

III

DIRECT REFERRAL TO FINANCE AND PERSONNEL COMMITTEE

Res. No. 171 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
April 10, 2023.

A RESOLUTION authorizing entering into a Development Agreement with Vue 14 LLC regarding an affordable housing project to be located at the corner of South 14th Street and Illinois Avenue.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Development Agreement Between Vue 14 LLC and the City of Sheboygan, a copy of which is attached hereto and incorporated herein.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

**DEVELOPMENT AGREEMENT
BETWEEN
VUE 14 LLC
AND THE CITY OF SHEBOYGAN**

THIS DEVELOPMENT AGREEMENT (the "Agreement"), is made and entered into as of the ___ day of _____, 2023 by and between the City of Sheboygan, Wisconsin, a municipal corporation of the State of Wisconsin, with its principal offices located at 828 Center Avenue, Sheboygan, WI 53081 (hereinafter "City"), and Vue 14 LLC, a Wisconsin limited liability company, with its principal offices located at 24 S. Brooke Street, Fond du Lac, WI 54935-4007 (hereinafter "Developer").

RECITALS

Developer has proposed constructing a new 48-unit affordable housing project in the City of Sheboygan with at-grade parking lots and related improvements (the "Development"). The Development will be located on the Property (as defined herein).

City recently conducted an Affordable Housing Market Study that identified a need for multifamily housing affordable to individuals and families with low and moderate incomes.

The Property is located in the City's Tax Incremental District No. 17 (the "District"), a rehabilitation district pursuant to § 66.1105, Wis. Stats. ("State Tax Increment Law"), which the City established in September 2018. The District was established for the purpose of making public improvements in the area so as to promote business redevelopment activity, attract and retain developments, and encourage further private investment in local businesses and residences, thereby providing long-term tax benefits to the City and the other overlying tax jurisdictions.

The City is authorized, by Section 66.1105(9)(a) of Wisconsin Statutes, as amended, to pay Project Costs (as defined in the State Tax Increment Law) from the special fund of the District or from the proceeds of municipal obligations issued under Wisconsin Statutes, as amended.

The City is authorized by Section 66.1105(3)(e) of Wisconsin Statutes, as amended, to enter into any contract or agreement necessary or convenient to implement the provisions and effectuate the purposes of the TID Project Plan (as defined herein), as it may be amended.

The Project (as defined herein) to be undertaken by the Developer, as described herein, is of particular importance to the City as it provides additional opportunities for affordable housing.

The TID Project Plan includes an upfront "Development Incentive Payment" from the District as eligible Project Costs for purposes of carrying out the TID Project Plan.

The City has also received funding from the United States Department of Treasury under the American Rescue Plan Act, given to assist local municipalities negatively impacted by the COVID-19 public health emergency, for affordable housing and plans to provide an upfront grant in the amount of \$1,200,000 from this allocation towards the cost of developing and constructing the Development (the "ARPA Grant").

The City established in 2020 an Affordable Housing Fund to provide funding to increase/improve the supply of safe, quality, affordable housing and revitalize central city neighborhoods. The City plans to provide an upfront grant in the amount of \$1,500,000 from the Affordable Housing Fund towards cost of developing and constructing the Development (the "AHF Grant").

The City proposes to enter into this Development Agreement with the Developer to achieve the objectives of the District, the American Rescue Plan Act and the Affordable Housing Fund and to facilitate the implementation of the TID Project Plan, as it may be amended, and the City is prepared to provide financial assistance to the Developer through development incentives in order to bring about the continued development of the Project in accordance with this Agreement.

The City desires to make the proceeds of the ARPA Grant, the AHF Grant and the Development Incentive Payment available to The Wisconsin Partnership For Housing Development, Inc. ("WPHD") conditioned upon WPHD loaning the proceeds of the ARPA Grant, the AHF Grant and the Development Incentive Payment to the Developer for Developer's use in connection with the Project.

WPHD is a nonprofit corporation that was formed, in part, to foster the development of affordable housing such as the Development. Developer desires to assist WPHD in the furtherance of its charitable purposes and has requested WPHD to participate in the development of the Project.

Developer has acquired real property within the proposed boundaries of the District more particularly described in Exhibit A attached hereto (the "Property") and intends to develop the Property through the construction of the Development at an estimated Hard Cost (as defined herein) of \$11,000,000 (Eleven Million Dollars.)

It is in the mutual interest of all parties to proceed with development of the Project, and in return for the benefits to be derived therefrom, the City is prepared to provide financial assistance to the Project through development incentives in order to bring about the development and thereby promote the sound growth of the City.

The Project proposed by the Developer would not be economically feasible within the foreseeable future without financial assistance from City to the Project as provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

All capitalized terms used herein and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

"Affordable Housing Fund" or "AHF" means the special revenue fund established by the City to provide funding to increase/improve the supply of safe, quality, affordable housing and revitalize central city neighborhoods.

