AGENDA
STORMWATER UTILITY COMMITTEE

MONDAY, OCTOBER 21, 2013
ROOM 202
5:30 P.M.

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

Eric Haugaard
Jan Michalski
G. John Ruffolo

A-1 Approval of minutes of regular meeting held on October 7, 2013.

C-1 Ordinance by the Mayor – To Amend Subsection 30.10 A. Regarding Filing of Complaints and to Repeal and Recreate Subsection 30.15 (of the Code of General Ordinances) Regarding Liability of Complainant for Costs and Expenses. *(also referred to Finance Committee, Public Works Committee and Ethics Board) (PSW approved 3-1, L/P approved 2-1) (referred on 10/7/13 Council Agenda)*

C-2 Acceptance of Project 12-1208 Sidewalk & Curb/Gutter Program (Citywide Locations) which has been satisfactorily completed by A.W. Oakes & Son (Racine, Wisconsin) in the amount of $491,835.37. ($51,164.50 Curb & Gutter Funds) **(All Districts)**

C-3 Set date and time for the 2014 Budget Review.

C-4 Approval of Development Agreement between the City of Kenosha, the Kenosha Water Utility and KTR WIS III LLC and KTR WIS IV, LLC (Project Onyx/Amazon) **(District 16)** (Also referred to Public Works, City Plan and Board of Water Commissioners)

C-5 Stormwater Management Practices Maintenance Agreement for Stormwater Maintenance Facilities by and between the City of Kenosha and KTR WIS III LLC and KTR WIS IV LLC.

C-6 Stormwater Permanent Easement and Agreement by and between KTR WIS III LLC and KTR WIS IV LLC and the City of Kenosha.

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 CONSITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

STORMWATER UTILITY COMMITTEE
- MINUTES -

MONDAY, OCTOBER 7, 2013
5:30 P.M.

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

Eric Haugaard
Jan Michalski
G. John Ruffolo

The regular meeting of the Stormwater Utility Committee was held on Monday, October 7, 2013 in Room 202 of the Municipal Building. The following members were present: Chairman Patrick Juliana, Vice Chairman Scott N. Gordon, Aldermen Steve Bostrom and Jan Michalski. Aldermen Eric Haugaard and G. John Ruffolo were excused. The meeting was called to order at 6:08 pm. Staff members in attendance were Mike Lemens and Cathy Austin.

A-1 Approval of minutes of regular meeting held on September 16, 2013.
It was moved by Alderman Michalski, seconded by Alderman Gordon to approve. Motion passed 4-0.

C-1 Resolution by Finance Committee – To Amend the City of Kenosha Capital Improvement Program for 2013 By Creating SW13-009 "Recreational Water Quality" in the Amount of $150,000 with Outside Funding from a Great Lakes Restoration Initiative Grant in the Amount of $150,000 for a Net Change of $0.
(also referred to Finance Committee)
It was moved by Alderman Gordon, seconded by Alderman Michalski to approve. Motion passed 4-0.

C-2 Agreement by and between the Board of Regents of the University of Wisconsin System *(on behalf of the University of Wisconsin Oshkosh)* and the City of Kenosha for Beach Restoration for Simmons Island and Eichelman Beaches.
(Park Commission approved 3-0)
It was moved by Alderman Michalski, seconded by Alderman Gordon to approve. Motion passed 4-0.

C-3 Disbursements for the month of August 2013.
It was moved by Alderman Gordon, seconded by Alderman Michalski to approve items C-3 and C-4. Motion passed 4-0.

C-4 Disbursements for the month of September 2013.

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 6:13 pm.

C-1

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

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October 11, 2013

To: Rocco LaMacchis, Sr., Chairman,
Public Safety & Welfare Committee

Eric Haugaard, Chairman,
Public Works Committee

Patrick A. Juliana, Chairman,
Stormwater Utility Committee

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

Subject: Ordinance by the Mayor – To Amend Subsection 30.10 A. Regarding Filing of Complaints and to Repeal and Recreate Subsection 30.15 *(of the Code of General Ordinances)* Regarding Liability of Complainant for Costs and Expenses.

BACKGROUND/ANALYSIS

The Legal Department has prepared the following Ordinance for Subsection 30.10 A. Regarding Filing of Complaints and to Repeal and Recreate Subsection 30.15 of the Code of General Ordinances Regarding Liability of Complainant for Costs and Expenses.

RECOMMENDATION

Staff has no recommendation.

SB/dh

ORDINANCE NO. _____

DRAFT 09/27/13

SPONSOR: MAYOR

TO AMEND SUBSECTION 30.10 A. REGARDING FILING OF COMPLAINTS AND TO REPEAL AND RECREATE SUBSECTION 30.15 OF THE CODE OF GENERAL ORDINANCES REGARDING LIABILITY OF COMPLAINANT FOR COSTS AND EXPENSES

The Common Council of the City of Kenosha, Wisconsin, do ordain as follows:

Section One: Subsection **30.10 A**. of the Code of General Ordinances for the City of Kenosha, Wisconsin, is hereby amended as follows:

A. Filing of Complaints. Any person may file a complaint against any covered person alleging a violation of the Code of Ethics with the Ethics Board. The complaint shall be filed with the City Department of Human Resources. The complaint shall be in writing and shall be verified. A separate written verified complaint shall be required for each named covered person. The complaint shall state with specificity the date of the alleged offense, the provision of the Code of Ethics alleged to have been violated, and the facts and circumstances upon which the allegations are based. Allegations shall be deemed to be made upon personal knowledge unless stated as being made upon information and belief. No complaint shall be filed unless accompanied by a verified acknowledgment on a form prescribed by the City stating that the complainant has read, understands and agrees to be bound by the provisions of Section 30.15 A. of this Chapter entitled Liability Of Complainant For Costs And Expenses. Any complaint filed with the Department of Human Resources but not received by the Ethics Board prior to the effective date of this ordinance will not be received by the Ethics Board unless and until the complainant files the verified acknowledgment required pursuant to this paragraph.

Section Two: Subsection **30.15** of the Code of General Ordinances for the City of Kenosha, Wisconsin, is hereby repealed and recreated as follows:

~~**30.15 REIMBURSEMENT OF LEGAL EXPENSES**~~

~~In the event a complaint against an accused covered person is dismissed in its entirety the Ethics Board, the accused covered person shall be paid by the City for the reasonable cost of the defense upon assigning to the City any cause of action to recover the legal expenses incurred by the accused covered person from the complainant. The City in its discretion may pursue such assigned cause of action to recover the legal expenses from the complainant where the complaint has been dismissed in its entirety by the Ethics Board.~~

30.15 LIABILITY OF COMPLAINANT FOR COSTS AND EXPENSES

A. In the event a complaint against an accused covered person is dismissed in its entirety by the Ethics Board, the complainant shall be liable to the City to the fullest extent allowed by law for all costs and expenses, including all administrative personnel costs and actual

reasonable attorney fees, incurred by the City and the Ethics Board in any way related to the complaint together with all costs and expenses, including actual reasonable attorney fees, incurred by the accused covered person in defense of the complaint. Upon dismissal of a complaint in its entirety by the Ethics Board, the accused covered person shall be paid by the City for the costs and expenses, including actual reasonable attorney fees, incurred by the accused covered person in defense of the complaint upon assigning to the City any cause of action to recover the amount paid by the City from the complainant. The City may pursue the assigned cause of action against the complainant together with the cause of action to recover all costs and expenses described above incurred by the City and the Ethics Board. In addition to the above, the complainant shall also be liable to the fullest extent allowed by law for all costs and expenses, including actual reasonable attorney fees, incurred by the City in any action against the complainant to recover the costs and expenses which the complainant is obligated to pay pursuant to this Section.

