

<p style="text-align:center">AGENDA STORMWATER UTILITY COMMITTEE</p>

MONDAY, AUGUST 4, 2014
ROOM 202
5:30 P.M.

Patrick Juliana, Chairman
Scott N. Gordon, Vice Chairman
Steve Bostrom

Eric Haugaard
Rhonda Jenkins
Jan Michalski

Approval of minutes of regular meeting held on July 21, 2014.

1. Agreement by and between the City of Kenosha, Wisconsin, a municipal corporation, and the City of Racine Health Department.
2. Development Agreement between the City of Kenosha and the Kenosha Water Utility and 125th Avenue Hotel, LLC and SMMFLP Limited Partnership. (Hampton Inn) **(District 16)** *(City Plan Commission-Approved-Ayes 10:Noes 0) (also referred to Public Works Committee and Board of Water Commissioners) (referred on July 21, 2014 Common Council agenda)*
3. Stormwater Management Practices Maintenance Agreement for Stormwater Management Facilities between the City of Kenosha, Wisconsin (a Municipal Corporation), and 125th Avenue Hotel, LLC (a Wisconsin Limited Liability Company) and SMMFLP Limited Partnership (a Delaware Limited Liability Partnership).
4. Permanent Storm Sewer and Detention Pond Easement and Agreement between 125th Avenue Hotel, LLC and SMMFLP Limited Partnership and the City of Kenosha, Wisconsin.
5. Sanitary Sewer Easement and Agreement by and between SMMFLP Limited Partnership and Kenosha Water Utility.
6. Approval of the Permanent Easement by and between the City *(of Kenosha)* and Stephen F. Estes *(CSM on 7th Avenue & 39th Street). (District 1) (Also referred to Parks Commission)*

INFORMATIONAL: Project Status Report

CITIZENS COMMENTS RELATED ONLY TO JURISDICTION OF STORMWATER UTILITY COMMITTEE

STAFF COMMENTS

ALDERMAN COMMENTS

IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE CALL 653-4050 BEFORE NOON ON THE DATE INDICATED FOR THIS MEETING.

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

STORMWATER UTILITY COMMITTEE
- MINUTES -

MONDAY, JULY 21, 2014
5:30 P.M.

Patrick Juliana, Chairman
Scott N. Gordon, Vice Chairman
Steve Bostrom

Eric Haugaard
Rhonda Jenkins
Jan Michalski

The regular meeting of the Stormwater Utility Committee was held on Monday, July 21, 2014 in Room 202 of the Municipal Building. The following members were present: Chairman Patrick Juliana, Vice Chairman Scott N. Gordon, Aldermen Steve Bostrom, Eric Haugaard, Rhonda Jenkins, and Jan Michalski. The meeting was called to order at 5:31PM. Staff members in attendance were Mike Lemens and Alderman Anthony Kennedy.

Approval of minutes of regular meeting held on July 7, 2014.

It was moved by Alderman Michalski, seconded by Alderman Gordon to approve. Motion passed 6-0.

1. Award of Contract for Project 14-1012 2014 Resurfacing Phase I (18th Avenue – 67th Street to 69th Street, 51st Street – 68th Avenue to 650 feet West, 68th Avenue – 52nd Street to 1050 feet North) to Payne & Dolan, Inc. (Kenosha Wisconsin) in the amount of \$550,000. (Stormwater funds \$40,000) **(Districts 12 & 16)**
It was moved by Alderman Michalski, seconded by Alderman Bostrom to approve. Motion passed 6-0.
2. Proposed Ordinance by Alderperson Anthony Kennedy – To Repeal and Recreate Subsection 1.025 C (of the Code of General Ordinances of the City of Kenosha) Regarding Attire for Members at Meetings of the Common Council. *(PSW Committee approved 5-0)*
A public hearing was held. Alderman Kennedy, sponsor, spoke. After some discussion it was moved by Alderman Bostrom, seconded by Alderman Jenkins to open another public hearing. Motion passed 6-0. Alderman Kennedy spoke again.
It was moved by Alderman Gordon, seconded by Alderman Haugaard to approve. Motion passed 5-1
3. Disbursements for the month of June 2014.
It was moved by Alderman Michalski, seconded by Alderman Haugaard to approve. Motion passed 6-0.

INFORMATIONAL: Project Status Report

ADJOURNMENT - There being no further business to come before the Stormwater Utility Committee, it was moved, seconded and unanimously approved to adjourn the meeting at 5:41PM.



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER
CATHY AUSTIN, P.E.
ASSISTANT CITY ENGINEER
KILE KUHLMEY
SOIL EROSION SPECIALIST

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

1

DEPARTMENT OF STORMWATER UTILITY

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL SWU@KENOSHA.ORG

August 1, 2014

To: Patrick Juliana, Chairman
Stormwater Utility Committee

From: Mike Lemens, P.E.
Director of Public Works

Cc: Eric Haugard
District 1

G. John Ruffolo
District 4

Subject: Agreement by and between the City of Kenosha, Wisconsin, a municipal corporation, and the City of Racine Health Department.

Background Information

Staff received a Wisconsin Coastal Management grant to complete water quality sampling in the Pike River. Julie Kinzelman, with the City of Racine Health Department, has been working on water quality issues along Lake Michigan and the Pike River for a number of years. Funding for her efforts comes from state grant awards. The general agreement authorizing her to continue working in the city must be renewed annually.

Recommendation

Approve Agreement between City of Kenosha-Stormwater Utility and the City of Racine Health Department in the amount of \$48,838 and authorize the Director to execute the contract. The funding for this work will be paid for out of the CIP SW-10-003 Pollution Prevention and Wisconsin Coastal Management Grant.

AGREEMENT

by and between

THE KENOSHA of KENOSHA, WISCONSIN
a municipal corporation

And

THE CITY OF RACINE HEALTH DEPARTMENT

THIS AGREEMENT, made and entered into by and between the City of Kenosha, Wisconsin ("CITY"), and the City of Racine Health Department ("CONTRACTOR"), 730 Washington Avenue, Racine, Wisconsin 53403.

Whereas, the CITY has entered into an agreement with the State of Wisconsin to monitor key stormwater infrastructure within the Pike River Watershed, across multiple jurisdictions in southeast Wisconsin, including the CITY, to further elucidate pollutant loading potential, in keeping with the SEWRPC *Water Quality Management Plan* and the *Pike River Watershed Restoration Plan* and is more particularly described in the Attachment to the Grant Agreement attached hereto and incorporated herein as Exhibit 1.

1. OBLIGATIONS OF THE CONTRACTOR. CONTRACTOR shall perform those services as directed by the CITY to fulfill the requirements set forth in Exhibit 1. CONTRACTOR shall use its best efforts to complete all obligations under this agreement by January 2, 2015. CONTRACTOR shall attend ordination meetings, progress and presentation meetings and/or telephone conferences with the CITY or such community, State, City, or County officials, groups, or individuals as requested by the CITY. CONTRACTOR agrees to perform CONTRACTOR'S work, services and duties in conformance with recognized professional standards in this field.

2. TERM. The term of this agreement shall be July 1, 2014 through January 2, 2015.

3. PAYMENT. CITY shall pay CONTRACTOR, an amount not to exceed \$48, 838 for services rendered under this Agreement. Compensation for services rendered under this Agreement shall be contingent upon review and approval by CITY'S Approving Officer.

4. INDEPENDENT CONTRACTORS, WORKERS' AND UNEMPLOYMENT COMPENSATION. CONTRACTOR acknowledges that it is an independent CONTRACTOR and that its employees and agents are not employees of the CITY for purposes of income tax payments, social security contributions, insurance, workers' and unemployment compensation and any other purpose.

5. MAINTENANCE OF RECORDS. CONTRACTOR shall keep available for inspection by representatives of the CITY for a period of 3 years after final payment all cost records and accounts pertaining to this Agreement. Should, however, any litigation, claim, or audit arising out of, in connection with, or relating to this Agreement is initiated before the expiration of the three-year period, the records shall be retained until such litigation, claim, or audit is completed.

625 52nd Street, Room 201
Kenosha, WI 53140

If to CONTRACTOR:

City of Racine Health Department
Health Department Administrator, Dottie-Kay Bowersox
730 Washington Avenue, Room 109
Racine, WI 53403

14. REPRESENTATION OF AUTHORITY. Each of the undersigned hereby represents and warrants that: (a) such party has all requisite power and authority to execute this Agreement; (b) the execution and delivery of this Agreement by the undersigned, and the performance of its terms and thereby have been duly and validly authorized and approved by all requisite action required by law; and (c) this Agreement constitutes a valid and binding agreement of the undersigned, enforceable against each of them, in accordance with the terms of this Agreement.

15. HEADINGS. The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

16. LAW GOVERNING. The interpretation of this Agreement will be governed by and construed and enforced in accordance with the laws of the State of Wisconsin.

17. SEVERABILITY. If any of the terms and provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and terms of this Offer shall not be affected and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

CITY OF RACINE, WISCONSIN
A Wisconsin Municipal Corporation

BY: _____

JOHN DICKERT, Mayor

Date: _____

ATTEST: _____

JANICE JOHNSON-MARTIN, City Clerk

Date: _____

APPROVED As To Form: _____

ROBERT K. WEBER, City Attorney

Date: _____

STATE OF WISCONSIN)

:SS.

COUNTY OF RACINE)

Personally came before me this _____ day of _____, 2014, **JOHN DICKERT, Mayor**, and **JANICE JOHNSON-MARTIN, City Clerk**, of the **CITY OF RACINE, WISCONSIN**, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the Agreement of said corporation, by its authority.

Notary Public, Racine County, Wisconsin

My Commission expires/is: _____

Drafted on July 7, 2014

Planning & Zoning Division 625 52nd Street - Room 308 Kenosha, WI 53140 262.653.4030	Kenosha City Plan Commission FACT SHEET	July 24, 2014	Item 3
Development Agreement between the City of Kenosha and the Kenosha Water Utility and 125th Avenue Hotel, LLC and SMMFLP Limited Partnership (Hampton Inn) (District #16) PUBLIC HEARING			

LOCATION/SURROUNDINGS:

Site: 7300 125th Avenue
Zoned: B-2 Community Business District

NOTIFICATIONS/PROCEDURES:

The Alderman of the district, Alderman Johnson, has been notified. The agreement was also referred to Public Works, Storm Water and Board of Water Committees before final review by the Common Council.

ANALYSIS:

- The Agreement details the public improvements that the developer must complete before occupancy permits can be issued.
- The developer is responsible for improvements in the 125th Avenue right-of-way, as well as on-site storm water improvements.
- The developer is constructing a 93-room hotel. As part of the Conditional Use Permit, the developer is required to enter into the Development Agreement.

RECOMMENDATION:

A recommendation is made to approve the the Agreement.



Brian R. Wilke, Development Coordinator



Jeffrey B. Labahn, Director

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF KENOSHA
AND THE KENOSHA WATER UTILITY
AND 125TH AVENUE HOTEL, LLC AND
SMMFLP LIMITED PARTNERSHIP

Document Number

Document Title

This space is reserved for recording data

Return to

Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, WI 53140

Parcel Identification Number

03-121-01-440-350

DEVELOPMENT AGREEMENT

Between

**THE CITY OF KENOSHA, WISCONSIN
A Municipal Corporation**

And

**THE KENOSHA WATER UTILITY
A Municipal Water Utility**

And

**125TH AVENUE HOTEL, LLC
A Wisconsin Limited Liability Company**

And

**SMMFLP LIMITED PARTNERSHIP
A Delaware Limited Liability Partnership**

THIS DEVELOPMENT AGREEMENT, (“AGREEMENT”) effective as of the last date of execution is entered into between the City of Kenosha, Wisconsin, a municipal corporation duly organized and existing under the laws of the State of Wisconsin (“CITY”), the Kenosha Water Utility, a municipally owned public water utility duly organized and existing under the Code of General Ordinances for the City of Kenosha and Section 66.0805 of the Wisconsin Statutes (“UTILITY”), and 125th Avenue Hotel, LLC, a Wisconsin limited liability company and SMMFLP Limited Partnership, a Delaware limited liability partnership, each with principal offices located at 4011 80th Street, Kenosha, WI 53142 (“DEVELOPER”), collectively referred to as the Parties.

WITNESSETH:

WHEREAS, DEVELOPER is the owner of approximately 4.77 acres of real estate in the City of Kenosha which is legally described on attached Exhibit A and shown on the certified survey map attached as Exhibit B, hereinafter referred to as “REAL ESTATE”; and,

WHEREAS, DEVELOPER desires to develop REAL ESTATE for commercial purposes; and,

WHEREAS, REAL ESTATE is zoned B-2 Community Business District and AIR-4 Airport Overlay District Overflight at the time of execution of this AGREEMENT which permits the commercial development set forth in this AGREEMENT; and,

WHEREAS, the Plan Commission of CITY and the CITY Public Works Committee have recommended to the Common Council and the Common Council of CITY has approved a certified survey map attached as Exhibit B for REAL ESTATE on the condition that DEVELOPER enter into this AGREEMENT relative to the manner and method by which REAL ESTATE is to be developed subject to the requirements of this AGREEMENT; and,

WHEREAS, the Plan Commission of CITY has recommended to the Common Council and the Common Council of CITY has approved a conditional use permit attached as Exhibit C for REAL ESTATE on the condition that DEVELOPER enter into this AGREEMENT relative to the manner and method by which REAL ESTATE is to be developed subject to the requirements of this AGREEMENT; and,

WHEREAS, UTILITY is the accepting and approving agency for CITY with respect to sanitary sewerage facilities for REAL ESTATE, and UTILITY is willing to approve the provision of sanitary sewerage to REAL ESTATE subject to the terms and conditions of this AGREEMENT; and,

WHEREAS, DEVELOPER agrees to develop REAL ESTATE as provided in the certified survey map, the conditional use permit, and this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the Parties, including the approval by CITY of a certified survey map and conditional use permit for REAL ESTATE, the provision by UTILITY of sanitary sewerage and the agreement of DEVELOPER to develop REAL ESTATE, the Parties agree that REAL ESTATE will be developed as provided in the certified survey map, the conditional use permit, and this AGREEMENT.

I. IMPROVEMENTS

A. Sanitary Sewerage Facilities.

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct and install complete sanitary sewerage facilities serving the REAL ESTATE, including the mains and appurtenances which abut land for any public purpose, in accordance with UTILITY specifications, the conditional use permit, the certified survey map, and the Sanitary Sewer Plan attached as Exhibit D. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications for the design, construction and installation of the sanitary sewerage facilities from UTILITY Engineer. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications for the design, construction and installation of the sanitary sewerage facilities from the Wisconsin Department of Natural Resources (WDNR). DEVELOPER shall provide copies of all WDNR approvals to UTILITY upon receipt.