"Agreement" or "Development Agreement" means this Agreement, as the same may be from time to time modified, amended or supplemented.

"ARPA" means the American Rescue Plan Act pursuant to which the U.S. Department of Treasury is authorized to provide state and local fiscal recovery funds to local governments for purposes of making significant investments with long-term benefits to help municipalities recover from the negative effects of the COVID-19 pandemic, focusing on affordable housing, revitalization and access and delivery of public services.

"Developer" means VUE 14 LLC and its permitted successors and assigns.

"Development Incentive Payment" means an upfront payment of Three Hundred Thousand Dollars (\$300,000) to WPHD funded from the District.

"Events of Default" means any of the events described in Article X hereof.

"Hard Costs" means funds spent physically constructing the Project. Such costs may include site work; remediation; architectural and civil costs; remediation; utilities serving the Project; contractor, subcontractor, and construction management fees; storm water facilities (both offsite and onsite); geotechnical and other testing; construction completion and payment and performance bonds; and all labor and materials required.

"Plans and Specifications" means the plans and specifications for the Project prepared by the Developer which have been approved by the City Plan Commission in accordance with all procedures and requirements of the City for such approvals.

"Project" means the construction of a housing complex with 48 affordable units, and associated at-grade parking lots, located on the Property as proposed by Developer herein.

"Substantial Completion" means completion of the Project evidenced by: (i) issuance by the Project architect of a certificate of substantial completion (but not including weather-related delays of landscaping and related exterior

work); and (ii) issuance by City of a temporary or permanent certificate of occupancy for the Development.

"TID Project Plan" means the Project Plan for Tax Incremental Financing District No. 17 of the City of Sheboygan, Wisconsin.

ARTICLE II. OVERVIEW OF THE PROJECT

The Project consists of the construction of a housing complex with 48 affordable housing apartment units, and associated parking upon the Property, the conceptual plans of which are attached hereto as Exhibit B. The Project will be subject to income and rent restrictions as set forth in the extended use agreement entered into by Developer and the Wisconsin Housing and Economic Development Authority ("WHEDA") in connection with the allocation of the Tax Credits (as defined herein) to the Project. Construction shall commence by September 1, 2023 and shall be Substantially Completed within sixteen months thereafter (subject to extension for Force Majeure), at an estimated Hard Cost of \$11,000,000 (Eleven Million Dollars.)

ARTICLE III. CONDITION PRECEDENT TO DEVELOPER AND CITY OBLIGATIONS

The parties acknowledge that Developer has been awarded an allocation of 4% Low-Income Housing Tax Credits (the "Tax Credits") from WHEDA. Developer's obligations hereunder shall be contingent upon Developer obtaining, in Developer's sole discretion, commitments for equity, grant funding, and debt financing in amounts sufficient to complete the Project. No later than September 1, 2023, Developer may elect to terminate this Agreement for failure to satisfy this condition by i) delivering written notice, ii) refunding all funds held by the Developer resulting from payments made by the City under this Agreement, and iii) providing releases related to all funds held in escrow and resulting from payments made by the City under this Agreement. Upon such termination, the parties shall have no further obligation to each other except that as expressly survive termination of this Agreement. The conditions precedent to City's obligation to make the proceeds of the ARPA Grant, the AHF Grant and the Development Incentive Payment are set forth herein.

**ARTICLE IV. REPRESENTATIONS AND
WARRANTIES OF THE DEVELOPER**

The Developer makes the following representations and warranties which the City may rely upon in entering into this and all other agreements with the Developer and granting all approvals, permits and licenses for the Project.

(A) Developer is a duly organized and existing limited liability company in current status under the laws of the State of Wisconsin.

(B) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by Developer, and no other or further acts or proceedings of Developer are necessary to authorize and approve the execution, delivery and performance of this Agreement and the matters contemplated hereby. This Agreement, and the exhibits, documents and instruments associated herewith and made a part hereof, have been duly executed and delivered by Developer and constitute the legal, valid and binding agreement and obligation of Developer, enforceable against it in accordance with their respective terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally, and by general equitable principles.

(C) There are no lawsuits filed or pending, or to the knowledge of Developer, threatened against Developer that may in any way jeopardize the ability of Developer to perform its obligations hereunder.

(D) Prior to receiving the proceeds of the ARPA Grant, AHF Grant or Development Incentive Payment, the Developer will have sufficient funds through equity investment in Developer, through lending sources, and through other funding mechanisms for the completion of the Project and will provide evidence thereof to the City. Developer shall, from time to time upon the reasonable request of the City, provide evidence thereof satisfactory to the City. The Developer shall promptly notify the City

of any material adverse change in the Developer's financial condition.

