

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is made and entered into as of March 4, 2024 by and between the City of Sheboygan, Wisconsin ("City"), and Kapur and Associates, Inc. ("Kapur"). Each of the foregoing is a "Party" and collectively the foregoing are "Parties" to the Agreement.

1. Purpose and Services. The Parties are entering into this Agreement to set forth the terms and conditions on which the City shall, engage Kapur, as an independent contractor, to provide interim Department of Public Works (DPW) assistance. This assistance shall in general include oversight of the operations of the City's Director of Public Works, and the City Engineer positions. Services to be provided by Kapur, at the request of the City Administrator may include, but shall not be limited to:

- (a) Coordination as directed for the various tasks listed under Appendix A related to DPW Projects – City Development including but not limited to economic development, infrastructure planning and implementation, civil engineering, surveying, fiscal and property tax planning, project management and administrative services related to the City's active Tax Incremental Districts. Providing regular updates to the City Administrator.
- (b) Oversight, coordination and execution for all tasks listed under DPW Projects – Administration presented on Appendix A. Moving projects forward by self-execution or coordinating with DPW staff. Providing regular updates to the City Administrator.
- (c) Operation, oversight and execution of tasks currently listed under DPW Projects – Engineering presented on Appendix A. Coordinate with and engage City engineering staff with appropriate tasks related to the listed Engineering projects. Conduct regular meetings with staff and provide updates to the City Administrator on all active projects.
- (d) Conduct weekly meetings with superintendents and supervisors overseeing DPW Projects – Motor Vehicle, Traffic Control, City Buildings, Parks and Forestry, Streets and Sanitation, and Wastewater services listed on Appendix A. Provide weekly updates to the City Administrator for each group.
- (e) Attend Common Council, Planning Commission and Public Works Committee meetings on a regular basis. Attend developer meetings and internal staff meetings as needed.
- (f) Working cooperatively with City staff, adjunct staff and other third-party contractors on all DPW matters.

- (f) Supporting the recruitment and development of new development throughout the city.

2. Staff and Subcontractors. In addition to Kapur staff, Kapur may retain subcontractors and other qualified, third-party independent contractors selected by Kapur, from time to time, to provide certain supporting DPW assistance throughout the City, consistent with the terms of this Agreement.

3. Manner of Providing Services. Kapur shall provide any and all requested services with the same degree of care, skill and diligence as exercised in the performance of similar professional services exercised in the ordinary course. The services referenced herein will be provided by Kapur staff during the time period beginning on the date of this Agreement and extending through December 31, 2024. All costs incurred by Kapur in providing services under this Agreement, including but not limited to time and materials, shall be billed by Kapur to the City at Kapur's standard billing rates, and with its standard mark-up, and paid by the City to Kapur.

4. Time Period for this Agreement and Compensation. The services described in this Agreement will be provided as requested by the City Administrator, during the period beginning on the date of this Agreement and extending through December 31, 2024, provided that the term of this Agreement may be renewed annually upon written agreement of the Parties. Agreement can be renewed annually with new rates agreed upon by both parties. Agreement can be terminated with a 30-day written notice.

5. Contract Rates. Kapur shall earn compensation based on time and materials actually incurred by Kapur staff and billed to the City at the following 2024 rates:

- (a) Engineer - Interim \$190/hour
- (b) Municipal Advisor - Interim \$200/hour
- (c) Director of Public Works - Interim \$215/hour
- (d) Materials will be a direct expense with no mark up.

The City may request Kapur to perform general engineering consulting services to aid in facilitating projects and deadlines. Kapur shall earn compensation based on time and materials actually incurred by Kapur staff and billed to the City at the following 2024 rates:

- (a) Project Engineer III \$165/hour
- (b) Project Engineer II \$135/hour
- (c) Project Engineer I \$120/hour
- (d) Staff Engineer II \$125/hour
- (e) Staff Engineer I \$110/hour
- (f) Tech III \$125/hour
- (g) Tech II \$110/hour
- (h) Tech I \$90/hour
- (i) Project Surveyor \$160/hour
- (j) Survey Crew \$150/hour
- (k) Environmental Scientist II \$130/hour

- (l) Environmental Scientist I \$103/hour
- (m) Landscape Architect \$135/hour
- (n) Administrative Assistant \$82/hour
- (o) Materials will be a direct expense with no mark up.