2. DEVELOPER, at DEVELOPER'S cost and expense, shall cause the owner of Lot 1 of Certified Survey Map No. 1368 recorded with the Kenosha County Register of Deeds on June 25, 1990 in Volume 1400 Page 607 as Document No. 845433 to grant to UTILITY a Sanitary Sewer Easement to the sanitary sewerage facilities required by this AGREEMENT. A copy of the Sanitary Sewer Easement is attached as Exhibit E. The Sanitary Sewer Easement shall be recorded with the Kenosha County Register of Deeds and shall be binding upon all current and subsequent owners of the land upon which the Sanitary Sewer Easement is located.
3. UTILITY shall cooperate with DEVELOPER in obtaining all permits required by any governmental unit or regulatory agency for the sanitary sewerage facilities required by this AGREEMENT, including sanitary sewerage extensions and connections.
4. Subject to the terms of this AGREEMENT, UTILITY shall allow DEVELOPER to extend and connect the sanitary sewerage facilities required by this AGREEMENT to the sanitary sewerage facilities of UTILITY at DEVELOPER'S cost and expense including payment by DEVELOPER of all fees, user fees, inspection fees, impact fees, charges or special assessments required to be paid pursuant to any federal, state, county, CITY or UTILITY laws, ordinances, resolutions, rules, regulations or this AGREEMENT.
5. UTILITY shall accept the sanitary sewerage facilities required to be designed, constructed and installed by DEVELOPER pursuant to this AGREEMENT which are located in the public rights-of-way or the Sanitary Sewer Easement required by this AGREEMENT upon the following:
 - a. completion of the sanitary sewerage facilities in accordance with all approved plans and specifications and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the fully functional sanitary sewerage facilities without defect, damage or nonconformance with this AGREEMENT, all approved plans and specifications, and the Code of General Ordinances for the City of Kenosha.
 - c. providing UTILITY with certified copies of the results of all tests and inspections of the sanitary sewerage facilities required by UTILITY, including density tests certifying proper compaction of sanitary sewerage facilities trench backfill.
 - d. certified "as-built" drawings of the sanitary sewerage facilities in print and digital form acceptable to UTILITY.

e. payment of all fees, user fees, inspection fees, impact fees, charges and special assessments required to be paid by DEVELOPER for the sanitary sewerage facilities pursuant to this AGREEMENT.

f. receipt of final lien waivers from all contractors, subcontractors and suppliers.

g. receipt of DEVELOPER'S affidavit of compliance with prevailing wage rate determination.

h. certification of items a - g above by UTILITY Engineer.

i. approval by UTILITY Board of Water Commissioners of the sanitary sewerage facilities.

6. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for the maintenance and operation of the sanitary sewerage facilities required by this AGREEMENT, including locate requests, unless and until the sanitary sewerage facilities are accepted by UTILITY. Upon acceptance of the sanitary sewerage facilities, UTILITY shall have full jurisdiction and ownership of the sanitary sewerage facilities located in the public rights-of-way or the Sanitary Sewer Easement required by this AGREEMENT and be responsible for their maintenance and operation subject to the guarantee of DEVELOPER provided in this AGREEMENT.
7. The sanitary sewerage facilities required by this AGREEMENT shall be installed and functional prior to CITY issuance of any Temporary Certificate of Occupancy for any improvements within REAL ESTATE.

B. Storm Water Drainage Facilities.

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct and install complete storm water drainage facilities throughout REAL ESTATE, including storm and surface water drainage facilities which abut land for any public purpose, in accordance with CITY specifications, the conditional use permit, the certified survey map, the Storm Water Management Plan attached as Exhibit F and the Storm Sewer Plan attached as Exhibit G.
2. DEVELOPER, at DEVELOPER'S cost and expense, shall apply for and obtain a Post-Construction Runoff Permit from CITY and shall submit to CITY any required financial guarantee all in accordance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha entitled Post-Construction Stormwater Management Ordinance. No

land disturbing construction activity as defined in Chapter XXXVI of the Code of General Ordinances shall be permitted until the Post-Construction Runoff Permit is issued by CITY. All land disturbing construction activities and the design, construction, installation and maintenance of the storm water drainage facilities shall be done in compliance with Chapter XXXVI of the Code of General Ordinances, the approved Stormwater Management Plan, the approved Maintenance Agreement and the Post-Construction Runoff Permit.

3. DEVELOPER, at DEVELOPER'S cost and expense, shall prepare all plans, specifications and calculations for all storm water drainage facilities and submit them to CITY Engineer for written approval which must be obtained prior to construction of the storm water drainage facilities. The storm water drainage facilities required by this AGREEMENT, including retention/detention basins and outlet structures, shall comply with CITY'S current storage and outflow requirements as well as any WDNR requirements.
4. CITY shall cooperate with DEVELOPER in obtaining all permits required by any governmental unit or regulatory agency for the storm water drainage facilities required by this AGREEMENT, including storm water drainage facilities extensions and connections.
5. Title to all storm water drainage facilities, including retention/detention basins and outlet structures located within REAL ESTATE or any easements located within REAL ESTATE as shown on the certified survey map and the Storm Sewer Plan attached as Exhibit G, shall be retained by DEVELOPER or conveyed by DEVELOPER to an owner's association approved by CITY. DEVELOPER, or the owner's association as the case may be, shall be responsible for the maintenance and operation of all storm water drainage facilities, including retention/detention basins and outlet structures located within REAL ESTATE or in any easement located within REAL ESTATE as shown on the certified survey map and the Storm Sewer Plan attached as Exhibit G, and shall enter into a Maintenance Agreement with CITY in accordance with Section 36.10 of the Code of General Ordinances for the City of Kenosha to provide for their maintenance and operation. A copy of the Maintenance Agreement is attached as Exhibit H. The Maintenance Agreement shall be recorded with the Kenosha County Register of Deeds and shall be binding upon all current and subsequent owners of land served by the storm water drainage facilities. The Maintenance Agreement shall include among its provisions the following:
 - a. identification of the storm water drainage facilities and designation of the drainage area served by the storm water drainage facilities.
 - b. a schedule for the regular maintenance, repair, replacement and operation of the

storm water drainage facilities consistent with the Storm Water Management Plan.

c. identification of the DEVELOPER, landowner or the owner's association responsible for the maintenance, repair, replacement and operation of the storm water drainage facilities.

d. requirement that the DEVELOPER, landowner or owner's association maintain, repair, replace and operate the storm water drainage facilities in accordance with the schedule included in subparagraph b. above.

e. authorization for CITY to access REAL ESTATE to conduct inspections of storm water drainage facilities as necessary to determine whether the storm water drainage facilities are being maintained, repaired, replaced and operated in accordance with the Maintenance Agreement.

f. requirement that CITY maintain public records of the results of the inspections of the storm water drainage facilities, to inform DEVELOPER, landowner or the owner's association of the inspection results, and to specifically indicate any corrective actions required to bring the storm water drainage facilities into proper working condition.

g. agreement that DEVELOPER, landowner or the owner's association responsible for the maintenance, repair, replacement and operation of the storm water drainage facilities be notified by CITY of any maintenance problems requiring correction and that any specified corrective actions be undertaken within a reasonable time as determined by CITY.

h. authorization for CITY to perform or have performed on CITY'S behalf, maintenance, repairs, or replacements of the storm water drainage facilities upon the failure of the DEVELOPER, landowner or owner's association to do so as directed by CITY and to impose a special charge pursuant to Section 66.0627 of the Wisconsin Statutes against all benefited REAL ESTATE for the charges incurred by CITY in performing or having performed on CITY'S behalf the maintenance, repairs or replacement to the storm water drainage facilities which are the subject of the Maintenance Agreement.

6. DEVELOPER, at DEVELOPER'S cost and expense, shall grant to CITY a Maintenance Easement to the storm water drainage facilities required by this AGREEMENT authorizing CITY to inspect, maintain, repair or replace the storm water drainage facilities in accordance with the Maintenance Agreement. A copy of the Maintenance

Easement is attached as Exhibit I. The Maintenance Easement shall be recorded with the Kenosha County Register of Deeds and shall be binding upon all current and subsequent owners of land served by the storm water drainage facilities.

7. DEVELOPER, at DEVELOPER'S cost and expense, shall complete the construction and installation of the fully functional storm water drainage facilities required by this AGREEMENT without defect, damage or non conformance with this AGREEMENT, all approved plans, specifications and calculations, the conditional use permit, the certified survey map, and the Code of General Ordinances for the City of Kenosha.
8. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY with certified copies of the results of all tests and inspections of the storm water drainage facilities required by CITY, including density tests certifying proper compaction of storm water drainage facilities trench back fill.
9. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY certified "as-built" drawings of the storm water drainage facilities, including retention/detention basins and outlet structures, in print and digital form acceptable to CITY prior to CITY issuance of any Temporary Certificate of Occupancy for any improvements within REAL ESTATE
10. DEVELOPER shall indemnify, defend and hold harmless CITY, UTILITY, their officers, employees and agents from and against any and all claims, liability, loss, charges, damages, costs, expenses, judgments, settlement expenses and attorney fees, which any of them may hereafter sustain, incur or be required to pay arising out of or in any way related to the design, construction and installation of the storm water drainage facilities required by this AGREEMENT which causes storm and surface water to flow in full or part upon any private property. Upon the filing with CITY or UTILITY of a claim for damages arising out of the acts which DEVELOPER herein agrees to indemnify, defend and hold CITY, UTILITY and others harmless, the CITY or UTILITY shall notify DEVELOPER of such claim, and in the event that DEVELOPER does not settle or comprise such claim, the DEVELOPER shall undertake the legal defense of such claim both on behalf of the DEVELOPER and CITY and/or UTILITY and their officers, employees and agents. It is specifically agreed that CITY and/or UTILITY at DEVELOPER'S cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against CITY and/or UTILITY or any of their officers, employees or agents for any cause for which DEVELOPER is liable herewith shall be conclusive against DEVELOPER as to liability and the amount of damages. Any damages, costs or expenses, including attorney fees, sustained, incurred or paid by CITY and/or UTILITY, their officers, employees or agents arising out of the acts which DEVELOPER herein agrees to indemnify, shall be reimbursed through DEVELOPER'S assurance required pursuant to this AGREEMENT or through such other means as the CITY and/or UTILITY, in their sole discretion, deem

appropriate. This paragraph shall survive installation of the storm water drainage facilities to effectuate its purpose.

11. The storm water drainage facilities required by this AGREEMENT, including retention/detention basins and outlet structures shall be installed and functional prior to CITY issuance of any Certificate of Temporary Occupancy for any improvements within REAL ESTATE.

C. Streets, Curb and Gutter.

1. DEVELOPER, at DEVELOPER'S cost and expense shall design, construct, and install all improvements to State Highway 50 and 125th Avenue, including curbs and gutters, in accordance with Wisconsin Department of Transportation specifications, the conditional use permit, the certified survey map, and the Street Plan attached as Exhibit J. DEVELOPER, at DEVELOPER's cost and expense, shall obtain approval of the plans and specifications and all required permits for the improvements from the Wisconsin Department of Transportation.
2. The improvements required pursuant to paragraph 1 shall be completed and accepted by the Wisconsin Department of Transportation prior to the issuance of any Temporary Certificate of Occupancy by CITY.
3. DEVELOPER shall not perform any street paving or install any curbs and gutters during any portion of the calendar year prohibited by the Wisconsin Department of Transportation.

D. Other Utilities and Utility Easements

1. DEVELOPER, at DEVELOPER'S cost and expense, shall locate and install all other utilities throughout REAL ESTATE in accordance with utility specifications, the conditional use permit, the certified survey map and the approved plans attached to this AGREEMENT. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications for the location and installation of the utilities from CITY Engineer and UTILITY Engineer.
2. DEVELOPER, at DEVELOPER'S cost and expense, shall provide easements for utilities, which shall be shown on the certified survey map and the approved plans attached to this AGREEMENT.
3. Easements for utilities may be modified or terminated only by CITY, UTILITY or other utility and only in the event CITY, UTILITY or other utility determine that the easement,

in full or in part, is no longer required to provide essential service.

E. Erosion Control

DEVELOPER, at DEVELOPER'S cost and expense, shall prepare and submit to CITY an Erosion and Sediment Control Plan in accordance with Chapter XXXIII of the Code of General Ordinances for the City of Kenosha entitled Land-Disturbing Erosion and Sediment Control Ordinance. DEVELOPER, at DEVELOPER'S cost and expense, shall apply for and obtain an Erosion Control Permit from CITY and shall submit to CITY the cash assurance all in accordance with Chapter XXXIII of the Code of General Ordinances. No land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances shall be permitted until the Erosion and Sediment Control Plan is approved by CITY, the cash assurance is paid to CITY, and the Erosion Control Permit is issued by CITY. All land disturbing construction activities undertaken by DEVELOPER shall be done in compliance with Chapter XXXIII of the Code of General Ordinances, the approved Erosion and Sediment Control Plan and the Erosion Control Permit. The Erosion and Sediment Control Plan shall include the location and duration of topsoil stockpiles. DEVELOPER, at DEVELOPER'S cost and expense, shall remove all topsoil stockpiles from REAL ESTATE prior to the issuance of any Certificate of Occupancy by CITY. A copy of the Erosion and Sediment Control Plan is attached as Exhibit K.

F. Grading

1. DEVELOPER, at DEVELOPER'S cost and expense, shall grade REAL ESTATE in accordance with CITY specifications, the conditional use permit, the certified survey map and the Grading Plan attached as Exhibit L. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the Grading Plan from CITY Engineer prior to commencement of any land disturbing construction activities.
2. DEVELOPER, at DEVELOPER'S cost and expense, shall grade all streets to Wisconsin Department of Transportation approved subgrade and shall submit approved Wisconsin Department of Transportation "as-built" drawings of the streets in print and digital form acceptable to CITY prior to installation of any utilities.
3. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY a certified "as-built" Grading Plan in print and digital form acceptable to CITY for approval by CITY Engineer. CITY Engineer approval of the "as built" Grading Plan shall be required prior to CITY issuance of any Certificate of Temporary Occupancy for any improvements within REAL ESTATE.