(E) The Project to be constructed will be fully subject to taxation under Wisconsin property tax laws until the Expiration Date (as defined herein). Developer, for itself, its successors and assigns, shall not, prior to the Expiration Date, (i) take any action(s) or file any claim(s) seeking, promoting or encouraging exemption of the Project in whole or part from taxability under property tax laws, or (ii) advocate any position or change in state law which would jeopardize or call into question the taxability of the Project.

(F) The City's obligation to provide the ARPA Grant is contingent upon City, Developer and WPHD entering into a grant agreement related to the ARPA Grant ("Grant Agreement") in a form approved by the City Attorney.

ARTICLE V. UNDERTAKINGS OF THE DEVELOPER

5.1 Construction of the Project. The Developer shall commence construction of the Project by September 1, 2023. Developer shall achieve Substantial Completion within sixteen months thereafter (subject to extensions for Force Majeure).

5.2 Compliance with Codes, Plans and Specifications, Etc. The building and other improvements to be constructed upon the Property, the construction thereof, and their uses shall comply with all applicable codes and ordinances of the City, and with all pertinent provisions of this Agreement and the Plans and Specifications. The acceptance of this Agreement and granting of any and all approvals, licenses and permits by the City shall not obligate the City to grant any variances, exceptions or conditional use permits, or approve any building the City determines not to comply with the City codes and ordinances. All work done by or for Developer shall be in accordance with all applicable City codes and ordinances, the Plans and Specifications, and other applicable laws and regulations. All plans for each aspect of the work must be approved by the City (which may delegate such approvals to its staff in accordance with City codes, ordinances and policies). If permits or approvals are required for any such work, issuance of such permits or approvals is a condition to commencement of such

work, and Developer will at its sole cost and expense take such action as required to seek such approvals and permits.

5.3 Taxability of the Project. Developer hereby represents that the contemplated Project will be fully subject to real estate and personal property taxes under state law until the Expiration Date (as defined herein). Prior to the Expiration Date, Developer shall take no action at Open Book, Board of Review, or in Circuit Court to reduce the assessed valuation of the Project to a value lower than that necessary to create an annual tax payment less than the greater of i) \$40,000 or ii) for each year after 2024 the product of \$40,000 multiplied by average increase in residential tax bills within the City of Sheboygan since 2024. Developer further represents and agrees for itself, its successors and assigns, that it shall take no action(s) or advocate any position or change in state law prior to the Expiration Date which would jeopardize or call into question the taxability of the Project or eliminate real estate or personal property taxation in the State of Wisconsin. This section shall remain in place until the termination of the District on August 20, 2045, or such earlier date as the City shall cause the termination of said District ("Expiration Date").

5.4 Payments in Lieu of Taxes. Notwithstanding the above, in the event that the Project is determined at any time to be exempt from real and/or personal property taxation under state law, or in the event that a particular tax is eliminated or repealed, Developer, for itself and its successors and assigns, agrees to make payments in lieu of taxes to the City, County, school district, and any other property taxing jurisdictions in the amounts and within the time periods that would otherwise be required as if the Development were fully taxable, in recognition of the valuable governmental services and benefits available and/or provided to the Development. This section shall remain in place until the Expiration Date.

5.5 Good Faith Hiring and Contracting Efforts. Developer agrees to exercise good faith in striving whenever possible to hire, retain, and contract with qualified individuals and businesses residing and/or based in the City of Sheboygan, as well as veteran- and minority-owned businesses in connection with the construction of the Project. Developer agrees to undertake reasonable efforts to make opportunities known and available to local residents and businesses, such as advertising

in publications and internet resources frequented by such residents and businesses.

ARTICLE VI. DEVELOPER GUARANTEE TO CITY

6.1 Minimum Investment. Developer for itself, its successors and assigns, hereby guarantees to construct or provide for private construction of the Project with a minimum investment of \$11,000,000 (Eleven Million Dollars.) ("Minimum Investment"). Costs and expenses counted towards the Minimum Investment include all Hard Costs expended by Developer in connection with the construction of the Project. Developer shall provide the City a statement of costs and expenses incurred in the construction of the Project no later than sixty (60) days after Substantial Completion of the Project as required by this Agreement, or such later date as the parties may hereafter agree. Such statement shall be certified by a certified public accountant.

ARTICLE VII. UNDERTAKINGS OF THE CITY

7.1 Development Incentive Payment. The City will grant the proceeds of the \$300,000 Development Incentive Payment to WPHD and WPHD will loan the proceeds of the Development Incentive Payment it receives from City to Developer for Developer's use in connection with the development and construction of the Project. The City shall deposit the Development Incentive Payment in a construction escrow account with First American Title Insurance Company, 25 W. Main Street, Suite 400, Madison Wisconsin ("Title Company") at such time as the City issues the building permit for construction of the Project. Such deposit shall be deemed a disbursement of the Development Incentive Payment to WPHD and an advance of the loan proceeds from WPHD to Developer. The City agrees and acknowledges that the Development Incentive Payment shall not be repayable except by Developer i) pursuant to termination of this Agreement pursuant to Article III above, or ii) pursuant to Article X below in connection with a default by Developer in the performance of its obligations under this Agreement.