6. Indemnification and Liability.

General. Having considered the potential liabilities that may exist relating to the provision of services under this Agreement, the City and Kapur agree to allocate and limit liabilities in accordance with this Section.

Indemnification. Kapur agrees to indemnify and hold the City harmless from and against legal liability for all judgments, losses, damages, and expenses to the extent such judgments, losses, damages, or expenses are caused by any negligent acts, errors, or omissions of any Kapur employee arising out of such employee's performance of services under this Agreement. In the event judgments, losses, damages, or expenses are caused by the joint or concurrent negligence of Kapur and the City, they shall be borne by each party in proportion to its own negligence.

Limitation of Liability. To the fullest extent permitted by law, the total aggregate liability of Kapur to the City for all judgments, losses, damages, and expenses resulting in any way from the performance of services under this Agreement shall not exceed the total limit of professional liability and excess liability insurance coverage as stated herein. Nothing contained within this agreement is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses, and immunities contained within Wis. Stat. ss. 345.05 and 893.80. To the extent that indemnification is available and enforceable, the City or its insurer shall not be liable in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by Wisconsin law.

7. Insurance. During the term of this Agreement, Kapur shall maintain the following insurance:

- (a) General Liability Insurance, with a combined single limit of \$2,000,000 per occurrence and \$4,000,000 per annual aggregate.
- (b) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each accident.
- (c) Workers' Compensation Insurance in accordance with statutory requirements.
- (d) Professional Liability Insurance, with a limit of \$5,000,000 per occurrence and \$5,000,000 annual aggregate.
- (e) Excess Liability Insurance with a limit of \$5,000,000 per occurrence and \$5,000,000 annual aggregate.

The City shall be named as an additional insured on the general liability, automobile and excess insurance policies. Kapur shall furnish City proof of insurance acceptable to City, which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to City.

8. Third Party Rights. The services provided by Kapur and/or its employees and subcontractors pursuant to this Agreement are for the sole use and benefit of City. Nothing in the Agreement shall be construed to give any rights or benefits to any third party.

9. Governing Law. This Agreement shall be governed by the internal laws of the State of Wisconsin, without application of conflicts of law.

10. Independent Contractor. Kapur is an independent contractor of the City, and the Parties agree that Kapur's services shall be provided under this Agreement consistent with the following terms.

- (a) The City shall provide office space, equipment or support services to Kapur, any employee of Kapur or any subcontractor of Kapur.
- (b) While the City Administrator, may request specific services from Kapur, all Kapur employees shall be solely directed and evaluated by Kapur and not by the City or any official or employee of the City.
- (c) Records of Kapur, its employees and its subcontractors shall at all times remain the sole property of Kapur or its subcontractor generating the records, except to the extent required by applicable open records laws and/or to the extent that the record was expressly funded by or purchased for the City.
- (e) Kapur, its employees and its subcontractors shall strictly adhere to the terms of any confidentiality and/or nondisclosure agreements required by any property owners, end users, businesses, landlords, developers and/or tenants.

None of Kapur, Kapur's employees or any of Kapur's subcontractors nor any of their respective officers, employees, or agents shall be considered to be an employee of the City as a result of the obligations undertaken pursuant to this Agreement.

11. Notices. All notices shall be in writing and shall be deemed received (i) on the same day as personal delivery made by an independent delivery service before 5:00 PM CST (or the next business day if made after that time), (ii) on the next business day if e-mailed with proof of receipt, if delivered before 5:00 PM CST (or the second business day if received after that time), or (iii) on the third business day if sent by US mail, postage prepaid by certified mail to the address specified below:

City: City of Sheboygan
828 Center Avenue, Suite 103
Sheboygan, WI 53081
Attn: Ms. Meredith DeBruin, City Clerk
Cc: Mr. Casey Bradley, City Administrator

Kapur: Kapur and Associates, Inc.
7711 N Port Washington Road
Milwaukee, WI 53217
Attn: Mr. Aaron Groh, P.E.

IN WITNESS WHEREOF, the City and Kapur have executed this Agreement as of March 4, 2024.

CITY:

City of Sheboygan

By: _____
City Mayor – Ryan Sorenson

By: _____
City Clerk – Meredith DeBruin

KAPUR:

Kapur and Associates, Inc.

By:  _____
Manager – Aaron Groh, P.E.

APPENDIX A

DPW Projects