B. Pursuant to Section 30.10 A., along with the complaint, a complainant shall file a signed acknowledgment that will include the following language:

> "The undersigned complainant acknowledges, understands and agrees that in the event the Ethics Board dismisses the undersigned's ethics complaint in its entirety, the undersigned shall be liable to the City of Kenosha to the fullest extent allowed by law for all costs and expenses, including actual reasonable attorney fees, incurred by the City, the Ethics Board and the accused covered person in any way related to the undersigned's ethics complaint, together with all costs and expenses, including actual reasonable attorney fees, incurred by the City in collecting payment thereof from the complainant. The undersigned further acknowledges that the undersigned has read and understands Section 30.15 A. of the Code of General Ordinances entitled Liability Of Complainant For Costs And Expenses and agrees to be bound by its provisions."

Section Three: This Ordinance shall become effective upon passage and publication.

ATTEST: _____ City Clerk

APPROVED: _____ Mayor

Passed:

Published:

Drafted By:
JONATHAN A. MULLIGAN
Assistant City Attorney

C-2

ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

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

DEPARTMENT OF PUBLIC WORKS
MICHAEL M. LEMENS, P.E., DIRECTOR
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October 16, 2013

To: Eric Haugaard, Chairman, Public Works Committee
Patrick Juliana, Chairman, Stormwater Utility Committee

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

Subject: Acceptance of Project 12-1208 Sidewalk & Curb/Gutter Program

Location: Citywide

Please be advised that the above referenced project has been satisfactorily completed by A.W. Oakes & Son, Racine, Wisconsin. This project consisted of hazardous sidewalk, driveway approach and curb/gutter repair, installation of new sidewalk, installation of handicapped ramps, excavation and landscaping.

It is recommended that the project be accepted in the final amount of $491,835.37 ($440,670,87 sidewalk and $51,164.50 curb and gutter).

Annually the sidewalk and curb/gutter contract is a "quantities and unit cost" contract, meaning that the quantities and locations of work are adjusted in accordance with available funding.

Original contract amount for sidewalk was $413,090.00 plus $66,910 for additional quantities for a total award of $480,000 from CIP Line Item IN-93-004; original contract amount for curb and gutter bid was $84,720.00 plus $10,280 for additional quantities for a total award of $95,000 from CIP Line Item SW-93-005, for total award amount of $575,000.

SAB/kjb

C-3

ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
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October 18, 2013

To: Eric Haugaard, Chairman,
Public Works Committee

Patrick A. Juliana, Chairman,
Stormwater Utility Committee

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

10-18-13

Subject: Set date and time for 2014 Budget Review

BACKGROUND/ANALYSIS

Administration is asking the Public Works Committee and the Stormwater Utility Committee to set up a date and time for the 2014 Budget Review. The Park Commission and Public Safety & Welfare Committee are scheduled for Monday, November 5, 2013. Finance Committee is scheduled for Tuesday, November 19, 2013 and Wednesday, November 20, 2013.

RECOMMENDATION

Administration is recommending the meetings to be scheduled during the period of October 29, 2013 through November 1, 2013.

MML/dh

C-4

ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
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October 17, 2013

To: Eric Haugaard, Chairman
Public Works Committee

Patrick Juliana, Chairman
Stormwater Utility Committee

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

10-18-13

Subject: ***Approval of Development Agreement between the City of Kenosha, Kenosha Water Utility and KTR WIS III, LLC and KTR WIS IV, LLC (Project Onyx/Amazon)***

BACKGROUND/ANALYSIS

A team of City staff has been reviewing the draft of the Development Agreement and negotiating the necessary revisions to allow the proposed Amazon project to move forward and obtain the necessary permits. The process of formal approval requires consideration and approval from the standing committees before it goes for approval by the Common Council.

RECOMMENDATION

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

MML

CC: Ald. Downing, District 16

DEVELOPMENT AGREEMENT

Between

THE CITY OF KENOSHA, WISCONSIN
a Municipal Corporation

And

THE KENOSHA WATER UTILITY
a Municipal Water Utility

And

KTR WIS III LLC And KTR WIS IV LLC
each a Delaware Limited Liability Company

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 KTR WIS III LLC and KTR WIS IV LLC, each a Delaware limited liability company, with principal offices located at Five Tower Bridge, 300 Barr Harbor Drive, Suite 150, Conshohocken, PA 19428 ("DEVELOPER"), collectively referred to as the Parties.

WITNESSETH:

WHEREAS, DEVELOPER is the owner of approximately 158 acres of real estate in the City of Kenosha which is legally described on attached Exhibit A and shown on the certified survey map (the "CSM") attached as Exhibit B, hereinafter referred to as "REAL ESTATE"; and,

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

WHEREAS, REAL ESTATE is zoned M-2 Heavy Manufacturing District, C-1 Upland Resource Conservancy District, C-2 Lowland Resource Conservancy District, FW Floodway District, SWO Shoreland Wetland Overlay District, AIR-3 Airport Overlay District Approach, 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 the "CSM" 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 the 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 Finance Committee has recommended to the Common Council and the Common Council of CITY has approved a development grant agreement attached as Exhibit D for Lot 1 of the 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 and water supply and distribution facilities for REAL ESTATE, and UTILITY is willing to approve the provision of sanitary sewerage and water supply to REAL ESTATE subject to the terms and conditions of this AGREEMENT; and

WHEREAS, DEVELOPER agrees to develop REAL ESTATE as provided in the CSM, the conditional use permit, the development grant agreement, and this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the Parties, including the approval by CITY of the CSM and conditional use permit for the REAL ESTATE, the development grant agreement for Lot 1 of the REAL ESTATE, the provision by UTILITY of sanitary sewerage and water supply, and the agreement of DEVELOPER to develop REAL ESTATE, the Parties agree that REAL ESTATE will be developed as provided in the CSM, the conditional use permit, the development grant agreement, 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 CSM, and the Sanitary Sewer Plan attached as Exhibit E. 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, which approval shall not be unreasonably withheld. 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 within ten (10) business days of receipt.

2. CITY and 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.

3. 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.

4. 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 in any easement located within REAL ESTATE 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 for the construction of any sanitary sewerage facilities being dedicated to the UTILITY.

   h. certification of items a - g above by UTILITY Engineer, such certification not to be unreasonably withheld.

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

5. 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 dedication and 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 in any easement located within REAL ESTATE and be responsible for their maintenance and operation subject to the guarantee of DEVELOPER provided in this AGREEMENT.

6. The sanitary sewerage facilities required by this AGREEMENT shall be functional prior to CITY issuance of any building permits for any improvements within REAL ESTATE pursuant to Section 17.12 C. of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time.