7.2. ARPA Payment. The City will grant the proceeds of the ARPA Grant (in amount equal to \$1,200,000) to WPHD pursuant to the terms of the Grant Agreement). The City acknowledges that WPHD will loan the proceeds of the ARPA Grant to Developer for

Developer's use in connection with the development and construction of the Project. The City shall deposit the ARPA Grant proceeds, in a single disbursement, in a construction escrow account with Title Company at the time of the closing of the construction financing and admission of the Investor Member into Developer. Notification of the date of such closing and admission shall be provided to the City at least ten days in advance. Such deposit shall be deemed a disbursement of the ARPA Grant to WPHD and an advance of the loan funded with ARPA Grant proceeds from WPHD to Developer. The City agrees and acknowledges that the ARPA Grant shall not be repayable except as set forth in the Grant Agreement or as a result of the failure of the Developer to proceed with construction.

7.3 AHF Payment. The City will grant the proceeds of the AHF Grant (in amount equal to \$1,500,000) to WPHD and WPHD will loan the proceeds of the AHF Grant it receives from City to Developer for Developer's use in connection with the development and construction of the Project. The City shall deposit the AHF Grant proceeds, in a single disbursement, in a construction escrow account with Title Company on or before September 1, 2023. Such deposit shall be deemed a disbursement of the AHF Grant to WPHD and an advance of the loan funded with AHF Grant proceeds from WPHD to Developer. The City agrees and acknowledges that the AHF Grant shall not be repayable except by Developer i) pursuant to termination of this Agreement pursuant to Article III above, or ii) pursuant to Article X of this Agreement in connection with a default by Developer in the performance of its obligations under this Agreement.

7.4 Purpose. The Development Incentive Payment made under this Agreement is provided by the City as part of a negotiated, lawful contract with Developer in exchange for consideration, including requirements to develop the Property in a manner that inures to the benefit of the general public. Said payments are in no way tied to future property tax payments and do not provide any future tax break, nor do they refund already paid taxes.

ARTICLE VIII. CONDITIONS TO THE UNDERTAKINGS OF THE CITY

As a condition to each and all of the covenants, agreements and other obligations of the City under this Agreement, all of the following shall occur, in addition to all other requirements and conditions set forth in this Agreement:

(A) All representations, guarantees, and warranties of Developer set forth in Articles III, IV, and V, and other representations and warranties of Developer in this Agreement and in all agreements expressly referred to herein shall be true, complete and correct.

(B) All covenants and obligations of Developer under this Agreement are duly performed, observed and satisfied.

(C) No Event of Default by Developer has occurred, or with the giving of notice or lapse of time would occur.

ARTICLE IX. INDEMNIFICATION OF THE CITY

The Developer hereby indemnifies and holds harmless the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section collectively referred to as the "Indemnified Parties"), against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the development of the Project, provided that the foregoing indemnification shall not be effective for any negligent acts or willful misconduct of the Indemnified Parties in fulfilling the obligations of the City or its agents as set forth in this Agreement. Except for any willful misrepresentation, gross negligence, or willful misconduct of, or breach of this Agreement by, the Indemnified Parties, the Developer will protect and defend the Indemnified Parties from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the action or inaction of the Developer (or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership and operation of the Project. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

ARTICLE X. DEFAULT/REMEDIES

10.1 Events of Default. An Event of Default is any of the following:

(A) A failure by the Developer to cause Substantial Completion of the Project to occur pursuant to the terms, conditions and limitations of this Agreement, or the failure of the Developer to perform or observe any and all covenants, conditions, obligations or agreements on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the Developer of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the Developer commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed within ninety (90) days of the date of written notice to Developer, then the event will not be an Event of Default.

(B) The failure by the City to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the City of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the City commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed within ninety (90) days of the date of notice to the City, then the event will not be an Event of Default.

(C) Developer becomes insolvent or is the subject of bankruptcy or insolvency proceedings.

City agrees to give Developer's tax credit investor ("Investor Member") written notice of any default under this Agreement so long as City has been provided the name and address of the Investor Member. Investor Member may, at Investor Member's option, cause the cure of such default within the cure periods set forth above. The City agrees to accept any cure by Investor Member as if such cure were made by Developer.

10.2 Remedies on Default. Whenever an Event of Default occurs and is continuing, the other non-defaulting party may take any one or more of the following actions:

(A) The non-defaulting party may immediately suspend their performance under this Agreement from the time any notice of an Event of Default is given until they receive assurances from the defaulting party deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement.