G. LED Street Lighting

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design and install a complete system of LED street lighting throughout REAL ESTATE in accordance with CITY specifications, the conditional use permit, the certified survey map and the Lighting Plan attached as Exhibit M. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the LED street lighting system from CITY Engineer.
2. The LED street lighting installation in the public rights-of-way shall be completed and presented to CITY for acceptance prior to or concurrent with DEVELOPER presenting the streets, curbs and gutters to the Wisconsin Department of Transportation for acceptance.
3. CITY shall accept the LED street lighting system required to be designed and installed by DEVELOPER pursuant to this AGREEMENT located in the public rights-of-way upon the following:
 - a. completion of the LED street lighting system in accordance with all approved plans and specifications, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the fully functional LED street lighting system without defect, damage or nonconformance with this AGREEMENT, all approved plans and specifications, and the Code of General Ordinances for the City of Kenosha.
 - c. receipt of final lien waivers from all contractors, subcontractors and suppliers.
 - d. receipt of DEVELOPER'S affidavit of compliance with prevailing wage rate determination.
 - e. certification of items a -- d above by CITY Engineer.
 - f. approval by the Common Council of the City of Kenosha upon recommendation by CITY Engineer and the City of Kenosha Board of Public Works of the LED street lighting system.

H. Landscaping.

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design and install landscaping throughout REAL ESTATE in accordance with CITY specifications, the conditional use

permit, the certified survey map and the Landscaping Plan attached as Exhibit N. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the Landscaping Plan from CITY.

2. DEVELOPER, at DEVELOPER'S cost and expense, shall protect existing trees within REAL ESTATE in accordance with Section 34.10 of the Code of General Ordinances for the City of Kenosha entitled Tree Protection and shall apply for and obtain a Tree Protection Permit from CITY.
3. DEVELOPER, at DEVELOPER'S cost and expense, shall remove and lawfully dispose of all rubbish, structures, dead trees, branches, brush, tree trunks, shrubs and other natural growth within REAL ESTATE inconsistent with the approved landscaping. DEVELOPER at DEVELOPER'S cost and expense, shall apply for and obtain a raze permit from CITY prior to removing any structures.
4. DEVELOPER, at DEVELOPER'S cost and expense, shall finish grade all lawn park areas within REAL ESTATE with six (6) inches of topsoil.
5. Landscaping shall be completed and presented to CITY for acceptance prior to or concurrent with DEVELOPER presenting the streets, curbs and gutters to the Wisconsin Department of Transportation for acceptance.
6. CITY shall accept the landscaping required to be designed and installed by DEVELOPER pursuant to this AGREEMENT located in the public rights-of-way, if any, upon the following:
 - a. completion of the landscaping in accordance with all approved plans and specifications, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. installation and delivery of the landscaping without defect, damage or nonconformance with this AGREEMENT, all approved plans and specifications, and the Code of General Ordinances for the City of Kenosha.
 - c. receipt of final lien waivers from all contractors, subcontractors and suppliers.
 - d. receipt of DEVELOPER'S affidavit of compliance with prevailing wage rate determination.
 - e. certification of items a – d above by CITY Engineer.

f. approval by the Common Council of the City of Kenosha upon recommendation by CITY Engineer and the City of Kenosha Board of Public Works of the landscaping.

I. Sidewalks.

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct and install sidewalks throughout REAL ESTATE in accordance with CITY specifications, the conditional use permit, the certified survey map and the Street Plan attached as Exhibit J. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications for the design, construction and installation of the sidewalks from CITY Engineer.
2. Sidewalks shall be five (5) feet wide and shall be constructed of a minimum of four (4) inches of Portland cement concrete over a two (2) inch aggregate base. The portion of sidewalks extending through any driveway approach shall be constructed of a minimum of eight (8) inches of Portland cement concrete over a two (2) inch aggregate base. Sidewalks shall be constructed and installed in accordance with the requirements of Section 5.05 of the Code of General Ordinances.
3. Sidewalks shall be installed prior to the issuance of a Temporary Certificate of Occupancy by CITY where practical but not later than six (6) months from the date of temporary occupancy. In the event the sidewalks are not installed prior to the issuance of a Temporary Certificate of Occupancy, the DEVELOPER shall provide CITY with an assurance in an amount determined by CITY Engineer to complete installation.
4. CITY shall accept the sidewalks required to be designed, constructed and installed by DEVELOPER pursuant to this AGREEMENT which are located in the public rights-of-way upon the following:
 - a. completion of the sidewalks in accordance with all approved plans and specifications and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the sidewalks without defect, damage or nonconformance with this AGREEMENT, all approved plans and specifications, and the Code of General Ordinances for the City of Kenosha.
 - c. providing CITY with certified copies of the results of all tests and inspections of the sidewalks required by CITY, including density tests certifying proper compaction of sidewalk trench backfill.

- d. certified "as-built" drawings of the sidewalks in print and digital form acceptable to CITY.
 - e. receipt of final lien waivers from all contractors, subcontractors and suppliers.
 - f. receipt of DEVELOPER'S affidavit of compliance with prevailing wage rate determination.
 - g. certification of items a – f above by CITY Engineer.
 - h. approval by the Common Council of the City of Kenosha upon recommendation by CITY Engineer and the City of Kenosha Board of Public Works of the sidewalks.
5. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for the maintenance of the sidewalks required by this AGREEMENT. Upon acceptance of the sidewalks, CITY shall have full jurisdiction and ownership of the sidewalks located in the public rights-of-way. DEVELOPER shall be responsible for the maintenance of the sidewalks in accordance with the Code of General Ordinances for the City of Kenosha.

J. Street and Regulatory Signs.

- 1. DEVELOPER shall reimburse CITY for CITY'S actual cost for materials, labor and installation of street name signs required by CITY within forty-five (45) days of being invoiced by CITY.
- 2. DEVELOPER shall reimburse CITY for CITY'S actual cost for materials, labor and installation of regulatory signs required by CITY within forty-five (45) days of being invoiced by CITY.

K. Survey Monuments.

DEVELOPER, at DEVELOPER'S cost and expense, shall install survey monuments placed in accordance with the requirements of Section 236.15 of the Wisconsin Statutes.

II. PRE-CONSTRUCTION AND CONSTRUCTION ACTIVITIES.

A. Pre-Construction Activities.

- 1. The public improvements required to be made pursuant to this AGREEMENT constitute a project of public works subject to the municipal prevailing wage and hour scales

pursuant to Section 66.0903 of the Wisconsin Statutes and Chapter DWD 290 of the Wisconsin Administrative Code. DEVELOPER, at DEVELOPER'S cost and expense, shall comply with the municipal prevailing wage and hour scales pursuant to Section 66.0903 of the Wisconsin Statutes and Chapter DWD 290 of the Wisconsin Administrative Code in connection with the public improvements required to be made pursuant to this AGREEMENT. CITY and UTILITY shall cooperate with DEVELOPER in requesting the Department of Workforce Development to determine the prevailing wage rates for all trades or occupations required to complete the public improvements. Prior to CITY and UTILITY accepting any of the public improvements required to be made pursuant to this AGREEMENT, DEVELOPER shall file with the CITY and UTILITY an affidavit of compliance with the prevailing wage rate determination on the form prescribed by the Department of Workforce Development pursuant to Chapter DWD 290.145 of the Wisconsin Administrative Code.

2. DEVELOPER shall provide CITY Engineer and UTILITY Engineer complete itemized cost estimates certified by DEVELOPER'S Civil Engineer for the public improvements and private storm water drainage facilities required to be made by DEVELOPER pursuant to this AGREEMENT prior to the solicitation of bids.
3. Any bidder on any of the public improvements required to be made by DEVELOPER pursuant to this AGREEMENT shall be pre-qualified by CITY and UTILITY. DEVELOPER shall not award any contract for any public improvements required to be made pursuant to this AGREEMENT to any bidder who has not been pre-qualified by CITY or UTILITY.
4. DEVELOPER shall not commence construction or installation of any of the improvements required to be made pursuant to this AGREEMENT until this AGREEMENT has been approved by the Common Council of the City of Kenosha and the Kenosha Water Utility Board of Water Commissioners, this Agreement has been signed by all Parties, has been recorded, all required assurances have been received and approved, and CITY and UTILITY have given written authorization to proceed. Prior to giving written authorization to proceed, DEVELOPER shall hold a pre-construction meeting which shall be attended by DEVELOPER, CITY, UTILITY, contractors and consultants' inspector. Upon receiving written authorization to proceed, DEVELOPER shall notify CITY and UTILITY in writing two (2) working days in advance of the date for the commencement of the construction of the improvements. This notification requirement shall also apply to the resumption of construction following a work interruption of over five (5) working days.

B. Construction Activities

1. Construction access to REAL ESTATE shall be as shown on the Erosion and Sediment

Control Plan attached as Exhibit K. DEVELOPER, at DEVELOPER'S cost and expense shall design, construct and install the construction access in accordance with Wisconsin Department of Transportation and CITY specifications. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications and all required permits for the design, construction and installation of the construction access from the Wisconsin Department of Transportation and CITY Engineer.

2. DEVELOPER, at DEVELOPER'S cost and expense, shall abandon any wells on REAL ESTATE in accordance with the requirements of the Wisconsin Department of Natural Resources, Chapter NR 812 of the Wisconsin Administrative Code and Section 32.09 of the Code of General Ordinances for the City of Kenosha. DEVELOPER shall provide copies of well abandonment reports to CITY and UTILITY.
3. CITY and UTILITY, as may be applicable, shall provide engineering and inspection services during construction of the improvements required by this AGREEMENT to ascertain DEVELOPER'S compliance with all approved plans and specifications. The cost for the engineering and inspection services shall be based upon the hourly rate of the CITY and UTILITY employees performing the services plus indirect costs. The DEVELOPER shall pay CITY and UTILITY for all engineering and inspection services provided by CITY and UTILITY within forty-five (45) days of being invoiced. The engineering and inspection services provided pursuant to this paragraph shall not relieve DEVELOPER, DEVELOPER'S employees, or DEVELOPER'S contractors from constructing and installing the improvements required by this AGREEMENT in accordance with all approved plans and specifications or from providing CITY and UTILITY all "as-built" plans required by this AGREEMENT.
4. DEVELOPER, at DEVELOPER'S cost and expense, shall complete a televised inspection of the completed sanitary sewerage facilities required by this AGREEMENT. The televised inspection shall be performed by an inspection service acceptable to UTILITY. Video tapes and written logs of all sanitary sewerage facilities inspections shall be provided to UTILITY for review. Any repairs or cleaning identified by the televised inspection shall be promptly performed by DEVELOPER and the effected area shall again be subject to a televised inspection. UTILITY reserves the right to perform the televised inspection of the completed sanitary sewage facilities at DEVELOPER'S cost and expense. DEVELOPER shall reimburse UTILITY for the cost of the televised inspection within forty-five (45) days of being invoiced by UTILITY.
5. UTILITY, at UTILITY'S sole discretion, reserves the right to retain independent testing services in the event UTILITY determines proper testing is not being performed by DEVELOPER or the results of DEVELOPER'S testing does not conclusively establish to UTILITY'S satisfaction the proper completion of the sanitary sewerage facilities and the

water supply and distribution facilities required by this AGREEMENT. DEVELOPER shall reimburse UTILITY for the cost of the independent testing services within forty-five (45) days of being invoiced by UTILITY.

6. CITY, at CITY'S sole discretion, reserves the right to retain independent testing services in the event CITY reasonably determines proper testing is not being performed by DEVELOPER or the results of DEVELOPER'S testing does not conclusively establish to CITY'S satisfaction the proper completion of the improvements required by this AGREEMENT. DEVELOPER shall reimburse CITY for the cost of the independent testing services within forty-five (45) days of being invoiced by CITY.
7. DEVELOPER, at DEVELOPER'S cost and expense, shall use granular trench backfill under all pavement and sidewalks and within twenty-four (24") inches thereof in accordance with CITY and UTILITY specifications, the conditional use permit, the certified survey map and the approved plans attached to this AGREEMENT. CITY and/or UTILITY shall test the granular backfill for proper compaction. Developer shall reimburse CITY and/or UTILITY for the cost of testing within forty-five (45) days of being invoiced by CITY or UTILITY.

III. ASSURANCE OF COMPLETION OF PUBLIC IMPROVEMENTS.

A. Assurance Required.

1. Prior to execution of this AGREEMENT by CITY and UTILITY, DEVELOPER shall deposit with the General Manager of UTILITY an assurance in the form of cash or an irrevocable letter of credit in an amount established by its General Manager of UTILITY equal to one hundred twenty-five (125%) percent of the UTILITY'S estimated cost of the sanitary sewerage facilities, the engineering and inspection services and the testing services related thereto required to be made and provided pursuant to this AGREEMENT. Prior to execution of this AGREEMENT by CITY and UTILITY, DEVELOPER shall deposit with the City Clerk-Treasurer an assurance in the form of cash or an irrevocable letter of credit in an amount established by CITY Engineer equal to one hundred twenty-five (125%) percent of the CITY Engineer's estimated cost of all other public improvements, private storm water drainage facilities, and the engineering and inspection services and the testing services related thereto required to be made and provided pursuant to this AGREEMENT. The assurance required pursuant to this paragraph shall be in addition to any other assurance which may be required pursuant to the Code of General Ordinances for the City of Kenosha for the development of REAL ESTATE which is the subject of this AGREEMENT.
2. The assurance required pursuant to paragraph 1 shall be used to secure DEVELOPER'S

cost of designing, constructing and installing the public improvements and private storm water drainage facilities required pursuant to this AGREEMENT and to compensate CITY and UTILITY for CITY'S and UTILITY'S cost of completing the public improvements, private storm water drainage facilities, and performing the engineering and inspection services and testing services required to be made and provided pursuant to this AGREEMENT in the event DEVELOPER fails to do so in a timely manner in accordance with all approved plans and specifications, the conditional use permit, the certified survey map, or this AGREEMENT. The assurance required pursuant to paragraph 1 shall also be used to assure compliance with DEVELOPER'S guarantee provided in this AGREEMENT.