B. Water Supply and Distribution Facilities.

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct, and install, complete water supply and distribution facilities throughout REAL ESTATE, including the mains and appurtenances which abut land for any public purpose, in accordance with UTILITY specifications, the conditional use permit, the CSM, and the Water Main Plan attached as Exhibit F. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications for the design, construction and installation of the water supply and distribution facilities from UTILITY Engineer, which approval shall not be unreasonably withheld. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications for the design, construction and installation of the water supply and distribution facilities from the Wisconsin Department of Natural Resources (WDNR). DEVELOPER shall provide copies of all WDNR approvals to UTILITY within ten (10) business days of receipt.

2. CITY and UTILITY shall cooperate with DEVELOPER in obtaining all permits required by any governmental unit or regulatory agency for the water supply and distribution facilities required by this AGREEMENT, including water supply distribution facilities extensions and connections.

3. Subject to the terms of this AGREEMENT, UTILITY shall allow DEVELOPER to extend and connect the water supply and distribution facilities required by this AGREEMENT to the water supply and distribution 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.

4. UTILITY shall accept the water supply and distribution facilities required to be designed, constructed and installed by DEVELOPER pursuant to this AGREEMENT which are located in the public rights-of-way or in any easement located within REAL ESTATE upon the following:

    a. completion of the water supply and distribution 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 water supply and distribution 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 water supply and distribution facilities required by UTILITY, including density tests certifying proper compaction of water supply and distribution facilities trench backfill.

d. certified "as-built" drawings of the water supply and distribution 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 water supply and distribution 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 for construction of any water supply and distribution facilities being dedicated to the UTILITY.

h. certification of items a - g above by UTILITY Engineer, such certification not to be unreasonably withheld.

i. approval by UTILITY Board of Water Commissioners of the water supply and distribution facilities.

5. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for the maintenance and operation of the water supply and distribution facilities required by this AGREEMENT, including locate requests, unless and until the water supply and distribution facilities are accepted by UTILITY. Upon dedication and acceptance of the water supply and distribution facilities, UTILITY shall have full jurisdiction and ownership of the water supply and distribution facilities located in the public rights-of-way or in any easement located within REAL ESTATE and be responsible for their maintenance and operation subject to the guarantee of DEVELOPER provided in this AGREEMENT.

6. The water supply and distribution facilities required by this AGREEMENT shall be functional prior to CITY issuance of any building permits for any improvements within REAL ESTATE pursuant to Section 17.12 C. of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time.

C. **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 CSM, the Storm Water Management Plan attached as Exhibit G and the Storm Sewer Plan attached as Exhibit H.

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 Stormwater Management 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 install tracer wires on all storm sewer mains and laterals in accordance with CITY specifications.

4. 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, which approval shall not be unreasonably withheld. 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.

5. 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.

6. Subject to the terms of this AGREEMENT, CITY shall allow DEVELOPER, at DEVELOPER'S cost and expense, to extend and connect the storm water drainage facilities required by this AGREEMENT to the nearest appropriate storm water drainage facilities of CITY. DEVELOPER'S cost and expense shall include payment by DEVELOPER of all easement acquisition costs and 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.

7. Title to all storm water drainage facilities, including retention/detention basins and outlet structures located within REAL ESTATE, except storm water drainage facilities located within public rights-of-way or any easements located within REAL ESTATE as shown on the Storm Sewer Plan attached as Exhibit H which are dedicated to and accepted by CITY, 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, except storm water drainage facilities located within public rights-of-way or in any easement located within REAL ESTATE as shown on the Storm Sewer Plan attached as Exhibit H which are dedicated to and accepted by CITY. CITY shall be responsible for the maintenance of the storm water pipe and structures conveying storm water from the public right-of-way as shown on the Storm Sewer Plan attached as Exhibit H. DEVELOPER, or the owner's association, 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 the maintenance and operation of the storm water drainage facilities, including retention/detention basins and outlet structures located within REAL ESTATE, except storm water drainage facilities located within public rights-of-way or in any easement located within REAL ESTATE dedicated to and accepted by CITY as shown on the Storm Sewer Plan attached as Exhibit H. A copy of the Maintenance Agreement is attached as Exhibit I. 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 consistent with and subject to the safety, confidentiality, and security protocol of the DEVELOPER and any tenant of the property being inspected to conduct inspections of storm water drainage facilities as reasonably necessary to determine whether the storm water drainage facilities are being maintained, repaired, replaced and operated in accordance with the Maintenance Agreement in a manner that will not materially interfere with the operations of the tenant or DEVELOPER on the property being inspected.

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 reasonably 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 reasonably 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.

8. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY a maintenance easement for the storm water drainage facilities, including retention/detention basins and outlet structures located within REAL ESTATE, except storm water drainage facilities located within public rights-of way. Upon the failure of the Developer to perform the required maintenance, the maintenance easement shall authorize CITY to impose a special charge pursuant to Section 66.0627 of the Wisconsin Statutes against all benefited REAL ESTATE, a special assessment, or a user fee for the charges incurred by CITY in performing or having performed on CITY'S behalf maintenance, repairs or replacements to the storm water drainage facilities located within REAL ESTATE, except storm water drainage facilities located within public rights-of-way.

9. Storm and surface water which flows onto any abutting private property may be tied into existing drain tiles at the perimeter of REAL ESTATE with the written permission of the abutting property owner and upon written approval of CITY Engineer, which approval shall not be unreasonably withheld.

10. CITY shall accept the storm water drainage facilities required to be designed, constructed and installed by DEVELOPER pursuant to this AGREEMENT which are located in the public rights-of-way or any easement located within REAL ESTATE as shown on the Storm Sewer Plan attached as Exhibit H upon the following:

a. completion of the storm water drainage facilities in accordance with all approved plans, specifications and calculations and compatibility with attached and adjacent systems, facilities and improvements.

b. construction, installation and delivery of the fully functional storm water drainage facilities without defect, damage or nonconformance with this AGREEMENT all approved plans, specifications and calculations, 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 storm water drainage facilities required by CITY, including density tests certifying proper compaction of storm water drainage facilities trench backfill.

d. certified "as-built" drawings of the storm water drainage facilities including retention/detention basins and outlet structures in print and digital form reasonably acceptable to CITY.

e. providing CITY with a maintenance agreement for the maintenance and operation of the storm water drainage facilities, including retention/detention basins and outlet structures located within REAL ESTATE.

f. providing CITY with a maintenance easement for the storm water drainage facilities, including storm sewers, conduits, retention/detention basins and outlet structures located within REAL ESTATE conveying storm water from beyond the REAL ESTATE and within REAL ESTATE.

g. payment of all fees, user fees, inspection fees, impact fees, charges and special assessments required to be paid by DEVELOPER for the storm water drainage facilities pursuant to this AGREEMENT.

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

i. receipt of DEVELOPER'S affidavit of compliance with prevailing wage rate determination for the construction of any storm water drainage facilities being dedicated to the CITY.

j. certification of items a – i above by CITY Engineer, such certification not to be unreasonably withheld.

k. approval by the Common Council of the City of Kenosha upon recommendation by CITY Engineer, the City of Kenosha Board of Public Works, and the Storm Water Utility Committee of the storm water drainage facilities.

11. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for the maintenance and operation of the storm water drainage facilities lying within the public rights-of-way within REAL ESTATE unless and until the storm water drainage facilities are accepted by CITY. Upon dedication and acceptance of the storm water drainage facilities, CITY shall have full jurisdiction and ownership of the storm water drainage facilities located within the public rights-of way as shown on the Storm Sewer Plan attached as Exhibit H and be responsible for their maintenance and operation subject to the guarantee of DEVELOPER provided in this AGREEMENT.