(B) The non-defaulting party may take any action, including legal or administrative action, in law or in equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the defaulting party under this Agreement.

10.3 No Remedy Exclusive. No remedy or right conferred upon or reserved to the City or Developer in this Agreement is intended to be exclusive of any other remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

10.4 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

10.5 Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and either the non-defaulting party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party shall, on demand thereof, pay the non-

defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

ARTICLE XI. FORCE MAJEURE

No party will be responsible to any other party for any resulting losses if the fulfillment of any of the terms of this Agreement (other than any financial obligation) is delayed or prevented by war, strikes, fires, floods, pandemic, or epidemic, acts of God, and other reasons wholly without the control of the party with whose performance there was interference, and which, by the exercise of reasonable diligence, such party is unable to prevent, and the time for performance will be extended by the period of delay occasioned by any such cause.

ARTICLE XII. ADDITIONAL PROVISIONS

12.1 Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer's successors or assigns on any obligations under the terms of this Agreement.

12.2 Incorporation by Reference. All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

12.3 No Implied Approvals. Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of Developer to obtain all necessary approvals, licenses and permits from the City in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the City to approve or disapprove the Development Plan, Plans and Specifications, or any part thereof, or to impose any limitations, restrictions and requirements on

the development, construction and/or use of the Project as a condition of any such approval, license or permit; including, without limitation, requiring any and all other development and similar agreements.

12.4 No Assignment. Developer may not assign its rights in this Agreement without the express prior written consent of the City. Developer shall not sell, transfer or convey the Property unless and until an occupancy permit has been issued. No owner of the Property may subdivide the Property nor sell, transfer or convey less than the entire Property. Notwithstanding the foregoing, no consent shall be required for: (i) a transfer of the Property pursuant to any foreclosure proceedings or a transfer by deed (or other instrument of conveyance) in lieu of any such foreclosure to any lender providing financing for the Project, or thereafter by such lender to a third party; or (ii) a collateral assignment of this Agreement for the benefit of Developer's lenders.

12.5 No Joint Venture. Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership or joint venture between or among such parties.

12.6 Time of the Essence. Time is deemed to be of the essence with regard to all dates and time periods set forth herein or incorporated herein.

12.7 Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

12.8 Notices. Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested, to the parties' respective addresses as follows or such other address designated in a notice to the other party pursuant to the terms of this section 12.8:

To the City: City of Sheboygan, Wisconsin
 828 Center Ave.
 Sheboygan, WI 53081
 Attn: City Clerk

with a copy to:
City Attorney
City of Sheboygan, Wisconsin
828 Center Ave., Suite 210
Sheboygan, WI 53081

To the Developer: VUE 14 LLC
c/o Commonwealth Holdings II, LLC
24 S. Brooke Street
Fond du Lac, WI 54935-4007
Attn: Dan Kroetz

with a copy to:

Reinhart Boerner Van Deuren s.c.
1000 N. Water Street, Suite 1700
Milwaukee, WI 53202
Attn: William R. Cummings

12.9 Entire Agreement. This document and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer and the City with respect to the matters set forth herein. This Agreement may be modified only by a writing signed by all parties.

12.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

12.11 Cooperation. The City and the Developer agree to cooperate in the prosecution of applications made by either party for any governmental certificates or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use and occupancy of the Property. The City and the Developer each will at any time, or from time to time at the written request of the other, sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

12.12 Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed an original.

12.13 Recording. This agreement or a memorandum of this Agreement shall be recorded in the Office of Sheboygan County

Register of Deeds against the Property at the cost of the Developer.

12.14 Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and permitted assigns.

12.15 Fees. Upon execution of this Agreement, and thereafter upon request of the City, the Developer shall reimburse the City for all legal, consulting and other fees and expenses incurred in connection with the preparation of this Agreement and other documents and agreements referred to herein in an amount not to exceed \$35,000.

12.16. The Agreement shall terminate as of the Expiration Date and the parties shall have no further obligations to each other except for any obligations which expressly survive termination of this Agreement.

12.17 ARPA Funding Requirements. The Grant Agreement shall incorporate the "City of Sheboygan Terms and Conditions for Contracts Funded with Federal Grants Subject to the Uniform Guidance," a copy of which is attached as Appendix A and made a part of this Agreement by reference. The Grant Agreement shall be effective only upon Developer's signing the various certifications attached to the Appendix.

[Signature Page Follows]

**SIGNATURE PAGE FOR
DEVELOPMENT AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF SHEBOYGAN, WISCONSIN

BY: _____
Ryan Sorenson, Mayor

ATTEST: _____
Meredith De Bruin, City Clerk

VUE 14 LLC

By: View 14 MM, LLC,
its managing member

By: Commonwealth Holdings II,
LLC, its member

BY: _____
Kristi Morgan, Manager

This document authorized by and in accordance with Res. No. _____-22-23.