3. In the event the assurance required pursuant to paragraph 1 is insufficient to cover one hundred twenty five (125%) percent of the actual cost of the public improvements, private storm water drainage facilities, and the engineering and inspection services and testing services required to be made and provided pursuant to this AGREEMENT, DEVELOPER upon written demand by CITY or UTILITY shall deposit with the City Clerk-Treasurer additional assurance in the form of cash or an irrevocable letter of credit in an amount established by CITY or UTILITY equal to one hundred twenty-five (125%) percent of the actual cost of the public improvements, private storm water drainage facilities, and the engineering and inspection services and testing services required to be made and provided pursuant to this AGREEMENT.
4. Any irrevocable letter of credit to be used by DEVELOPER as an assurance pursuant to this AGREEMENT shall be issued by a financial institution authorized to do business in the State of Wisconsin having a financial standing acceptable to the CITY, and the form of any irrevocable letter of credit shall be approved in advance by the City Attorney. Any irrevocable letter of credit approved for use by the City Attorney as an assurance pursuant to this AGREEMENT shall remain in effect until completely drawn upon or released by CITY and UTILITY. If for any reason, any irrevocable letter of credit approved for use as an assurance pursuant to this AGREEMENT is about to expire and has not been renewed by DEVELOPER, CITY and UTILITY may draw upon the irrevocable letter of credit in an amount not to exceed one hundred twenty five percent (125%) of the CITY Engineer's or the UTILITY General manager's reasonable estimate of the cost of the remaining Public Improvements, the private storm water drainage facilities, the engineering, testing and inspection services required to be made and provided pursuant to this AGREEMENT, and the DEVELOPER'S guarantee obligations pursuant to Section IV B. of this AGREEMENT, and retain the proceeds as a cash assurance pursuant to this AGREEMENT.
5. If and to the extent DEVELOPER shall properly complete portions of the public improvements and private storm water drainage facilities required to be made pursuant to

this AGREEMENT for which DEVELOPER shall have deposited an assurance, then upon written request of DEVELOPER, and upon the written recommendation of CITY Engineer and UTILITY General Manager, as the case may be, the assurance may be reduced in the amount reasonably recommended by CITY Engineer and UTILITY General Manager. Prior to the reduction of any assurance, DEVELOPER shall submit to CITY and UTILITY a waiver of lien current to date from all contractors, subcontractors and suppliers. The balance of the remaining assurance shall remain on deposit with the General Manager of UTILITY and the City Clerk-Treasurer, as the case may be, until expiration of DEVELOPER'S guarantee provided in this AGREEMENT. CITY and UTILITY shall release the balance of the remaining assurance within forty-five (45) days following expiration of DEVELOPER'S guarantee provided in this AGREEMENT.

6. In addition to all other remedies, occupancy permits may be withheld by CITY until the City of Kenosha Department of Community Development and Inspections certifies that the requirements of Chapter XVII of the Code of General Ordinances have been met. In the event any work specified in this AGREEMENT is not completed in accordance with this AGREEMENT and Chapter XVII of the Code of General Ordinances, City and/or UTILITY may do or cause the work to be done and charge the cost for the work against any assurance provided pursuant to this AGREEMENT or impose a special charge and/or special assessment against the benefited REAL ESTATE in the event there is no applicable assurance or the assurance is insufficient. The remedies available to CITY and UTILITY pursuant to this paragraph shall not relieve DEVELOPER of DEVELOPER'S guarantee provided in this AGREEMENT.

IV. DEDICATION AND GUARANTEE OF PUBLIC IMPROVEMENTS.

A. Dedication of Public Improvements.

Subject to all other provisions of this AGREEMENT, the attached exhibits, the conditional use permit and the certified survey map, DEVELOPER shall, upon completion of all of the public improvements and without charge to CITY, UTILITY and the Wisconsin Department of Transportation unconditionally give, grant, convey and fully dedicate the public improvements to CITY, UTILITY and the Wisconsin Department of Transportation, as the case may be, their successors and assignees, free and clear of all liens and encumbrances together with all buildings, structures, mains, conduits, pipes, lines, plant machinery, equipment, appurtenances and habiliments which may in any way be a part of or pertain to the public improvements together with any and all easements necessary for access to the public improvements. DEVELOPER shall execute such documents deemed necessary by CITY, UTILITY and the Wisconsin Department of Transportation to effectuate the dedication of the public improvements pursuant to this paragraph. Upon dedication, CITY, UTILITY and the Wisconsin

Department of Transportation shall have the right to connect or integrate the dedicated public improvements unto the facilities of CITY, UTILITY and the Wisconsin Department of Transportation, as the case may be, without charge, award of damages or consent of DEVELOPER. Dedication shall not constitute acceptance of any improvement by CITY, UTILITY or the Wisconsin Department of Transportation.

B. Guarantee of Public Improvements.

1. DEVELOPER shall guarantee all public improvements required by this AGREEMENT against all defects due to faulty design, materials or workmanship of which DEVELOPER is notified in writing within a period of one (1) year from the date of acceptance of the subject public improvement by the Common Council of the City of Kenosha, the Kenosha Water Utility Board of Water Commissioners or the Wisconsin Department of Transportation. DEVELOPER, at DEVELOPER'S cost and expense, shall make any required repairs. CITY and UTILITY reserve the right to perform any required repairs to the public improvements which CITY and UTILITY deem necessary on a time and material basis. DEVELOPER shall reimburse CITY and UTILITY for the cost of repairs within forty-five (45) days of being invoiced by CITY or UTILITY.
2. DEVELOPER shall be responsible for any settlement of fill material which may occur in any public utility trenches in any right-of-way or easement for a period of one (1) year from the date of the last acceptance by CITY or UTILITY of any utility improvement located in such portion of REAL ESTATE. DEVELOPER, at DEVELOPER'S cost and expense, shall make any required repairs. CITY and UTILITY reserve the right to perform any required repairs which CITY and UTILITY deem necessary on a time and material basis. DEVELOPER shall reimburse CITY and UTILITY for the cost of repairs within forty-five (45) days of being invoiced by CITY or UTILITY.
3. The assurance required to be provided by DEVELOPER pursuant to Section III of this AGREEMENT shall be used to assure DEVELOPER'S guarantee of the public improvements pursuant to this Section IV and to compensate CITY and UTILITY for CITY'S and UTILITY'S cost of performing any repairs to the public improvements guaranteed by DEVELOPER pursuant to this AGREEMENT. In the event there is no applicable assurance or in the event the assurance is insufficient, CITY and/or UTILITY may do or cause DEVELOPER'S guarantee work to be done and impose a special charge and/or special assessment against the benefited REAL ESTATE for the cost of the work.

V. DEVELOPER INDEMNIFICATION.

DEVELOPER shall indemnify, defend and hold harmless CITY, UTILITY, their officers, employees and agents from and against any and all claims, liability, loss, charges, damages,

costs, expenses, judgments, settlement expenses and attorney fees, which any of them may hereafter sustain, incur or be required to pay arising out of or in any way related to the design, construction and installation of any of the public improvements required by this AGREEMENT or arising out of or in any way related to any claim for labor, materials or supplies furnished in connection with any of the public improvements required by this AGREEMENT. Upon the filing with CITY or UTILITY of a claim for damages arising out of the acts which DEVELOPER herein agrees to indemnify, defend and hold CITY, UTILITY and others harmless, the CITY and/or UTILITY shall notify DEVELOPER of such claim, and in the event that DEVELOPER does not settle or compromise such claim, the DEVELOPER shall undertake the legal defense of such claim both on behalf of the DEVELOPER and/or CITY and UTILITY and their officers, employees and agents. It is specifically agreed that CITY and/or UTILITY, at DEVELOPER'S cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against CITY and/or UTILITY or any of their officers, employees or agents for any cause for which DEVELOPER is liable herewith, shall be conclusive against DEVELOPER as to liability and the amount of damages. Any damages, costs or expenses, including attorney fees sustained, incurred or paid by CITY and/or UTILITY, their officers, employees or agents arising out of the acts which DEVELOPER herein agrees to indemnify, shall be reimbursed to CITY and/or UTILITY, their officers, employees and agents through the DEVELOPER'S assurance required pursuant to this AGREEMENT or through such other means as the CITY and/or UTILITY, in their sole discretion, deem appropriate. This paragraph shall survive installation of the public improvements to effectuate its purpose.

VI. CITY RESPONSIBILITIES.

Upon application by DEVELOPER and upon payment by DEVELOPER of all required fees, CITY shall process all permit applications and will issue all CITY permits required for the development of REAL ESTATE provided DEVELOPER is in compliance with all CITY and UTILITY conditions of approval, the conditional use permit, the certified survey map, this AGREEMENT, and all standards for the issuance of the required CITY permits set forth in applicable federal, state, county, CITY or UTILITY laws, ordinances, resolutions, rules and regulations in effect as of the date the permit is to be issued unless otherwise specified.

VII. MISCELLANEOUS.

A. Notice

Any notice required to be given in this AGREEMENT by any of the Parties is to be by certified mail with return receipt or by personal service addressed to DEVELOPER, CITY or UTILITY as the case may be as set forth below. Any Party may designate a different

address by delivering, sending or serving written notice of such change of address upon the other Parties. Notice shall be effective as of the date of delivery, if by hand, or mailing if by certified mail.

If to DEVELOPER: 125TH AVENUE HOTEL, LLC
4011 80th Street
Kenosha, WI 53142

with copies to: Hotvedt & Terry, LLC
Attn: John E. Hotvedt
4015 – 80th Street, Suite H
Kenosha, WI 53142

If to CITY: City Clerk/Treasurer
Municipal Building, Room 105
625 -52nd Street
Kenosha, Wisconsin 53140

with copies to: Director of Public Works
Municipal Building, Room 305
625 -52nd Street
Kenosha, Wisconsin 53140

Office of the City Attorney
Municipal Building, Room 201
625 -52nd Street
Kenosha, Wisconsin 53140

If to UTILITY: General Manager
Kenosha Water Utility
4401 Green Bay Road
Kenosha, Wisconsin 53144

with a copy to: Office of the City Attorney
Municipal Building, Room 201
625 -52nd Street
Kenosha, Wisconsin 53140

B. Land Dedications and Impact Fees.

DEVELOPER, at DEVELOPER'S cost and expense, shall provide for all land

dedications required by Chapter XVII of the Code of General Ordinances. DEVELOPER shall pay all impact fees in accordance with Chapter XXXV of the Code of General Ordinances prior to the CITY issuance of a building permit.

C. Assignment.

DEVELOPER shall not assign or transfer this AGREEMENT without the prior written consent of CITY and UTILITY. Any unauthorized assignment shall be a breach of this AGREEMENT. Any assignment shall be conditioned upon the assignee entering into a written agreement with CITY and UTILITY through which the assignee agrees to be bound by all of the terms, conditions and obligations of this AGREEMENT. No assignment shall relieve DEVELOPER of any of DEVELOPER'S obligations under this AGREEMENT in the event of breach or default by the assignee. No assignment shall be inconsistent with the terms of this AGREEMENT. The assignee shall have all rights, privileges and obligations as granted DEVELOPER under this AGREEMENT.

D. Integration.

This AGREEMENT, the attached exhibits, the conditional use permit, the certified survey map and such other documents incorporated by reference herein embody the entire agreement and understanding among the Parties and supersedes all prior agreements and understandings relating to the subject matter hereof.

E. Defaults.

No default shall arise under this AGREEMENT unless the non-defaulting Party has provided the defaulting Party written notice of default and twenty (20) days to cure the default.

F. Severability.

Any covenant, condition or provision of this AGREEMENT held to be invalid or unenforceable by a court of competent jurisdiction shall be considered deleted from this AGREEMENT, but such deletion shall in no way affect the application or validity of the remaining covenants, conditions or provisions of this AGREEMENT which shall be given effect without the invalid or unenforceable covenant, condition or provision and to this extent, the covenants, conditions and provisions of this AGREEMENT are declared to be severable.

G. Recordation.

This AGREEMENT shall be recorded in the office of the Register of Deeds for Kenosha County, Wisconsin, and all costs of recordation shall be paid by DEVELOPER. Recordation of this AGREEMENT may at the discretion of CITY and UTILITY omit some or all of the attached exhibits set forth in paragraph H. below.

H. Exhibits Incorporated by Reference.

The exhibits to this AGREEMENT listed below are made a part of this AGREEMENT, and incorporated herein by reference. The exhibits are on file with the City of Kenosha Department of Community Development and Inspections.

- Exhibit A: Legal Description
- Exhibit B: Certified Survey Map
- Exhibit C: Conditional Use Permit
- Exhibit D: Sanitary Sewer Plan
- Exhibit E: Sanitary Sewer Easement
- Exhibit F: Storm Water Management Plan
- Exhibit G: Storm Sewer Plan
- Exhibit H: Maintenance Agreement
- Exhibit I: Maintenance Easement
- Exhibit J: Street Plan
- Exhibit K: Erosion and Sediment Control Plan
- Exhibit L: Grading Plan
- Exhibit M: Lighting Plan
- Exhibit N: Landscaping Plan

I. Choice of Law and Venue.

This AGREEMENT, the attached exhibits, the conditional use permit and the certified survey map shall be construed and enforced according to the laws of the State of Wisconsin. The Parties agree that any matter which may be brought or pursued in court shall be brought and maintained only in the Circuit Court for Kenosha County, Wisconsin, and each Party consents to said venue and the court's personal jurisdiction over each Party.

J. Waiver of Breach or Violation not Deemed Continuing.

Any Party may, to the extent legally allowed, (a) extend the time for performance of any of the obligations or other acts of the other Parties, (b) waive any inaccuracies in the representations or warranties of the other Parties contained in this AGREEMENT or in

any document delivered pursuant to this AGREEMENT and (c) waive any compliance by any of the other Parties with any of the agreements or conditions contained in this AGREEMENT. The waiver by any Party of a breach or violation of any provision of this AGREEMENT shall not operate as or be construed to be a waiver of any or other subsequent breach or violation of any provision of this AGREEMENT. No breach or violation of any provision of this AGREEMENT shall be waived except by an agreement in writing signed by the waiving Party.

K. Construction.

The Parties agree that each Party has contributed substantially and materially to the preparation of this AGREEMENT and that as a result, this AGREEMENT shall not be construed more strictly against one Party or another merely by virtue of the fact that it may have been prepared primarily by counsel for CITY.

L. Time of the Essence.

It is understood and agreed by the Parties that time is of the essence with respect to the provisions of this AGREEMENT specifying dates and deadlines.

M. Binding Effect.

This AGREEMENT shall run with REAL ESTATE and shall be binding upon DEVELOPER, DEVELOPER'S successors and assigns, and DEVELOPER'S successors in title. The guarantee of DEVELOPER set forth in Section IV shall be for the period specified therein. Any recorded easements, agreements, covenants and restrictions shall be binding for the time set forth therein, or if no time is specified, for the time provided under applicable Wisconsin law.

