	March 3, 2023
60% Plans & Estimate	May 1, 2023
60% Plan Meeting	May 12, 2023
90% Plans, Estimate & Specials	September 1, 2023
90% Plan Meeting	September 15, 2023
Draft PSE	November 1, 2023
Final Plans & PSE	December 1, 2023