EXHIBIT A

The Property

PARCEL 1:

LOTS 2, 3, 4 AND THE EAST 5 FEET OF LOT 5 IN BLOCK 247, EXCEPT THAT PART OF LOTS 2 AND 3 SOLD TO THE RAILROAD, OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN, TOGETHER WITH THE NORTH ½ OF THE VACATED ALLEY ADJOINING SAID LOTS TO THE SOUTH SAID LAND BEING IN THE CITY OF SHEBOYGAN, COUNTY OF SHEBOYGAN, STATE OF WISCONSIN.

TAX PARCEL NO. 59281506240

PARCEL 2:

THE WEST 55 FEET OF LOT 5 AND ALL OF LOT 6, BLOCK 247, OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN, TOGETHER WITH THE NORTH ½ OF THE VACATED ALLEY ADJOINING SAID LOTS TO THE SOUTH, SAID LAND BEING IN THE CITY OF SHEBOYGAN, COUNTY OF SHEBOYGAN, STATE OF WISCONSIN.

TAX PARCEL NO. 59281506260

PARCEL 3:

THE NORTH 1/2 OF LOTS 7, 8, 9, 10 AND 11, BLOCK 247, ORIGINAL PLAT, CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN, TOGETHER WITH THE SOUTH ½ OF THE VACATED ALLEY ADJOINING SAID LOTS TO THE NORTH, IN THE CITY OF SHEBOYGAN ACCORDING TO THE RECORDED PLAT THEREOF.

TAX PARCEL NO. 59281506350

PARCEL 4:

ALSO, ALL THAT PART OF LOTS 1, 2 AND 3, IN SAID BLOCK 247, ORIGINAL PLAT OF THE CITY OF SHEBOYGAN, TOGETHER WITH THE NORTH ½ OF THE VACATED ALLEY ADJOINING SAID LOTS TO THE SOUTH, IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1, DISTANT 50 FEET NORTHERLY FROM THE SOUTHEAST CORNER OF SAID LOT, THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE TO A POINT ON THE WEST LINE OF SAID LOT 1, DISTANT 30 FEET NORTHERLY FROM THE SOUTHWEST CORNER THEREOF; THENCE SOUTHWESTERLY

ALONG A STRAIGHT LINE TO A POINT ON THE SOUTH LINE OF SAID LOT 3, DISTANT 30 FEET WESTERLY FROM THE SOUTHEAST CORNER THEREOF; THENCE SOUTHERLY AT RIGHT ANGLES TO THE SOUTH LINE OF SAID LOT 3 TO A POINT ON THE CENTER LINE OF SAID VACATED ALLEY, THENCE WESTERLY ALONG SAID CENTER LINE TO A POINT ON THE EAST LINE OF SOUTH 14TH STREET, THENCE SOUTHERLY ALONG SAID EAST LINE TO THE NORTHWEST CORNER OF SAID LOT 7, THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOTS 7, 8, 9, 10 AND 11, TO THE NORTHEAST CORNER OF SAID LOT 11, THENCE NORTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE TO A POINT ON THE CENTER LINE OF SAID VACATED ALLEY, THENCE EASTERLY ALONG SAID CENTER LINE TO A POINT ON THE SOUTHERLY EXTENSION OF THE EAST LINE OF SAID LOT 1, THENCE NORTHERLY ALONG THE EAST LINE AND THE SOUTHERLY EXTENSION OF SAID LOT 1 TO THE POINT OF BEGINNING.

TAX PARCEL NO. 59281506230

EXHIBIT B

Conceptual Plans

[See attached]

APPENDIX A

CITY OF SHEBOYGAN

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

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

Background and Purpose

The American Rescue Plan Act (“ARPA”) was passed in March 2021. ARPA provided \$65 billion in recovery funds for cities across the country. The City of Sheboygan (the “City”) received an allocation of recovery funds (the “ARPA funds”), and has approved the use of a portion of its ARPA funds to provide aid for affordable housing projects. In order to receive the ARPA funds, the City agreed to certain obligations. Broadly speaking, the City is required to comply with all applicable federal statutes, regulations, and executive orders, and to “provide for such compliance by other parties in any agreements it enters into with other parties relating to [the ARPA funds].”

The purpose of these Terms and Conditions to address Developer’s compliance with all applicable federal statutes, regulations, and executive orders.

1. **Developer’s Obligations.** As a condition of receiving ARPA funds from the City as part of aid for affordable housing projects, Developer agrees to comply with all applicable federal statutes, regulations, and executive orders. Developer shall disclose in writing to the City any potential conflict of interest affecting the Payment in accordance with 2 C.F.R. § 200.112. Developer shall provide any information necessary to the City in order for the City to comply with its reporting obligations related to the ARPA funds.