N. Amendment.

This AGREEMENT may only be amended by the mutual written consent of all the Parties and subject to the approval of any such amendment by the Common Council for the City of Kenosha and the Kenosha Water Utility Board of Water Commissioners.

VIII. AUTHORIZATION.

- A. DEVELOPER represents to CITY and UTILITY that DEVELOPER is a Wisconsin limited liability company, is in good standing in Wisconsin, that all acts which are a condition precedent to entering into this AGREEMENT have thereby taken place, and that the individual executing this AGREEMENT on behalf of DEVELOPER has the authority to do so and to bind DEVELOPER to the terms and conditions of this

AGREEMENT.

- B.** UTILITY enters into this AGREEMENT by authority of action taken by the Board of Water Commissioners on the ____ day of _____, 2014.
- C.** CITY enters into this AGREEMENT by authority of action taken by its Common Council on the ____ day of _____, 2014.

SIGNATURE PAGES FOLLOW

125TH AVENUE HOTEL, LLC
A Wisconsin Limited Liability Company

By: _____
Bear Development, LLC, Manager

By: _____
S.R. Mills, Member

Date: _____

By: _____
Stephen Mills, Member

Date: _____

STATE OF WISCONSIN)
 :SS
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, S. R. Mills and Stephen Mills, Members of Bear Development, LLC, as Manager of 125th Avenue Hotel, LLC, a Wisconsin Limited Liability Company, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Name: _____
Notary Public, State of Wisconsin
My Commission expires/is: _____

SMMFLP LIMITED PARTNERSHIP
A Delaware Limited Liability Partnership

BY: _____
Stephen C. Mills
Its: General Partner

Date: _____

STATE OF WISCONSIN)
:SS.
COUNTY OF KENOSHA)

Personally came before me this ____ day of _____, 2014, Stephen C. Mills, the General Partner of SMMFLP LIMITED PARTNERSHIP, a Delaware limited liability partnership, to me known to be such General Partner, and acknowledged that he executed the foregoing instrument as such General Partner as the agreement of said limited liability partnership by its authority.

Notary Public, Kenosha County, Wisconsin
My Commission expires/is: _____

Drafted By:
JONATHAN A. MULLIGAN
Assistant City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOT 1 AND LOT 2 OF CERTIFIED SURVEY MAP NO. _____ RECORDED WITH THE
KENOSHA COUNTY REGISTER OF DEEDS ON _____, 2014 AS DOCUMENT NO. _____,
LOCATED IN PART OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 1, TOWN 1
NORTH, RANGE 21 EAST, IN THE CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN.

Parcel Identification Number: 03-121-01-440-350

EXHIBIT B

FARRIS, HANSEN & ASSOC. INC. CERTIFIED SURVEY MAP NO. _____

7 RIDGWAY COURT- P.O. BOX 437
ELKHORN, WISCONSIN 53121
PHONE (262) 723-2098
FAX (262) 723-5886

OWNER(S):
SMMFLP LIMITED PARTNERSHIP
4011 80th STREET
KENOSHA, WI 53142

LOCATED IN PART OF THE
SW 1/4 THE SE 1/4 OF SECTION 1,
TOWN 1 NORTH, RANGE 21 EAST,
CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN

ZONING: B-2
SOILS: MzdB2; MzdB; EtB; BcA

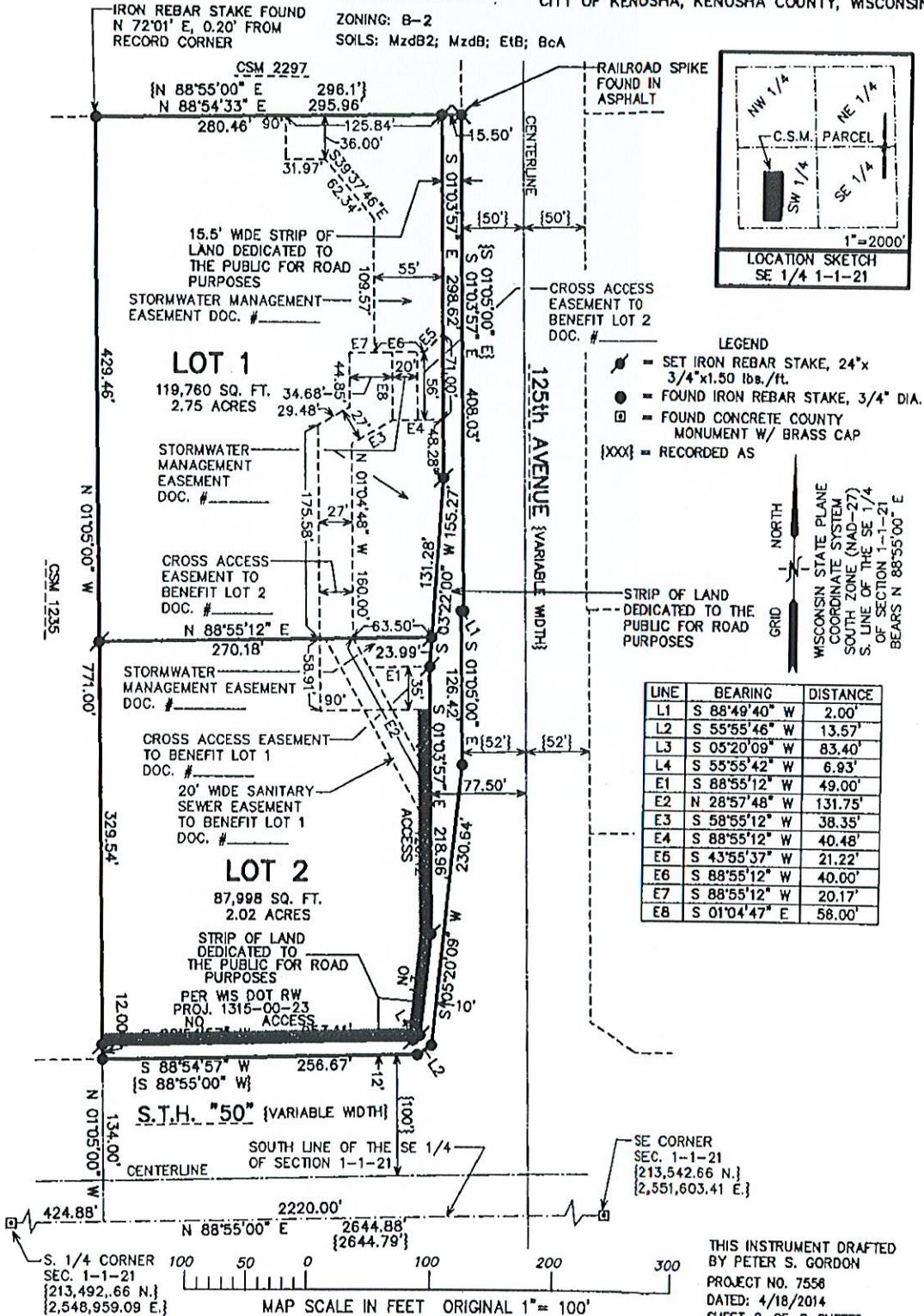


EXHIBIT B

FARRIS, HANSEN & ASSOC. INC. CERTIFIED SURVEY MAP NO. _____

7 RIDGWAY COURT- P.O. BOX 437
ELKHORN, WISCONSIN 53121
PHONE (262) 723-2098
FAX (262) 723-5886

LOCATED IN PART OF THE
SW 1/4 THE SE 1/4 OF SECTION 1,
TOWN 1 NORTH, RANGE 21 EAST,
CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN

SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT AT THE DIRECTION OF SMMFLP LIMITED PARTNERSHIP, OWNERS, AND IN FULL COMPLIANCE WITH THE PROVISIONS OF CHAPTER 236.34 OF WISCONSIN STATUTES AND THE DIVISIONS AND COMBINATIONS OF LAND ORDINANCE FOR THE CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN, I HAVE SURVEYED, DIVIDED, AND MAPPED THE FOLLOWING DESCRIBED LAND AND THAT THIS MAP IS A TRUE REPRESENTATION OF THE EXTERIOR BOUNDARIES OF THE MAP AND OF THE DIVISION THEREOF TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, LOCATED IN PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 1, TOWN 1 NORTH, RANGE 21 EAST, KENOSHA COUNTY, WISCONSIN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT A CONCRETE COUNTY MONUMENT FOUND MARKING THE SOUTHEAST CORNER OF SAID SECTION 1;
THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 1, S 88DEG 55MIN 00SEC W, 2220.00 FEET; THENCE N 01DEG 05MIN 00SEC W, 134.00 FEET TO AN IRON REBAR STAKE FOUND AT THE NORTHERLY RIGHT OF WAY OF STATE TRUNK HIGHWAY 50 AND THE POINT OF BEGINNING; THENCE N 01DEG 05MIN 00SEC W, 771.00 FEET; THENCE N 88DEG 54MIN 33SEC E, 295.96 FEET TO AN IRON REBAR STAKE FOUND AT THE EASTERLY RIGHT OF WAY OF 125TH AVENUE; THENCE ALONG SAID EASTERLY RIGHT OF WAY, S 01DEG 03MIN 57SEC E, 408.03 FEET TO AN IRON REBAR STAKE; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY, S 01DEG 05MIN 00SEC E, 128.42 FEET TO AN IRON REBAR STAKE; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY, S 05DEG 20MIN 09SEC W, 230.64 FEET TO AN IRON REBAR STAKE; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY, S 55DEG 55MIN 46SEC W, 13.57 FEET TO AN IRON REBAR STAKE AT THE NORTHERLY RIGHT OF WAY OF STATE TRUNK HIGHWAY 50 ; THENCE ALONG SAID NORTHERLY RIGHT OF WAY, S 88DEG 54MIN 57SEC W, 256.67 FEET TO THE POINT OF BEGINNING. CONTAINING 224,206 SQUARE FEET (5.15 ACRES) OF LAND, MORE OR LESS.

DATED: APRIL 18, 2014 REVISED: 5/6/2014

PETER S. GORDON, RLS 2101

CITY OF KENOSHA APPROVAL

APPROVED BY THE COMMON COUNCIL OF THE CITY OF KENOSHA THIS _____ DAY OF _____, 2014.

KEITH G. BOSMAN, MAYOR

DEBRA L. SALAS, CITY CLERK-TREASURER

CONSENT OF LIMITED PARTNERSHIP OWNER

SMMFLP LIMITED PARTNERSHIP, DULY ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF DELAWARE, OWNER OF THE ABOVE DESCRIBED LANDS, DOES HEREBY CERTIFY THAT SAID LIMITED PARTNERSHIP CAUSED THE LAND DESCRIBED ON THIS MAP TO BE SURVEYED, DIVIDED, MAPPED, AND DEDICATED AS REPRESENTED ON THIS MAP.

THIS CSM IS REQUIRED TO BE SUBMITTED TO THE CITY OF KENOSHA FOR APPROVAL.

IN WITNESS WHEREOF, THE SAID SMMFLP LIMITED PARTNERSHIP HAS CAUSED THESE PRESENTS TO BE SIGNED BY STEPHEN C. MILLS, ITS MEMBER, AT _____, WISCONSIN AND ITS COMPANY SEAL TO BE AFFIXED HERETO THIS _____ DAY OF _____, 2014.

STEPHEN C. MILLS, SMMFLP LIMITED PARTNERSHIP

STATE OF WISCONSIN)
COUNTY OF WALWORTH) SS

PERSONALLY CAME BEFORE ME THIS _____ DAY OF _____, 2014, STEPHEN C. MILLS, OF THE ABOVE NAMED LIMITED PARTNERSHIP, TO ME KNOWN TO BE THE PERSON WHO EXECUTED THE FOREGOING INSTRUMENT AND TO ME KNOWN TO BE SUCH OFFICER OF SAID LIMITED PARTNERSHIP, AND ACKNOWLEDGED THAT THEY EXECUTED THE FOREGOING INSTRUMENT AS SUCH MEMBER AS THE DEED OF SAID LIMITED PARTNERSHIP BY ITS AUTHORITY.

MY COMMISSION EXPIRES

NOTARY PUBLIC, _____ WISCONSIN

THIS INSTRUMENT DRAFTED
BY PETER S. GORDON
PROJECT NO. 7556
DATED: 4/18/2014
SHEET 1 OF 2 SHEETS

STORMWATER MANAGEMENT PRACTICES
MAINTENANCE AGREEMENT FOR STORMWATER
MANAGEMENT FACILITIES

Between

THE CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation,

And

125TH AVENUE HOTEL, LLC,
A Wisconsin Limited Liability Company

And

SMMFLP LIMITED PARTNERSHIP
A Delaware Limited Liability Partnership

THIS AGREEMENT, effective as of the last date of execution is entered into between the City of Kenosha, Wisconsin, a municipal corporation duly organized and existing under the laws of the State of Wisconsin (“CITY”) and 125th Avenue Hotel, LLC, a Wisconsin limited liability company and SMMFLP Limited Partnership, a Delaware limited liability partnership, each with principal offices located at 4011 – 80th Street, Kenosha, Wisconsin 53142 (“OWNER”), collectively referred to as the Parties.

WITNESSETH:

WHEREAS, OWNER owns the real estate legally described on Exhibit A situated in the City of Kenosha, County of Kenosha, State of Wisconsin, hereinafter referred to as “REAL ESTATE”; and,

WHEREAS, the CITY, the OWNER, and the OWNER'S successors and assigns, including any owners' association, agree that the health, safety and welfare of the residents of the City of Kenosha, Wisconsin, require that on-site stormwater facilities hereinafter referred to as “Stormwater Management Facilities” be designed, constructed and maintained on the REAL ESTATE to properly manage stormwater runoff in accordance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time, the Conditional Use Permit, the Development Agreement between the CITY, the Kenosha Water Utility and OWNER, and this Agreement; and

WHEREAS, the CITY requires that on-site Stormwater Management Facilities are adequately maintained by the OWNER and the OWNER'S successors and assigns, including any

owners' association, in accordance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time, the Conditional Use Permit, the Development Agreement and this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements of the Parties, CITY and OWNER agree as follows:

1. The OWNER and the OWNER'S successors and assigns, including any owners' association, shall regularly inspect the Stormwater Management Facilities on the REAL ESTATE as often as conditions require, but in any event at least twice each year. The Stormwater Inspection and Maintenance Checklist attached to this Agreement as Exhibit B, and by this reference made a part hereof, shall be used for the purpose of the regular inspections of the Stormwater Management Facilities on the REAL ESTATE. The OWNER and the OWNER'S successors and assigns, including any owners' association, shall keep the Stormwater Inspection and Maintenance Checklist from past inspections, as well as a log of maintenance activity indicating the date and type of maintenance completed for a period of three (3) years following such inspection or maintenance. The Stormwater Inspection and Maintenance Checklist and the Maintenance Log shall be made available to the City Stormwater Utility for review. The purpose of the inspections is to assure safe and proper functioning of the Stormwater Management Facilities on the REAL ESTATE. The inspections shall cover all Stormwater Management Facilities on the REAL ESTATE, including, but not limited to, conveyance systems, berms, outlet structures, basin areas and access roads. Any deficiencies shall be noted in the Stormwater Inspection and Maintenance Checklist.