12. DEVELOPER shall indemnify, defend and hold harmless CITY, UTILITY, their officers and employees from and against any and all claims and liability arising out of the design and construction by DEVELOPER 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, their officers and employees 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 and employees. Any judgment, final beyond all possibility of appeal, which may be rendered against CITY and/or UTILITY or any of their officers or employees 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 or employees 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.

13. The storm water drainage facilities required by this AGREEMENT, including retention/detention basins, diversion berms and swales, outlet structures and sedimentation ponds shall be functional prior to CITY issuance of any building permits for any improvements within REAL ESTATE pursuant to Section 17.12 C. of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time.

D. **Streets.**

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct, and install all improvements to 120th Avenue, the East Frontage Road, Burlington Road (County Highway S), and 38th Street in accordance with Wisconsin Department of Transportation, Kenosha County and CITY specifications, the conditional use permit, the CSM, the Street Layout Plan attached as Exhibit J, and the letter from the Wisconsin Department of Transportation dated October 17, 2013 attached as Exhibit K. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications and all required permits for the improvements set forth in Exhibit K from the Wisconsin Department of Transportation, Kenosha County and CITY (such approval from the CITY, not to be unreasonably withheld).

2. The public streets which are the subject of the improvements required to be constructed by DEVELOPER pursuant to paragraph 1 shall be completed, dedicated and accepted by the Wisconsin Department of Transportation, Kenosha County and CITY, as the case may be, prior to the issuance of a temporary certificate of occupancy by CITY; however, it is specifically agreed that the CITY will not unreasonably withhold its consent for the Tenant to receive and stock product in any improvement within the REAL ESTATE as long as DEVELOPER and Tenant have received the approval of the CITY building and fire safety inspectors.

3. DEVELOPER shall not perform any street paving within the public rights of way after November 15th of any calendar year without the express written approval of CITY Engineer. No street paving will be permitted within the public rights of way after December 1st of any calendar year. Street paving may commence after April 1st of any calendar year with the approval of CITY Engineer.

4. DEVELOPER, at DEVELOPER'S cost and expense, or an owner's association approved by CITY at the association's cost and expense, as the case may be, shall design, construct, grade, gravel, pave, and maintain, including snow plowing, all private streets, curbs and gutters located within REAL ESTATE and required by the conditional use permit, the CSM and this AGREEMENT.

5. CITY shall accept the CITY street improvements required pursuant to paragraph 1 upon the following:

   a. completion of the CITY street improvements 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 CITY street improvements 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 CITY street improvements including density tests certifying proper completion of street trench backfill.

   d. certified "as-built" drawings of the CITY street improvements in print and digital form acceptable to CITY.

   e. payment of all fees and charges required to be paid by DEVELOPER for the CITY street improvements 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 for the construction of any street improvements being dedicated to the CITY.

   h. certification of items a - g above by CITY Engineer, such certification not to be unreasonably withheld.

   i. 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 CITY street improvements.

6. Upon dedication and acceptance of the CITY street improvements and rights-of-way, CITY shall have full jurisdiction and ownership of the CITY street improvements and rights-of-way and be responsible for their maintenance subject to the guarantee of DEVELOPER provided in this AGREEMENT.

E. 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 CSM 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, which approval shall not be unreasonably withheld.

2. DEVELOPER, at DEVELOPER'S cost and expense, shall provide easements for utilities, which shall be shown on the CSM 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, which modification or termination, in full or in part, shall not be unreasonably withheld, conditioned or delayed.

F. 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. A copy of the Erosion and Sediment Control Plan is attached as Exhibit L.

G. Grading

1. DEVELOPER, at DEVELOPER'S cost and expense, shall grade REAL ESTATE in accordance with CITY specifications, the conditional use permit, the CSM and the Grading Plan attached as Exhibit M. The Grading Plan shall include the location and duration of topsoil stockpiles. 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, which approval shall not be unreasonably withheld. DEVELOPER, at DEVELOPER'S cost and expense, shall remove all topsoil stockpiles from REAL ESTATE in accordance with the Topsoil Stockpile Management Plan. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the Topsoil Stockpile Management Plan from CITY Engineer prior to CITY issuance of any building permits for any improvements within REAL ESTATE pursuant to Section 17.12 C. of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time.

2. DEVELOPER, at DEVELOPER'S cost and expense, shall grade all streets to approved subgrade and shall submit "as-built" drawings of the streets in print and digital form acceptable to CITY for approval by CITY Engineer 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 building permits for any improvements within REAL ESTATE pursuant to Section 17.12 C. of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time.

H. Street Lighting

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design and install a complete system of street lighting throughout REAL ESTATE in accordance with CITY specifications, the conditional use permit, the CSM and the Lighting Plan attached as Exhibit N. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the street lighting system from CITY Engineer, which approval shall not be unreasonably withheld. DEVELOPER, at DEVELOPER'S cost and expense, may contract with WE Energies for installation of the street lighting required by this AGREEMENT located in the public rights-of-way.

2. The street lighting installation in the public rights-of-way shall be completed and presented to CITY for dedication and acceptance prior to or concurrent with DEVELOPER presenting the street improvements to the Wisconsin Department of Transportation, Kenosha County and CITY for dedication and acceptance.

3. CITY shall accept the 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 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 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 for the construction of any street lighting system being dedicated to the CITY, Kenosha County, or Wisconsin Department of Transportation.

e. certification of items a – d above by CITY Engineer, such certification not to be unreasonably withheld.

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 street lighting system.

4. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for the maintenance and operation of the street lighting system required by this AGREEMENT unless and until the street lighting system is accepted by CITY. Upon dedication and acceptance of the street lighting system, CITY shall have full jurisdiction and ownership of the street lighting system located in the CITY public rights-of-way and be responsible for its maintenance and cost of operation subject to the guarantee of DEVELOPER provided in this AGREEMENT.

I. 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 CSM and the Landscaping Plan attached as Exhibit O. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the Landscaping Plan from CITY, which approval shall not be unreasonably withheld.

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 the approved Landscape Plan 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 a minimum of six (6) inches of topsoil.

5. Landscaping shall be completed and presented to CITY for dedication and acceptance prior to or concurrent with DEVELOPER presenting the street improvements to CITY for dedication and 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 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 for the installation of any landscaping being dedicated to the CITY.

   e. certification of items a – d above by CITY Engineer, such certification not to be unreasonably withheld.

   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.

7. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for maintaining the landscaping required by this AGREEMENT, including watering street trees for thirty (30) days after planting, unless and until the landscaping is accepted by CITY. Upon dedication and acceptance of the landscaping, CITY shall have full jurisdiction and ownership of the landscaping located in the public rights-of way and be responsible for the maintenance of the landscaping subject to the guarantee of DEVELOPER provided in this AGREEMENT.

J. Sidewalks.

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct and install sidewalks or a ten (10) foot wide multi-use path throughout REAL ESTATE in accordance with CITY specifications, the conditional use permit, the CSM and the Street Layout 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, which approval shall not be unreasonably withheld.