2. **Compliance with Statutes and Regulations.** In addition to the specific provisions in these Terms and Conditions, statutes and regulations prohibiting discrimination applicable to this contract may include, without limitation:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance
- b. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance

d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance

e. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state or local governments or instrumentalities or agencies thereto

Federal regulations applicable to this contract may include, without limitation:

a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200), other than such provisions as Treasury may determine are inapplicable and subject to such exceptions as may be otherwise provided by Treasury

b. Universal Identifier and System for Award Management (SAM) (2 C.F.R. Part 25) (including the award term set forth in Appendix A to 2 C.F.R. Part 25)

c. Reporting Subaward and Executive Compensation Information (2 C.F.R. Part 170) (including the award term set forth in Appendix A to 2 C.F.R. Part 170)

d. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) (2 C.F.R. Part 180) (including the requirement to include a term or condition in all lower tier covered transactions)

e. Recipient Integrity and Performance Matters

f. Governmentwide Requirements for Drug-Free Workplace (31 C.F.R. Part 20)

g. New Restrictions on Lobbying (31 C.F.R. Part 21)

h. Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations

i. Generally Applicable Federal Environmental Laws and Regulations

3. **Title VI Assurances.** In addition to the obligations listed above, as a condition of receiving the Payment, the Developer agrees to:

a. Ensure its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

b. Acknowledge that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English

Proficiency (LEP). The Developer understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, the Developer shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. The Developer understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Developer's programs, services, and activities.

c. Consider the need for language services for LEP persons when the Developer develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

d. Acknowledge that compliance with the Assurances is binding upon the Developer and the Developer's successors, transferees, and assignees for the period in which federal financial assistance is provided.

e. Require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with the Assurances in this Title VI Assurances section.

f. Comply with, and include in any contract subject to Title VI and its regulations as follows:

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

4. **Amendment Permitted.** This list of Federally Required Contract terms may be amended by City in the event that the applicable federal grant providing funding for this Agreement contains additional required terms.

5. **Debarment and Suspension.** Developer represents and warrants that, as of the execution of this Contract, neither Developer nor any subcontractor or sub-consultant performing work under this Contract (at any tier) is included on the federally debarred bidder's list listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189)

and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” If at any point during Contract’s term Developer or any subcontractor or sub-consultant performing work at any tier is included on the federally debarred bidder’s list, Developer shall notify City immediately. Developer’s completed Vendor Debarment Certification is attached hereto and incorporated herein.

6. **Record Retention.** Developer certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Developer further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of five (5) years after it receives City notice that City has submitted final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed. Unless Developer is functioning as a sub-recipient of grant funding, rather than as a contractor, this requirement is in addition to, and not in place of, City’s public records retention requirements set forth elsewhere herein. In the event of conflict between local and federal retention periods, the longer retention requirement shall control.

7. **Procurement of Recovered Materials (Applies Only if the Work Involves the use of Materials).** Pursuant to 2 CFR §200.323, Developer represents and warrants that in its performance under the Contract, Developer shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

8. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** If this is a contract or sub-grant in excess of \$150,000, Developer must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

9. **Energy Efficiency.** Developer certifies that it will comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

10. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352). Developer certifies that:

10.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Developer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative

agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.

10.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Developer shall request from City and provide, completed, to City the “Disclosure Form to Report Lobbying,” in accordance with its instructions as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96).

10.3. Developer shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

10.4. Developer’s completed Byrd Anti-Lobbying Certification is attached hereto and incorporated herein.

11. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (Applies Only to Funding Over \$100,000, When Laborers or Mechanics are Used).** Developer must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Developer must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

12. **Right to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any applicable implementing regulations.

13. **Federal Government is Not a Party.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to City, Developer, or any other party pertaining to any matter resulting from the Contract.

14. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** If this is a “prime construction contract,” in its performance under the Contract, Developer shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and

Assisted Construction”). In accordance with the statute, Developer is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Developer is required to pay wages not less than once a week. **Note: this paragraph is not applicable to contracts paid for solely with ARPA SLFRF moneys.**

15. **Copeland “Anti-Kickback” Act (40 U.S.C. 3145).** If this is a “prime construction contract” in excess of \$2,000, Developer shall, in its performance of the contract, comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that Developer is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

16. **Equal Employment Opportunity.** Developer shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by EO 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

17. **Termination for Convenience.** If this Contract is for an amount in excess of \$10,000, the Contract shall address termination for convenience and the manner by which it may be effected and the basis for settlement.

18. **Termination for Cause.** If this Contract is for an amount in excess of \$10,000 and it lacks a termination for cause clause, the following applies: If Developer shall fail to fulfill in timely and proper manner any of its obligations or violate any of the provisions of this Contract; City shall have the right to terminate this Contract. City shall notify Developer of its intent to terminate, by giving Developer prior written notice at least five (5) business days before the effective date of the termination, identifying the alleged deficiencies in Developer’s performance, and shall give Developer thirty (30) days to cure such deficiencies prior to termination. In such event, all deliverables completed by Developer as of the date of termination shall, at the option of City, become property of City. Notwithstanding the above, Developer shall not be relieved of liability to City for damages sustained by City by virtue of any breach of the Contract, and City shall retain its remedies under law.