2. The OWNER and the OWNER'S successors and assigns, including any owners' association, shall adequately maintain all Stormwater Management Facilities on the REAL ESTATE, including, but not limited to, all pipes and channels built to convey stormwater to and from the Stormwater Management Facilities, as well as all structures, improvements and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as keeping the Stormwater Management Facilities in good working condition so that the Stormwater Management Facilities are performing their design functions and are maintained in accordance with the Stormwater Maintenance Standards attached to this Agreement as Exhibit C, hereinafter referred to as "Maintenance Standards".

3. The OWNER and the OWNER'S successors and assigns, including any owners' association, hereby grant permission to the CITY, its authorized agents and employees, to enter upon the REAL ESTATE to inspect the Stormwater Management Facilities whenever the CITY deems necessary. The purpose of inspection is to investigate reported deficiencies, respond to citizen complaints, and to determine compliance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time, the Conditional Use Permit, the Development Agreement, and this Agreement. The Director of the CITY Stormwater Utility, or designee thereof, shall provide the OWNER and the OWNER'S successors and assigns, including any owners' association, copies of the inspection findings and a

directive to commence with corrective actions, if necessary. Corrective actions shall be taken within a reasonable time frame as established by the Director of the CITY Stormwater Utility.

4. If the OWNER or the OWNER'S successors and assigns, including any owners' association, fails to maintain the Stormwater Management Facilities on the REAL ESTATE in good working condition such that the Stormwater Management Facilities on the REAL ESTATE are not performing their designed control of the quantity and quality of stormwater acceptable to the Director of the CITY Stormwater Utility, or designee thereof, and does not perform the required corrective actions in the specified time, the CITY may take one or more of the following actions:

a. Issue a citation to the OWNER or the OWNER'S successors and assigns under Section 36.13 of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time.

b. Perform the corrective actions identified in the Inspection Report and assess the OWNER or the OWNER'S successors and assigns, including any owners' association, for the cost of such work and all administrative costs associated with performing such work. The cost of such work shall be assessed against the REAL ESTATE as a special charge pursuant to Section 66.0627, Wisconsin Statutes. This provision shall not be construed to allow the CITY to erect any structure of a permanent nature on the land of the OWNER outside of the easement area for the Stormwater Management Facilities. It is expressly understood and agreed that the CITY is under no obligation to routinely maintain or repair the Stormwater Management Facilities on the REAL ESTATE, and in no event shall this Agreement be construed to impose any such obligation on the CITY.

c. Revoke the Stormwater Quality Credit and/or Stormwater Quantity Credit as defined in Chapter VIII of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time, until OWNER submits a revised Operation and Maintenance Report or a minimum of one (1) year.

5. The OWNER and the OWNER'S successors and assigns, including any owners' association, will perform the work necessary to keep the Stormwater Management Facilities on the REAL ESTATE in good working order, as appropriate. The minimal amount of maintenance required to be performed on the Stormwater Management Facilities shall be in accordance with the Maintenance Standards attached as Exhibit C which may be amended by CITY from time to time.

6. In the event CITY, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials and the like, the OWNER and the OWNER'S successors and assigns, including any owners' association, shall reimburse the CITY within thirty (30) days of receipt of written demand for payment of all actual costs incurred by the CITY hereunder. Failure of the OWNER and the OWNER'S successors and assigns, including any owners' association to reimburse the

CITY within thirty (30) days shall result in the costs being assessed against the REAL ESTATE as a special charge pursuant to Section 66.0627, Wisconsin Statutes.

7. Under this Agreement, CITY assumes no responsibility or any liability in the event the Stormwater Management Facilities on the REAL ESTATE fail to operate properly and OWNER and the OWNER'S successors and assigns, including any owners' association, shall indemnify, defend and hold harmless CITY, its officers, employees and agents against any such claims.

8. This Agreement shall be attached as an exhibit to any document which creates an owners' association that is responsible for maintenance of the Stormwater Management Facilities on the REAL ESTATE, shall be recorded at the Kenosha County Register of Deeds, shall constitute a covenant running with the land, and shall be binding on the OWNER and the OWNER'S successors in interest, including any owners' association. The OWNER shall provide the Director of the CITY Stormwater Utility with a copy of any document which creates an owners' association that is responsible for maintaining the Stormwater Management Facilities on the REAL ESTATE.

9. All notices, requests, demands and other matters required to be given, or which may be given hereunder, shall be in writing and shall be deemed given when delivered in person or when deposited in the United States mail, certified, return receipt requested, postage prepaid, or equivalent private delivery service, addressed to the respective Party at the addresses stated below:

a. OWNER:

125th Avenue Hotel, LLC
Attn: S. R. Mills
4011 – 80th Street
Kenosha, Wisconsin 53142

With copies to:

Attorney John E. Hotvedt
Hotvedt & Terry, LLC
4015 – 80th Street, Suite H
Kenosha, Wisconsin 53142

b. CITY:

City Clerk/Treasurer
City of Kenosha
625 52nd Street, Room 105
Kenosha, Wisconsin 53140

With copies to:

Director, Stormwater Utility
City of Kenosha
625 52nd Street, Room 305
Kenosha, Wisconsin 53140

and

Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

11. Nothing contained herein shall be deemed to be a dedication of the Stormwater Management Facilities on the REAL ESTATE to the public. OWNER reserves all rights to use the REAL ESTATE for all purposes not inconsistent with the rights granted to the CITY herein or in that certain Permanent Storm Sewer and Detention Pond Easement and Agreement by and between the OWNER and CITY in connection with the Stormwater Management Facilities.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the dates below given.

CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation,

By: _____
KEITH G. BOSMAN, Mayor

Date: _____

By: _____
DEBRA SALAS, City Clerk/Treasurer

Date: _____

STATE OF WISCONSIN)
) SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, KEITH G. BOSMAN, Mayor, and DEBRA SALAS, City Clerk/Treasurer, of the CITY OF KENOSHA, WISCONSIN, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the Agreement of said corporation, by its authority.

Name: _____
Notary Public, Kenosha County, Wisconsin
My Commission expires/is: _____

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

LOT 1 AND LOT 2 OF CERTIFIED SURVEY MAP NO. _____ RECORDED WITH THE KENOSHA COUNTY REGISTER OF DEEDS ON _____, 2014 AS DOCUMENT NO. _____, LOCATED IN PART OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 1, TOWN 1 NORTH, RANGE 21 EAST, IN THE CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN.

Parcel Identification Number: 03-121-01-440-350

EXHIBIT B

Stormwater Inspection and Maintenance Checklist

Stormwater Inspection and Maintenance Checklist

Owner: _____ Parcel No. _____ City: _____ Zip: _____	Phone No.: _____ Address: _____ State: _____ Contact Name: _____
---	---

Date of Inspection (mm/dd/yy): _____	Inspection	<input type="checkbox"/> 6 Month <input type="checkbox"/> Other _____
Time of Inspection	Start: _____ End: _____	Name of Individual Performing Inspection (please print): _____

Weather Conditions during Inspection: _____

Stormwater Facility Inspection				
Condition	Good	Bad	Requires Maintenance	Notes: (Condition / Corrective Action)
General Site Conditions				
Greenspace				
Curb & Gutter				
Catch Basins				
Stormsewer				
Gutters/Downspouts				
Stormceptor or Equivalent Unit				
Overall Condition				
Lids and Access				
Sediment Level	-	-	Sediment Level	
Cleaning Required	Yes	No		Attach Manufacturer's recommendations for cleaning
Wet Detention Basin				
Outlet Structure Condition				
Next Structure Downstream				
Mowing (Monthly or >6")				
Condition of Plantings				
Condition of Water Plants				
Erosion				
Invasive Plants	Yes	No		
Sediment Level	-	-	Sediment Level	
Dredging Required	Yes	No		
Dry Detention Basin				
Outlet Structure Condition				
Next Structure Downstream				
Mowing (Monthly or >6")				
Condition of Plantings				
Condition of Water Plants				
Condition of Basin Bottom				
Erosion				
Invasive Plants	Yes	No		
Sediment Removal				
Excavation Required	Yes	No		
Bioretention Basin				
Overflow Pipe				
Condition of Water Plants				
Vegetation				
Standing Water	Yes	No		
Condition of Plantings				
Is trash evident	Yes	No		

Stormwater Inspection and Maintenance Checklist

Bioretention Basin (continued)			
Soil Test Bioretention	Yes	No	If Yes when Ph Level
Sediment Level			
Infiltration Basin/Trench			
Spreader			
Overflow Spillway			
Vegetation			
Standing Water	Yes	No	
50% of basin floor wet 3 days after rainfall	Yes	No	
Are plants at least 5-6 inches	Yes	No	
Has the Basin been burned	Yes	No	If Yes when
Is trash evident	Yes	No	
Rain Garden			
Weeds	Yes	No	
Condition of Plants			height
Vegetation			
Standing Water	Yes	No	
Is trash evident	Yes	No	
Dead Plants evident	Yes	No	Mowed When
Vegetated Swales			
Pesticides and Fertilizers Used	Yes	No	
Mowing Height			height
Sediment Level			height
Erosion	Yes	No	
Litter and Debris	Yes	No	
Proper Drainage	Yes	No	
Vegetated Swales			
Proper Drainage	Yes	No	
Mowing Height			height
Sediment Level			height
Erosion	Yes	No	
Level Spreader Condition			
Underground Storage Systems			
Outlet Structure Condition			
Inlet Pipe Conditions			
Sediment Level	height		% of Area
Floating debris	Yes	No	
Cracked or Damaged Sections	Yes	No	
Signature of Inspector _____ Date _____ Signature of Owner _____ Date _____			

EXHIBIT C

Stormwater Maintenance Standards

Storm Water Maintenance Standards – Reference Only

1. Greenspace: Vegetation shall be maintained to prevent erosion caused by stormwater runoff. An inspection shall be made at least every 6 months. If vegetation is no longer in good condition it shall be replanted.
2. Curb & Gutter: All curb and gutter shall be inspected every 6 months. This inspection shall include the condition of the gutter and the cleanliness of the gutter. This shall be maintained to allow for proper drainage of the area.
3. Storm Sewer: All storm sewers shall be inspected once a year. This inspection shall include the condition of the main line storm sewers to ensure that the system is functioning according to the design requirements.
4. Catch Basins and inlets: All catch basins and inlets shall be inspected every 6 months and periodically cleaned to remove accumulated sediment.
5. Gutters and Downspouts: All building's gutters and downspouts shall be inspected every 6 months and periodically cleaned to remove accumulated sediment.
6. Detention Basins – General
 - a. Dry or Wet Detention Basins
 1. Outlet Structure Maintenance: Trash grates shall be examined for debris accumulation after any storm that has significant runoff (observed flow in street gutters). Any debris on the trash grate shall be removed and disposed of offsite. If significant debris has passed the trash grates, it will be necessary to lift the grate to remove that debris. If debris passing the trash grate or vandals attempting to plug the outlet is a problem, then revisions should be made in the trash grate. Any time a trash grate needs replacement, the replacement grate must be constructed of stainless steel. Any blockage of the basin outlet must be addressed immediately. Blockage of the lower stages of the outlet structure must be cleared within 48 hours to avoid substantial die-off of the flooded grass areas. Any time a substantial portion of the grass area becomes damaged, the entire bottom area of the detention basin will need to be reseeded.
 2. Downstream Stormwater Conveyance: Upon detection of storm water failing to completely drain down to the basin discharge elevation, an investigation shall be made to determine the cause. Any obstruction or sediment buildup in the downstream pipes or drainage-way must be removed within 30 days and any damage to the basin such as wave terraces or grass die-off due to the water back up shall be repaired.

3. Mowing: The grass areas must be mowed when the grass reaches a height of 6 inches or monthly during the growing season – whichever occurs first. At no time shall the detention basin be mowed when the bottom or side slopes are still soft after recent storage of storm water. Any ruts created by mowing shall be graded closed or filled with topsoil, seeded, and covered with a tackifier type mulch within one week of the damage. The type of mower used shall be such that a mulch type grass clipping is produced. Grass cut only at the ground level, such as with a sickle bar, tends to be carried to the outlet by storm water where it plugs the trash grate.
4. Maintenance of Plantings: All planting of trees and bushes shall be maintained in good condition. An examination of the plantings shall be made each Spring and Fall and any dead trees or bushes replaced at that time. The replacement shall be in kind or with a suitable species approved by the City Forester. All planting shall receive regular watering during the first few years until they become well established. Mulch beds shall be maintained around the plantings to discourage the growth of weeds and to conserve moisture. The area immediately around the plantings shall be kept free of weeds by pulling or weed whipping each time the grass is mowed. Bushes mowed off or tree bark girdled by the mowing equipment shall be replaced by a specimen of similar size.
5. Erosion: Any area bare of suitable vegetation shall, within 30 days of discovery or the onset of suitable weather, have any erosion repaired, filled with three inches of topsoil, seeded, and covered with a tackifier type mulch. On slopes of 10 to 1 or greater the repair shall be covered with turf reinforcement before placement of the top two inches of topsoil.
6. Invasive plant species: Invasive plant species such as purple loose strife or canary reed grass shall not be allowed to become established in the detention basin. At the detection of such species a control program shall be established and progress in their control shall be included in the yearly report.
7. Use of chemicals: No fertilizer or weed killer shall be used with the detention basin parcel.
8. Alterations to the detention basin: No alterations may be made to the detention basin in the way of grading, additional discharges to the basin, plantings etc without permission from the Storm Water Utility.

b. Wet Detention Basins – In addition to the above requirements

1. Mowing: Any vegetation growing at the edge of a permanent pond shall not be mowed since this ruts the edge of the pond and puts debris in the water. Any undesirable vegetation around the permanent pond should be removed mechanically and in accordance with DNR regulations and guidelines.
2. Control of water plants: Some water plants are desirable as they provide a balance environment for aquatic life and aid in the removal of nutrients from the storm water. Growth along the edge of the pond stabilizes the shoreline against erosion and discourages geese from using the pond. Excessive growth should be controlled by mechanical removal of the plants. Any use of chemicals in the pond must be in conformance with DNR regulations and guidelines and receive prior approval from the Kenosha Stormwater Utility. If the shoreline erodes due to lack of proper stabilization some other means of protection such as the placement of boulders will be required. The control of algae is not a required maintenance item since the objection to algae is mainly based on esthetics.
3. Sediment removal: Soundings shall be taken every 5 years to determine the amount of sediment deposition. More than 2 feet of sediment in any area shall require excavation of the sediment from that area. If more than 25% of the pond bottom has greater than 1 foot of sediment the entire pond will need to be dredged or excavated to the original elevation.