2. Sidewalks shall be five (5) feet wide and four (4) inches deep except that portion of the sidewalk extending through the driveway approach which shall be eight (8) inches deep. Sidewalks shall be constructed of Portland cement concrete over a two (2) inch aggregate base. Sidewalks shall be constructed and installed adjacent to CITY streets and shall be installed in accordance with the requirements of Section 5.05 of the Code of General Ordinances. Multi-use paths shall be ten (10) feet wide and shall be constructed of a minimum of six (6) inches of Portland cement concrete over a two (2) inch aggregate base, or four (4) inch asphalt over a four (4) inch aggregate base.

3. Sidewalks and multi-use paths shall be installed prior to the issuance of a temporary occupancy permit by CITY where practical but not later than six (6) months from the date of temporary occupancy. In the event the sidewalks and multi-use paths are not installed prior to the issuance of a temporary occupancy permit, the DEVELOPER shall provide CITY with an assurance in an amount reasonably determined by CITY Engineer to complete installation.

4. CITY shall accept the sidewalks and multi-use paths 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 and multi-use paths 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 and multi-use paths 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 and multi-use paths required by CITY, including density tests certifying proper compaction of sidewalk trench backfill.

   d. certified "as-built" drawings of the sidewalks and multi-use paths 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 for the construction of any sidewalks and multi-use paths being dedicated to the CITY.

   g. certification of items a – f above by CITY Engineer, such certification not to be unreasonably withheld.

   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 and multi-use paths.

5. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for the maintenance of the sidewalks and multi-use paths required by this AGREEMENT. Upon dedication and acceptance of the sidewalks, CITY shall have full jurisdiction and ownership of the sidewalks located in the public rights-of-way. DEVELOPER, or the owner's association as the case may be, shall be responsible for the maintenance of the sidewalks and multi-use paths in accordance with the Code of General Ordinances for the City of Kenosha.

K. Street Signs, Regulatory Signs and Traffic Signals.

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.

3. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct, and install traffic signalization in accordance with Wisconsin Department of Transportation, Kenosha County and CITY specifications, the conditional use permit, the CSM, and the letter from the Wisconsin Department of Transportation, dated October 17, 2013, attached as Exhibit K. 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 traffic signalization required by this paragraph from the Wisconsin Department of Transportation, Kenosha County and CITY.

4. The traffic signalization required to be constructed by DEVELOPER in paragraph 3 shall be completed, dedicated and accepted by the Wisconsin Department of Transportation, Kenosha County and CITY, as the case may be, prior to the issuance of any temporary occupancy permits by CITY.

L. 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 and dedicated to the CITY or UTILITY 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 and dedicated to the CITY or UTILITY 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 which are being dedicated to the CITY or UTILITY. Prior to CITY and UTILITY accepting the dedication of any of the public improvements required to be made pursuant to this AGREEMENT which are being dedicated to the CITY or UTILITY, DEVELOPER shall file with the CITY and UTILITY an affidavit of compliance with the prevailing wage rate determination for the work being dedicated to the CITY or UTILITY on the form prescribed by the Department of Workforce Development pursuant to Chapter DWD 290.145 of the Wisconsin Administrative Code.

2. Upon request by CITY or UTILITY, DEVELOPER shall provide CITY Engineer and UTILITY Engineer with 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.

3. Any bidder on any of the public improvements which are being dedicated to the CITY or UTILITY 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 and dedicated to the CITY or UTILITY 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 fifteen (15) 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 L. DEVELOPER, at DEVELOPER'S cost and expense shall design, construct and install the construction access in accordance with Wisconsin Department of Transportation, Kenosha County 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, Kenosha County 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 reasonable direct costs related to the engineering and inspection services. 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. UTILITY agrees to utilize best efforts to minimize any interruption to DEVELOPER or DEVELOPER'S tenants and shall comply with all security and confidentiality requirements of DEVELOPER'S tenants. DEVELOPER shall reimburse UTILITY for the cost of the televised inspection within forty-five (45) days of being invoiced by UTILITY.

5. DEVELOPER, at DEVELOPER'S cost and expense, shall complete a televised inspection of the completed storm water drainage facilities required by this AGREEMENT. The televised inspection shall be performed by an inspection service acceptable to CITY. Video tapes and written logs of all storm water drainage facilities inspections shall be provided to CITY 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 televised inspection. CITY reserves the right to perform the televised inspection of the completed storm water drainage facilities at DEVELOPER'S cost and expense. CITY agrees to utilize best efforts to minimize any interruption to DEVELOPER or DEVELOPER'S tenants and shall comply with all security and confidentiality requirements of DEVELOPER'S tenants. DEVELOPER shall reimburse CITY for the cost of the televised inspection within forty-five (45) days of being invoiced by CITY.

6. UTILITY, at UTILITY'S sole discretion, reserves the right to retain independent testing services in the event UTILITY reasonably determines proper testing is not being performed by DEVELOPER or the results of DEVELOPER'S testing does not conclusively establish to UTILITY'S reasonable 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 reasonable cost of the independent testing services within forty-five (45) days of being invoiced by UTILITY.

7. 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 reasonable satisfaction the proper completion of the improvements required by this AGREEMENT. DEVELOPER shall reimburse CITY for the reasonable cost of the independent testing services within forty-five (45) days of being invoiced by CITY.

8. 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 CSM 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 reasonable 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. Within two (2) business days of the execution of this AGREEMENT by CITY and UTILITY, DEVELOPER shall deposit with the General Manager of UTILITY an assurance in the form of an initial deposit of cash or an irrevocable letter of credit in an amount equal to $500,000 (Five Hundred Thousand Dollars), the ("Initial Utility Improvements Deposit"). Prior to the issuance of any building permits, DEVELOPER shall increase the Initial Utility Improvements Deposit to an amount equal to one hundred twenty-five (125%) percent of the estimated cost of the sanitary sewerage facilities, water supply and distribution facilities being dedicated to the UTILITY, the engineering and inspection services and the testing services related thereto required to be made and provided pursuant to this AGREEMENT. Within two (2) business days of the execution of this AGREEMENT by CITY and UTILITY, DEVELOPER shall deposit with the City Clerk-Treasurer an assurance in the form of an initial deposit of cash or an irrevocable letter of credit in an amount equal to $500,000 (Five Hundred Thousand Dollars), the ("Initial City Improvements Deposit"). Prior to the issuance of any building permits, DEVELOPER shall increase the Initial City Improvements Deposit to an amount equal to one hundred twenty-five (125%) percent of the 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, but not duplicative of, 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 CSM, 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 sufficient to increase such security to an amount 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. Notwithstanding the foregoing, CITY hereby approves Bank of America, N.A. and SunTrust Bank as financial institutions acceptable to CITY for the issuance of any irrevocable letter of credit on behalf of DEVELOPER. 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 shall after two (2) business days prior written notice to Developer draw upon the irrevocable letter of credit 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 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 CSM, DEVELOPER shall, upon completion of all of the public improvements and without charge to CITY or UTILITY, unconditionally give, grant, convey and fully dedicate the public improvements which are required to be dedicated to the CITY or UTILITY under this AGREEMENT to CITY and UTILITY, their successors and assignees, free and clear of all liens and encumbrances together with all structures, mains, conduits, pipes, lines, plant machinery, equipment, appurtenances and habiliments which are a part of the public improvements together with any and all easements necessary for access to the public improvements. DEVELOPER shall execute such documents reasonably deemed necessary by CITY and UTILITY to effectuate the dedication of the public improvements pursuant to this paragraph. Upon dedication, CITY and UTILITY shall have the right to connect or integrate the dedicated public improvements unto the facilities of CITY and UTILITY without charge, award of damages or consent of DEVELOPER. Dedication shall not constitute acceptance of any improvement by CITY or UTILITY.