19. **Executive Order 13202- Preservation of Open Competition and Government Neutrality Towards Contractors’ Labor Relations on Federal and Federally Funded Construction Contracts.** These requirements apply to recipients and sub-recipients of awards and cooperative agreements and to any manager of a construction project acting on their behalf. These individuals or employees of one of these organizations must ensure that the bid specifications, project agreements, and other controlling documents do not: (a) require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or (b) otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to

become or remain signatories, or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s). Contractors or subcontractors are not prohibited from voluntarily entering into agreements with one or more labor organizations.

20. **Domestic Preferences for Procurements.** Pursuant to 2 CFR §200.322, as appropriate, and to the extent consistent with law, Developer should, to the greatest extent practicable under this Contract, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts and purchase orders for work or products under this Contract.

21 **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** Developer shall not use funds under this Contract to purchase, or enter into subcontracts to purchase, any equipment, services, or systems that use telecommunications equipment or services as a substantial or essential component of a system that is subject to 2 CFR § 200.216 (generally, video surveillance or telecommunications equipment produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, their subsidiaries or affiliates, or any entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by the government of a foreign country). In the event Developer identifies covered telecommunications equipment or services that constitute a substantial or essential component of any system, or as critical technology as part of any system that is subject to 2 CFR § 200.216, during Contract performance, Developer shall alert City as soon as possible and shall provide information on any measures taken to prevent recurrence.

22. **Prohibitions on Discrimination.** Developer agrees to comply with the following as applicable:

22.1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.

22.2. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

22.3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.

22.4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.

22.5. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs,

activities, and services provided or made available by state or local governments or instrumentalities or agencies thereto.

22.6. Title IX of the Education Amendments of 1972 (Title IX), (20 U.S.C. 1681 et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 28, which prohibits discrimination on the basis of sex in any federally funded education program or activity

23. **Financial and Program Management** As subrecipient of federal funds, Developer is required to comply with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, other than such provisions as Treasury may determine are inapplicable to this Agreement and subject to such exceptions as may be otherwise provided by Treasury.

23.1. Financial Management: Developer shall maintain records and financial documents sufficient to show compliance with section 603(c) of ARPA, Treasury's regulations implementing that section, and guidance issued by Treasury. Developer shall grant the Treasury Office of Inspector General and the Government Accountability Office or their authorized representatives, the right of access to these records in order to conduct audits or other investigations. Financial records, supporting documents, statistical records and all other records pertinent to the services purchased pursuant to this Agreement shall be retained for a period of five (5) years after all of the City's funds have been expended or returned to the Treasury Department, whichever is later.

23.2. Audit Requirements. Developer agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) or upon request. Developers who expend more than \$750,000 in federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F.

23.3 Recipient Integrity and Performance Matters. Developer agrees to provide any information requested by the City in order to comply with 2 CFR Appendix XII to Part 200

23.4 SAM.gov Requirements. Developer is required to comply with 2 CFR Part 25 (System for Award Management ("SAM")) and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information) unless exempted pursuant to 2 CFR § 25.110.

24. **Drug-Free Workplace.** Developer acknowledges that as a subrecipient of federal funds, it is subject to 31 CFR Part 20 (Governmentwide Requirements for Drug-Free Workplace)

25. **Relocation Assistance.** Where an agreement or project requires the relocation of persons or such person's personal property, Developer is advised that 42 USC 4601-4655 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) may apply.

26. **Incorporation of Required Clauses and Conditions.** To the extent any applicable federal statute, regulation, or executive order requires any clause or condition to be included or

incorporated into this Agreement between the City of Sheboygan and the Developer, and that term or condition has not been expressly included or incorporated, it is included or incorporated by reference. To the extent the Developer is required, by this Agreement or by any applicable federal statute, regulation, or executive order, to include or incorporate any clause or condition into any subsequent agreement, the Developer agrees to ensure that the required term is included.

27. **Hatch Act.** No personnel employed under this Agreement, shall be in any way or to any extent, engaged in the conduct of political activities in violation of 5 U.S.C. Ch. 15.

28. **Encouragement to Developer Regarding Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), the City encourages its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving and to establish workplace safety policies to decrease accidents caused by distracted drivers.

CERTIFICATION REGARDING LOBBYING

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

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

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

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

_____ Date: _____

Signature of Developer's authorized official

(Print name of person signing above)

(Print title of person signing above)

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

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

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

Date: _____

Signature of Developer’s authorized official

(Print name of person signing above)

(Print title of person signing above)