7. Vegetated Swales

- a. Pesticides and Fertilizers: Chemicals shall be used in moderation and only as needed to promote healthy dense vegetation.
- b. Mowing: The swale shall be mowed or cut to the height needed for proper function.
- c. Sediment Removal: When infiltration rates impeded or sediment is 2 inches. Care shall be taken to ensure that the swale is not being compacted during removal process.
- d. Erosion: Any area bare of suitable vegetation shall, within 30 days of discovery or the onset of suitable weather, have any erosion repaired, filled with three inches of topsoil, seeded, and covered with a tackifier type mulch. On slopes of 10 to 1 or greater the repair shall be covered with turf reinforcement before placement of the top two inches of topsoil.

- e. Litter and Debris: Swales shall be examined for debris accumulation after any storm that has significant runoff (observed flow in street gutters). Any debris within the swale shall be removed and disposed of offsite.
- f. Proper drainage shall be maintained in all dry bottom detention basins to reduce mosquito breeding. No standing water shall be evident with one day of the complete drainage of the basin. Any such poorly drained area will need to be regraded or tiled.

PERMANENT STORM SEWER AND
DETENTION POND EASEMENT & AGREEMENT
BETWEEN 125TH AVENUE HOTEL, LLC AND
SMMFLP LIMITED PARTNERSHIP AND
THE CITY OF KENOSHA, WISCONSIN

Document Number

Document Title

This space is reserved for recording data

Return to:

Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, WI 53140

03-121-01-440-350

Parcel Identification Number

PERMANENT STORM SEWER AND DETENTION POND
EASEMENT & AGREEMENT

Between

125TH AVENUE HOTEL, LLC
A Wisconsin Limited Liability Company

And

SMMFLP LIMITED PARTNERSHIP
A Delaware Limited Liability Partnership

And

THE CITY OF KENOSHA
A Municipal Corporation

This Permanent Storm Sewer and Detention Pond Easement and Agreement (“Easement and Agreement”) effective as of the last date of execution is entered into between 125th Avenue Hotel, LLC, a Wisconsin limited liability company and SMMFLP Limited Partnership, a Delaware limited liability partnership, each with principal offices located at 4011 80th Street, Kenosha, Wisconsin 53142 as (“Grantor”) and the City of Kenosha, a municipal corporation duly organized and existing under the laws of the State of Wisconsin (“Grantee”).

Grantor is the owner of real estate legally described on Exhibit A situated in the City of Kenosha, County of Kenosha, State of Wisconsin, hereinafter referred to as “Real Estate.”

Grantor, in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions below provided, does hereby grant to Grantee a permanent easement, in, to and under and across that certain portion of the Real Estate legally described and shown on Exhibit B (the “Easement Area”) to install, construct, expand, replace, maintain, and repair storm sewer, stormwater ponds and appurtenances as described in the Conditional Use Permit, the executed Development Agreement and the Stormwater Management Practices Maintenance Agreement for Stormwater Maintenance Facilities, copies of which are on file with the City of Kenosha Department of Community Development and Inspections and the Department of Public Works, (hereinafter “Permitted Work”) for the purposes of conveying and detaining storm sewerage over, across, through, and under the Real Estate, together with the right to, within the Easement Area, excavate

and refill ditches and/or trenches, install appurtenances, and the further right to, within the Easement Area, remove trees, bushes, undergrowth, and remove other structures and obstructions interfering with the Permitted Work.

Grantor shall have and retain all other rights not granted to Grantee to the use and occupancy of the Easement Area, provided that no structure, landscaping or paving shall be erected or placed over or upon the Easement Area without the advance, written approval of the Director of Public Works of the City of Kenosha, and then subject to reasonable conditions, such as, but not limited to, replacement or removal of authorized improvements at the cost of Grantor, when required by Grantee. Unauthorized improvements on the Easement Area by Grantor are subject to removal by Grantee.

For the purpose of performing Permitted Work, Grantee shall have the right to enter and pass over and use the Real Estate and the lands of Grantor reasonably adjacent thereto for the temporary transportation, laying down, and storage of materials, backfill, tools and equipment, the depositing and removal of excavated materials, and for other purposes incidental to the Permitted Work. Upon completion of Permitted Work, restoration of the Easement Area by the Grantee shall be limited to backfilling ditches and/or trenches, topsoil, seeding and debris removal. Upon completion of Permitted Work, Grantor, at Grantor's cost and expense, shall be responsible for all other restoration within the Easement Area and surrounding property to the condition prior to such Permitted Work.

This Easement and Agreement shall run with the land and be binding upon the heirs, successors and assigns of the parties hereto. However, this Easement and Agreement shall not take effect until it is fully executed by the Grantor and Grantee. Each person who executes this Easement and Agreement certifies that they are acting within the scope of their respective authority in doing so.

This Easement and Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Grantor, Grantee and their respective successors and assigns shall have all rights to enforce this Easement and Agreement at law or in equity.

SIGNATURE PAGES FOLLOW

GRANTEE:

THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation

BY: _____
KEITH G. BOSMAN, Mayor

Date: _____

BY: _____
DEBRA SALAS, City Clerk/Treasurer

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, KEITH G. BOSMAN, Mayor, and DEBRA SALAS, City Clerk/Treasurer of the CITY OF KENOSHA, WISCONSIN, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

DRAFTED BY:
Jonathan A. Mulligan
Assistant City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOT 1 AND LOT 2 OF CERTIFIED SURVEY MAP NO. _____ RECORDED WITH THE KENOSHA COUNTY REGISTER OF DEEDS ON _____, 2014 AS DOCUMENT NO. _____, LOCATED IN PART OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 1, TOWN 1 NORTH, RANGE 21 EAST, IN THE CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN.

Parcel Identification Number: 03-121-01-440-350

SANITARY SEWER EASEMENT AND
AGREEMENT BY AND BETWEEN
SMMFLP LIMITED PARTNERSHIP AND
KENOSHA WATER UTILITY

Document Number

Document Title

This space is reserved for recording data

Return to:

Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, WI 53140

03-121-01-450-331

Parcel Identification Number

SANITARY SEWER EASEMENT AND AGREEMENT

By and Between

SMMFLP LIMITED PARTNERSHIP
A Delaware Limited Liability Partnership

And

KENOSHA WATER UTILITY
A Municipal Water Utility

This Sanitary Sewer Easement and Agreement (this "Easement and Agreement") made by and between SMMFLP LIMITED PARTNERSHIP, a Delaware limited liability partnership as "Grantor" and the KENOSHA WATER UTILITY, a municipal water utility existing under the laws of the State of Wisconsin hereafter referred to as "Grantee".

Grantor is the owner of real estate legally described on Exhibit A situated in the City of Kenosha, County of Kenosha, State of Wisconsin, hereafter referred to as the "Real Estate."

Grantor, in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions below provided, does hereby grant to Grantee a permanent easement in, to, under and across that certain portion of the Real Estate described and shown on Exhibit B (the "Easement Area") to install, construct, expand, reconstruct, repair, remove, replace, inspect, maintain and operate sanitary sewer and appurtenances all of which is hereafter referred to as the "Permitted Work", for the purposes of conveying sewage over, across, through, and under the Real Estate, together with the right to, within the Easement Area, excavate and refill ditches and/or trenches, install appurtenances, and the further right to, within the Easement Area, remove, cut or trim trees, shrubs, bushes, plants, undergrowth, fences, pavement or any other structures and obstructions interfering with the Permitted Work. Grantor will not push, plow or deposit snow, ice, or debris within the Easement Area.

Grantor shall have and retain all other rights not granted to Grantee to the use and occupancy of the Easement Area provided that no structure, landscaping or paving shall be erected or placed over or upon the Easement Area without the advance, written approval of the General Manager of the Kenosha Water Utility, and then subject to reasonable conditions, such as, but not limited to, replacement or removal of authorized improvements at the cost of Grantor, when required by Grantee. Unauthorized improvements on the Easement Area by Grantor are subject to removal by Grantee.

For the purpose of performing Permitted Work, Grantee shall have the right, upon reasonable notice to Grantor, except in case of emergency in which event Grantee shall provide such notice to Grantor as Grantee is reasonably able to provide under the circumstances, to enter and pass over the Real Estate in order to use the Easement Area and the lands of Grantor reasonably adjacent thereto for the temporary transportation, laying down and storage of non-hazardous materials, backfill, tools and equipment, the depositing and removal of excavated materials, and for other purposes incidental to the Permitted Work. Upon completion of Permitted Work, restoration of the Easement Area by the Grantee shall be limited to backfilling ditches and/or trenches, topsoil, seeding and debris removal. Upon completion of Permitted Work, Grantor, at Grantor's cost and expense, shall be responsible for all other restoration, including

restoration of any landscaping, any fencing, any concrete and asphalt surfaces, or any other structures within the Easement Area and surrounding property to the condition prior to such Permitted Work.

This Easement and Agreement shall run with the land and be binding upon the heirs, successors and assigns of the parties hereto. However, this Easement and Agreement shall not take effect until it is fully executed by the Grantor and Grantee. Each person who executes this Easement and Agreement certifies that they are acting within the scope of their respective authority in doing so.

This Easement and Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Grantor, Grantee and their respective successors and assigns shall have all rights to enforce this Easement and Agreement at law or in equity.

GRANTOR:

SMMFLP LIMITED PARTNERSHIP
A Delaware Limited Liability Partnership

BY: _____
Stephen C. Mills
Its: General Partner

Date: _____

STATE OF WISCONSIN)
:SS.
COUNTY OF KENOSHA)

Personally came before me this ____ day of _____, 2014, Stephen C. Mills, the General Partner of SMMFLP LIMITED PARTNERSHIP, a Delaware limited liability partnership, to me known to be such General Partner, and acknowledged that he executed the foregoing instrument as such General Partner as the agreement of said limited liability partnership by its authority.

Notary Public, Kenosha County, Wisconsin
My Commission expires/is: _____

GRANTEE:

KENOSHA WATER UTILITY
A Wisconsin Municipal Water Utility

BY: _____
JAN MICHALSKI, Chairman
Board of Water Commissioners

Date: _____

BY: _____
EDWARD ST. PETER,
General Manager
Kenosha Water Utility

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, JAN MICHALSKI, Chairman of the BOARD OF WATER COMMISSIONERS, and EDWARD ST. PETER, General Manager of the KENOSHA WATER UTILITY, a Wisconsin municipal water utility, to me known to be such Chairman and General Manager of said municipal water utility, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal water utility, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

DRAFTED BY:
Jonathan A. Mulligan
Assistant City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

Exhibit "A"

Lot 1 of Certified Survey Map. No. 1368 as recorded in the office of the Register of Deeds in and for Kenosha County as Document No. 845433, and being located in part of the Southeast 1/4 of Section 1, Town 1 North, Range 21 East, City of Kenosha, Kenosha County, Wisconsin

EXHIBIT B

20' WIDE SANITARY SEWER EASEMENT

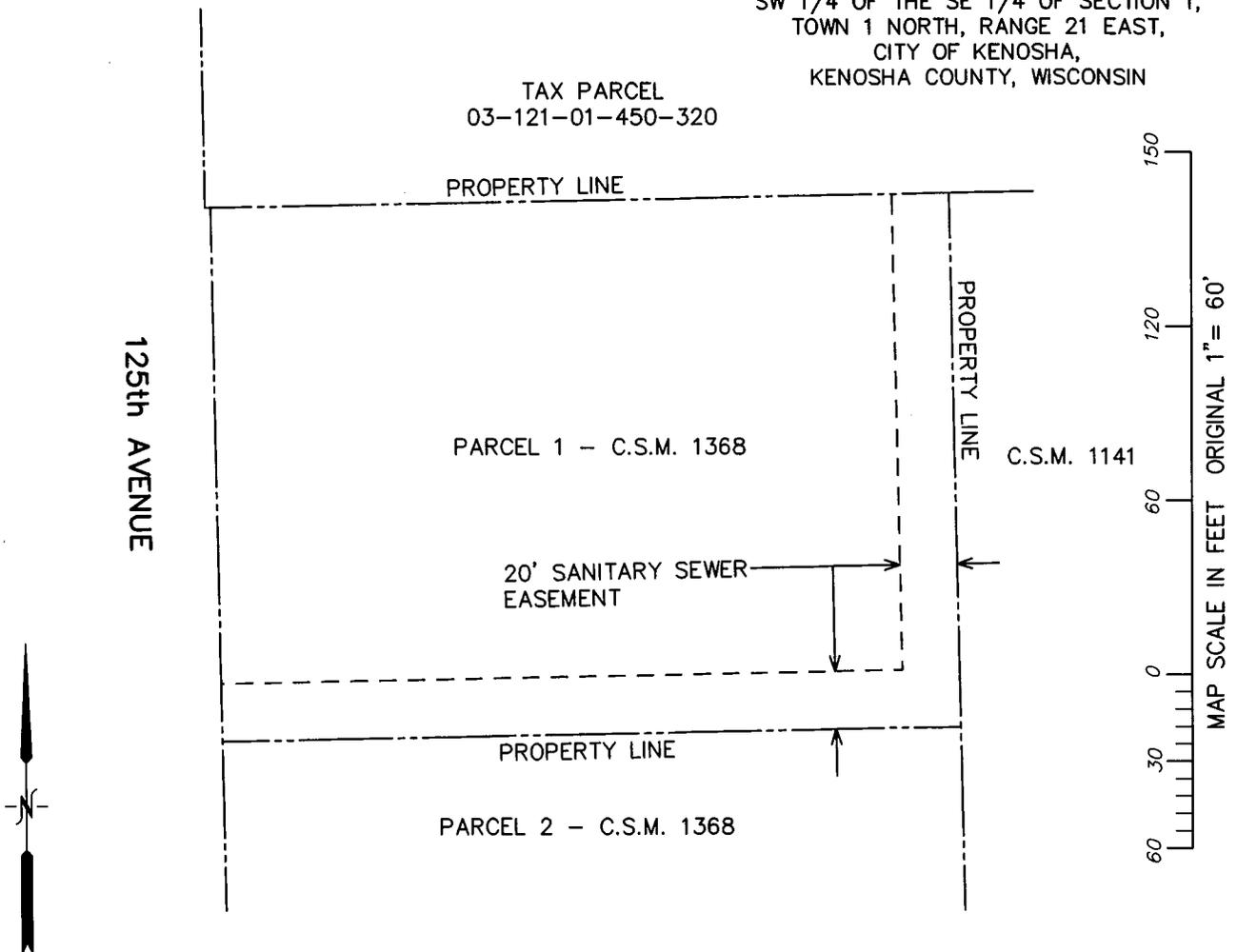
THE SOUTH TWENTY FEET AND THE EAST TWENTY FEET OF PARCEL 1 OF CERTIFIED SURVEY MAP NO. 1368 AS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR KENOSHA COUNTY AS DOCUMENT NO. 845433, AND BEING LOCATED IN PART OF THE SOUTHEAST 1/4 OF SECTION 1, TOWN 1 NORTH, RANGE 21 EAST, CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN. EXCEPTING THEREFROM LANDS CONVEYED FOR ROAD RIGHT OF WAY PURPOSES.