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 or the Kenosha Water Utility Board of Water Commissioners. 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 reasonably necessary on a time and material basis. CITY and UTILITY agree to utilize best efforts to minimize any interruption to DEVELOPER or DEVELOPER'S tenants and shall comply with all security and confidentiality requirements of such tenants. DEVELOPER shall reimburse CITY and UTILITY for the reasonable 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 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 reasonably necessary on a time and material basis. CITY and UTILITY agree to utilize best efforts to minimize any interruption to DEVELOPER or DEVELOPER'S tenants and shall comply with all security and confidentiality requirements of such tenants. DEVELOPER shall reimburse CITY and UTILITY for the reasonable 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.

A. INDEMNIFICATION FOR PUBLIC IMPROVEMENTS.

Except as otherwise provided in Sections I.C. 12. and V. B. of this AGREEMENT, no contractual obligations for indemnification are created pursuant to this AGREEMENT. The Parties are not waiving any rights to common law indemnification nor are the Parties waiving any common law or statutory immunities, limits of liability, monetary liability limitations or notice requirements.

B. INDEMNIFICATION FOR LABOR, MATERIALS OR SUPPLIES.

During the period of any applicable statute of limitations, DEVELOPER shall indemnify, defend and hold harmless CITY, UTILITY, their officers and employees from and against any and all claims and liability arising out of the actions of DEVELOPER, their employees or agents, or any contractor, subcontractor, vendor, material supplier or any of their employees or agents for labor, materials or supplies furnished by or on behalf of DEVLEOPER in connection with the following public improvements:

1. Sanitary Sewer Facilities.
2. Water Supply and Distribution Facilities.
3. Streets located within the public rights-of-way.
4. Erosion Control.
5. Grading located within the public rights-of way.
6. Street Lighting located within the public rights-of way.
7. Landscaping located within the public rights-of-way.
8. Sidewalks located within the public rights-of-way.
9. Traffic signals located within the public rights-of-way.
10. Well Abandonment pursuant to Section II.B.2 of this AGREEMENT

Upon the filing with CITY or UTILITY of a claim against the CITY or UTILITY for labor, materials, or supplies for which DEVELOPER herein agrees to indemnify, defend and hold CITY, UTILITY, their officers and employees harmless, the CITY and/or UTILITY shall notify DEVELOPER of such claim, and in the event that DEVELOPER does not resolve 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 and employees. Any judgment, final beyond all possibility of appeal, which may be rendered against CITY and/or UTILITY or any of their officers or employees for any claim 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 reasonable attorney fees sustained, incurred or paid by CITY and/or UTILITY, their officers or employees arising out of the acts which DEVELOPER herein agrees to indemnify, shall be reimbursed to CITY and/or UTILITY, their officers or employees through the DEVELOPER'S assurance required pursuant to this AGREEMENT or through such other means as the CITY and/or UTILITY, in their reasonable discretion, deem appropriate. This paragraph shall survive installation of the subject public improvements required by this paragraph 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 contemplated by this AGREEMENT 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 CSM, the development grant agreement, 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:

KTR WIS III LLC
Five Tower Bridge
300 Barr Harbor Drive, Suite 150
Conshohocken, PA 19428
Attn: A. Donald Chase, Jr.

and

KTR WIS IV LLC
Five Tower Bridge
300 Barr Harbor Drive, Suite 150
Conshohocken, PA 19428
Attn: A. Donald Chase, Jr.

With a copy to:

Barack Ferrazzano Kirschbaum & Nagelberg LLP
Suite 3900
200 West Madison Avenue
Chicago, Illinois 60606
Attn: Mark J. Beaubien

If to TENANT:

c/o Amazon.com, Inc.
Attention: Real Estate Manager (NA Ops)
410 Terry Ave. N
Seattle, WA 98109-5210

With a copy to:

c/o Amazon.com, Inc.
Attention: General Counsel: Real Estate
410 Terry Ave. N

	Seattle, WA 98109-5210
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, except that Developer may assign this Agreement to its Tenant without consent. Any unauthorized assignment shall be a breach of this AGREEMENT and shall render this AGREEMENT null and void. 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 CSM, the development grant agreement 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: Development Grant Agreement
Exhibit E: Sanitary Sewer Plan
Exhibit F: Water Main Plan
Exhibit G: Storm Water Management Plan
Exhibit H: Storm Sewer Plan
Exhibit I: Maintenance Agreement
Exhibit J: Street Layout Plan
1. Preliminary plans on file.

2. Thirty percent (30%) plans due prior to footing and foundation permits being issued.
3. Sixty percent (60%) plans due prior to any building permits being issued.
4. One hundred percent (100%) plans due prior to commencement of construction of any public street improvements.

Exhibit K: Wisconsin Department of Transportation letter dated October 17, 2013
Exhibit L: Erosion and Sediment Control Plan
Exhibit M: Grading Plan
Exhibit N: Lighting Plan
Exhibit O: Landscaping Plan

I. Choice of Law and Venue.

This AGREEMENT, the attached exhibits, the conditional use permit, the CSM and the development grant agreement 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 and/or DEVELOPER.

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.

IX. AUTHORIZATION.

A. DEVELOPER represents to CITY and UTILITY that DEVELOPER is a Delaware limited liability company, is in good standing in Delaware and 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 _____, 2013.

C. CITY enters into this AGREEMENT by authority of action taken by its Common Council on the _____ day of _____, 2013.

X. RIGHTS OF TENANT OF PROPERTY.

A. THIRD PARTY BENEFICIARIES. The CITY, UTILITY and DEVELOPER intend and agree that Amazon.com.dedc LLC ("Tenant") is a third-party beneficiary under this AGREEMENT. This AGREEMENT creates rights and obligations only for the parties hereto and their permitted successors and assigns, except as set forth herein. Other than with respect to Tenant, this AGREEMENT is not intended to and does not create any right in any third party.

B. NOTICE TO TENANT AND RIGHT TO CURE. The parties shall forward to Tenant copies of any notice required to be given under this AGREEMENT and agree that, notwithstanding any provisions of this AGREEMENT to the contrary, no notice of default delivered to DEVELOPER shall be effective unless CITY and/or UTILITY shall have, pursuant to Section VI of this AGREEMENT, provided Tenant notice of the default giving rise to such cancellation or abatement and (i) in the case of any such default that can be cured by the payment of money, until fifteen (15) business days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, until thirty (30) days shall have elapsed following the giving of such notice, unless, if the nature of

the obligation is such that more than thirty (30) days are reasonably required to complete its cure, then a reasonable period for remedying such default, including such time as may be necessary to acquire possession of the applicable Property if possession is necessary to effect such cure (provided, such time required to acquire possession does not extend beyond one hundred twenty (120) days following the giving of such notice). Notwithstanding the foregoing, Tenant shall have no obligation to cure any such default. CITY and/or UTILITY, as applicable, agree to accept performance by Tenant of any terms of this AGREEMENT, as applicable, required to be performed by DEVELOPER with the same force and effect as though performed by DEVELOPER.

IN WITNESS WHEREOF, the Parties hereto have hereunto executed this AGREEMENT on the dates below given.

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 _____, 2013, JAN MICHALSKI, Chairman, Board of Water Commission and EDWARD ST. PETER, General Manager, Kenosha Water Utility, of the CITY OF KENOSHA, WISCONSIN, a Wisconsin municipal water utility, to me known to be such Chairman and General Manager of said water utility, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said water utility, by its authority.

_____
Notary Public, Kenosha County, WI
My Commission expires/is_____

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 _____, 2013, 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:_____

KTR WIS III LLC
a Delaware Limited Liability Company

By: KTR Property Trust III
a Maryland real estate investment trust, sole member

BY:_____

Date:_____

KTR WIS IV LLC
a Delaware Limited Liability Company

By: KTR Property Trust III
a Maryland real estate investment trust, sole member

BY:_____

Date:_____

Subscribed and sworn to before me
this _____ day of _____ , 2013

_____
Notary Public, State of _____ , County of _____
My commission is/expires:

Mutually Drafted By:

<u>For CITY and UTILITY:</u>
Jonathan A. Mulligan
Assistant City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

<u>For DEVELOPER:</u>
Brian Mullins
Axley Brynelson, LLP
2 East Mifflin Street, Suite 200
Post Office Box 1767
Madison, WI 53701-1767

Exhibit A

Legal Description of REAL ESTATE

[Metes and Bounds Description to be included]

Part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 19 and part of the Southwest 1/4 of the Southeast 1/4 of Section 19 and part of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 30 and part of the Northwest 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 30 all in Town 2 North, Range 22 East in the City of Kenosha, Kenosha County, Wisconsin, bounded and described as follows:

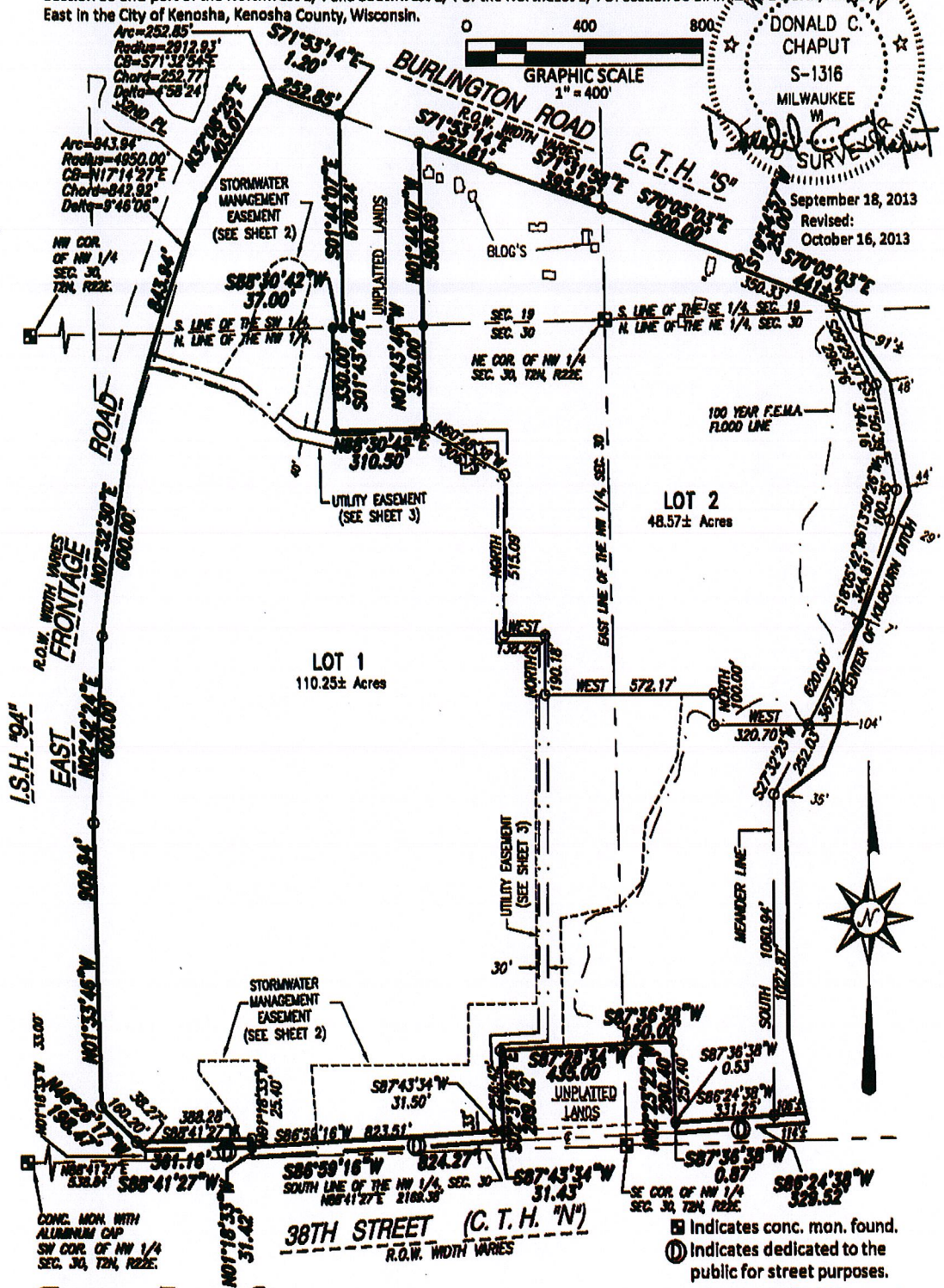
COMMENCING at the Southwest corner of the Northwest 1/4 of Section 30, thence North 88°41'27" East along the South line of said 1/4 Section 538.84 feet to a point; thence North 01°18'33" West 33.00 feet to a point on the North line of 38th Street and the East line of a Frontage Road and the point of beginning of the lands to be described; thence North 46°26'17" West along said East line 160.20 feet to a point; thence North 01°33'46" West along said East line 909.94 feet to a point; thence North 02°42'24" East along said East line 600.00 feet to a point; thence North 07°32'30" East along said East line 600.00 feet to a point; thence Northeasterly 843.94 feet along said East line and arc of a curve, whose center lies to the Southeast, whose radius is 4950.0 feet and whose chord bears North17°14'27" East 842.92 feet to a point; thence North 32°08'25" East along said East line 403.01 feet to a point on the South line of Burlington Road; thence Southeasterly 252.85 feet along said South line and arc of a curve, whose center lies to the Northeast, whose radius is 2912.93 feet and whose chord bears South 71°32'54" East 252.77 feet to a point; thence South 71°53'14" East along said South line 1.20 feet to a point; thence South 01°44'07" East 678.24 feet to a point; thence South 88°30'42" West 37.00 feet to a point; thence South 01°43'46" East 330.00 feet to a point; thence North 88°30'42" East 310.50 feet to a point; thence North 01°43'46" West 330.00 feet to a point; thence North 01°44'07" West 580.69 feet to a point on the South line of Burlington Road; thence South 71°53'14" East along said South line 257.61 feet to a point; thence South 71°31'58" East along said South line 395.52 feet to a point; thence South 70°05'03" East along said South line 500.00 feet to a point; thence South 19°54'57" West along said South line 25.00 feet to a point; thence South 70°05'03" East along said South line 350.33 feet to a meander corner, said point being North 70°05'03" West 91 feet more or less from the center of the Kilbourn Ditch; thence South 29°29'37" East along a meander line 296.76 feet to a point; thence South 11°50'39" East along said meander line 344.16 feet to a point; thence South 13°50'26" West along said meander line 100.35 feet to a point; thence South 18°05'42" West along said meander line 344.81 feet to a point; thence South 27°32'23" West along said meander line 620.00 feet to a point; thence due South along said meander line 1060.94 feet to the center line of 38th Street, said point being South 86°24'38" West 114 feet more or less from the center of the Kilbourn Ditch; thence South 86°24'38" West along said centerline 329.52 feet to a point; thence South 87°36'38" West along said centerline 0.87 feet to a point; thence North 02°23'22" West 290.40 feet to a point; thence South 87°36'38" West 150.00 feet to a point; thence South 87°28'34" West 435.00 feet to a point; thence South 02°31'26" East 289.42 feet to a point on the centerline of 38th Street; thence South 87°43'34" West along said centerline 31.43 feet to a point; thence South 86°59'16" West along said centerline 824.27 feet to a point; thence North 01°18'33" West 31.42 feet a point; thence South 88°41'27" West 361.16 feet to a point; thence North 46°26'17" West along the East line of a Frontage Road 38.27 feet to the point of beginning. Together with those lands lying between the aforesaid meander line and the center of the Kilbourn Ditch.