FARRIS, HANSEN & ASSOC. INC.

7 RIDGWAY COURT- P.O. BOX 437
ELKHORN, WISCONSIN 53121
PHONE (262) 723-2098
FAX (262) 723-5886

20' WIDE SANITARY SEWER EASEMENT

LOCATED IN PART OF THE
SW 1/4 OF THE SE 1/4 OF SECTION 1,
TOWN 1 NORTH, RANGE 21 EAST,
CITY OF KENOSHA,
KENOSHA COUNTY, WISCONSIN



THIS INSTRUMENT DRAFTED
BY PETER S. GORDON
PROJECT NO. 7556
DATED: 6/13/2014
SHEET 1 OF 1 SHEETS



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER
PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT
FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT
WASTE DIVISION
ROCKY BEDNAR.
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

July 29, 2014

To: Scott Gordon, Chairman
Parks Commission

Patrick Juliana, Chairman
Stormwater Utility Committee

From: Michael M. Lemens, P.E.
Director of Public Works

Subject: *Approval of the Permanent Easement by and between the City of Kenosha and Stephen F. Estes (CSM on 7th Avenue at 39th Street)*

BACKGROUND/ANALYSIS

The owner of the property along 7th Avenue immediately south of the south line of Pennoyer Park recently divided the lots and wants to offer them for sale. A condition of the certified survey map splitting the lots requires the property owner to obtain an easement from the City a short distance across Pennoyer Park for the installation of storm sewer to serve the newly divided lots and allow for proper drainage of the lots.

All costs associated with the installation of sewer including restoration will be the responsibility of the petitioner.

RECOMMENDATION

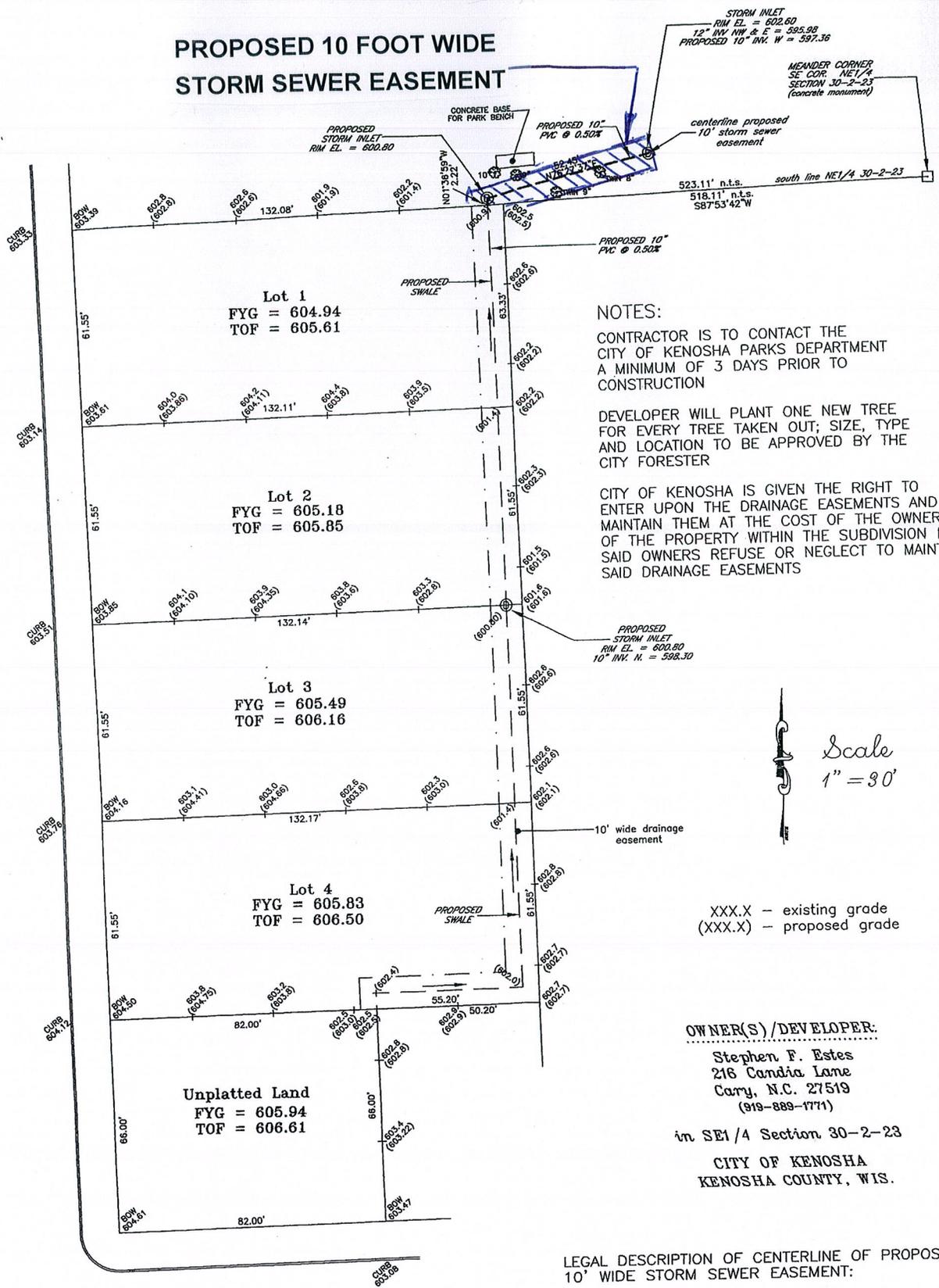
Staff recommends that the easement be approved and that it be recommended to the Common Council to authorize the Mayor and City Clerk to execute the easement.

MML

CC: Ald. Haugaard, District 1

PROPOSED 10 FOOT WIDE STORM SEWER EASEMENT

7th Avenue (88' 1/4")

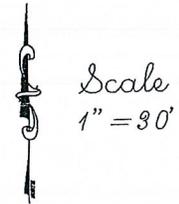


NOTES:

CONTRACTOR IS TO CONTACT THE CITY OF KENOSHA PARKS DEPARTMENT A MINIMUM OF 3 DAYS PRIOR TO CONSTRUCTION

DEVELOPER WILL PLANT ONE NEW TREE FOR EVERY TREE TAKEN OUT; SIZE, TYPE AND LOCATION TO BE APPROVED BY THE CITY FORESTER

CITY OF KENOSHA IS GIVEN THE RIGHT TO ENTER UPON THE DRAINAGE EASEMENTS AND MAINTAIN THEM AT THE COST OF THE OWNERS OF THE PROPERTY WITHIN THE SUBDIVISION IF SAID OWNERS REFUSE OR NEGLECT TO MAINTAIN SAID DRAINAGE EASEMENTS



XXX.X - existing grade
(XXX.X) - proposed grade

OWNER(S)/DEVELOPER:

Stephen F. Estes
216 Candia Lane
Cary, N.C. 27519
(919-889-1771)

in SE 1/4 Section 30-2-23

CITY OF KENOSHA
KENOSHA COUNTY, WIS.

LEGAL DESCRIPTION OF CENTERLINE OF PROPOSED 10' WIDE STORM SEWER EASEMENT:

Part of the Northeast Quarter of Section 30, Tow 2 North, Range 23 East of the Fourth Principal Meridian; lying and being in the City of Kenosha, Kenosha County, Wisconsin and being more particularly described as: Commencing at the meander corner southeast corner of said quarter section; thence S87°53'42"W along the south line of said quarter section N76°27'37"E along said centerline 22.45 feet to the point of termination.

39th (88' 1/4") Street

8121 22ND AVENUE KENOSHA, WI 53143
ph. 262-652-8110 fax 262-652-9695

dated: 6/4/14
Revised 6/25/14

August 1, 2014

TO: Michael M. Lemens, P.E.
Director of Public Works

FROM: Shelly Billingsley, P.E.
Deputy Director of Public Works / City Engineer

SUBJECT: Public Works Project Status Report

Informational Item

- Project # 08-1443 Bike and Pedestrian Connections** - Plans have begun but a major focus on bike paths has been to complete the Bike Path crossing at Washington Road and the extension through Nash Park. Once these projects have been bid, design will be completed on this third phase. (Citywide)
- Project #09-1121 - Forest Park Evaluation** – [Strand] Staff is meeting with consultant and working on final comments. (1)
- Project #10-1126 - Wetland Mitigation Bank** - [Wetlands and Waterways Consulting LLC] Monitoring wells have been installed on-site. Currently in the process of finalizing new technical memo. (16)
- Project #10-1131 - River Crossing Swale Restoration** – [Applied Ecological Services] Maintenance has been performed. (17)
- Project #11-1128 - Multi-Plate Pipe Storm Sewer Inspection and Evaluation** – [Ruekert-Mielke] Staff is working with consultant on recommendations. (2 and 7)
- Project #11-1125 - Pennoyer Beach Outfall Stormwater Infiltration Basin (GLRI Grant)** – Bioswales have been replanted. (1 and 6)
- Project #11-2013 - Harbor and Marina Dredging** – [Shoreline Builders] Waiting for close out documents (2).
- Project #12-1430 - Alford Park Warehouse Demolition** – [Earth Construction] Close out documents were sent to Contractor. (1)
- Project #11-1025 - 122nd Avenue – 71st Street to 74th Street** – [AW Oakes] Waiting for close out documents. (Stormwater Utility funding also) (16)
- Project #13-1012 - Resurfacing I** – [Stark] Project is complete. Punch list items remain. [Lincoln Road intersection at 28th Avenue, Lincoln Road intersection at 22nd Avenue, 70th Street from 39th Avenue to 40th Avenue] (Stormwater Utility funding also) (13, 15)
- Project #13-1013 -CDBG Resurfacing** – [Stark] Punch list items remain. [13th Court from Washington Road to 43rd Street, 41st Street from 22nd Avenue to 350 ft. east of 21st Avenue] (Stormwater Utility funding also) (6)
- Project #13-1016 Resurfacing III** – [Cicchini] Punch list items remain on 40th Street. [34th Ave from 86th Place to 88th Place, 44th Avenue Cul-de-Sac south of 87th Place, 87th Place Cul-de-Sac west of 42nd Avenue, 26th Avenue from 34th Street to 31st Street, 40th Street from Sheridan Road to 8th Avenue] (Stormwater Utility funding also) (1, 6, 9, 14)
- Project #13-1024 – 60th Street Resurfacing – 39th Avenue to 30th Avenue** – [Cicchini] Punch list items are complete. Working on project close-out. (Stormwater Utility funding also) (3, 11, 15)
- Project #13-1025 56th Street Resurfacing** – [Cicchini] Project is complete. Punchlist items remain. [56th Street from Sheridan Road to 13th Avenue] (Stormwater Utility funding also) (2)
- Project #13-1208 - Sidewalk and Curb and Gutter** – [AW Oakes] Project is complete. Punch list items remain. (Stormwater Utility funding also) (Citywide)
- Project #13-1412 - Simmons Field** – [Camosy] Waiting on close out documents. (12)
- Project #14-1012 – Resurfacing Phase I** – [Payne & Dolan] Contract awarded on July 28, 2014. Anticipated project start on August 4, 2014. (12, 16)
- Project #14-1014 – Concrete Street Repairs – 80th Street** – Bid opening is scheduled for August 13.
- Project #14-1015 – 39th Avenue – Washington Rd to 45th Street Resurfacing** – [Payne & Dolan] Project Awarded on July 28, 2014. Anticipated project start on August 18, 2014. (10)
- Project #14-1017 Concrete Street Repairs (Street Division) – Pershing Blvd** – Staff is finalizing areas to be replaced. It is anticipated that Street Division will be doing this work.
- Project #14-1019 – Crackfilling** – Bid opening was July 30. Contract is pending Public Works Committee and Common Council approval. (Citywide)
- Project #14-1208 – Sidewalk Repair Program** –Project started on May 29 and is approximately 50% complete. (Stormwater Utility funding also) (Citywide)
- Project #14-2002 Overpass Painting** – Bids were opened on July 16. Anticipated award by Public Works and Common Council on August 4. Project is anticipated to begin mid-August.
- Project #14-1027 Pavement Markings** – Contract was awarded on July 7. Project is anticipated to begin August 4. (Citywide)
- Project #14-1025 56th Street Phase Lighting** – [WIL-Surge Electric, Inc.] Existing concrete street lights have been removed. Direction Boring is underway. (2)
- Project #14-1026 56th Street Phase Sidewalk Project** – Staff is completing plans and specifications for the sidewalk repairs. (2)
- Project #14-1209 Emergency Vehicle Preemption – Traffic Signals** – The City is waiting on equipment to be shipped. (Citywide)
- Project #14-2013 Southport Marina Dredging** – [Ryba] – Project has started. Contractor is anticipating dredging to be completed by Mid-August.
- Design Work (Public Works)** – Staff is working on the following projects: Website Design, GPS Data Forms, Simmons Library Improvements, Equipment Specifications, and SWU Projects and Parks Projects.