Exhibit B

Certified Survey Map

CERTIFIED SURVEY MAP NO. _____

Part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 19 and part of the Southwest 1/4 of the Southeast 1/4 of Section 19 and part of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 30 and part of the Northwest 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 30 all in Town 2 North, Range 22 East in the City of Kenosha, Kenosha County, Wisconsin.



Indicates conc. mon. found.

Indicates dedicated to the public for street purposes.

● Indicates found 3/4" iron rod.

○ Indicates set 1.315" O.D. iron pipe 18" in length, weighing 1.68 lbs. per lineal foot.

CHAPUT LAND SURVEYS LLC
234 W. FLORIDA STREET
MILWAUKEE, WI 53204
414-224-8068
www.chaputlandsurveys.com

Bearings are referenced to the Wisconsin State Plane Coordinate System (South Zone), in which the west line of the Northwest 1/4 of Section 30 bears North 01°34'08" West

Drawing No. 1281-grb/tjn

Sheet 1 of 5 Sheets

This instrument was drafted by Donald C. Chaput, Registered Land Surveyor S-1316

CERTIFIED SURVEY MAP NO. _____

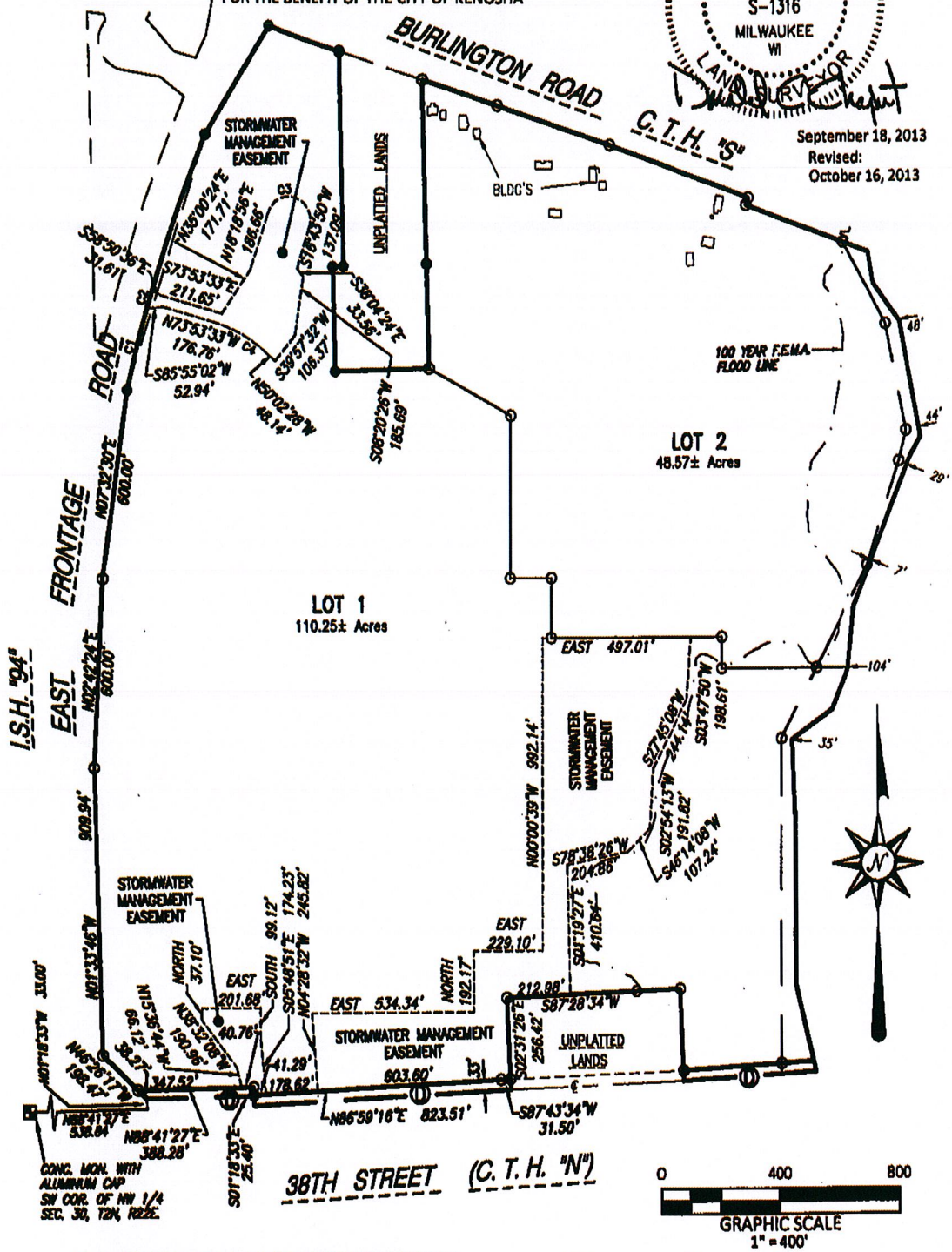
Part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 19 and part of the Southwest 1/4 of the Southeast 1/4 of Section 19 and part of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 30 and part of the Northwest 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 30 all in Town 2 North, Range 22 East in the City of Kenosha, Kenosha County, Wisconsin.

DONALD C. CHAPUT S-1316 MILWAUKEE WI LAND SURVEYOR

September 18, 2013
Revised:
October 16, 2013

STORMWATER MANAGEMENT EASEMENT

FOR THE BENEFIT OF THE CITY OF KENOSHA



CURVE	ARC LNG	RADIUS	DELTA ANG	CHORD BRNG	CHORD LNG
C1	284.62'	4950.00'	3°03'47"	N13°53'18"E	284.59'
C2	59.48'	4950.00'	0°41'19"	N15°48'50"E	59.48'
C3	231.64'	74.39'	176°24'54"	S72°28'37"E	148.54'
C4	198.07'	471.00'	23°51'05"	N61°58'00"W	194.66'

This instrument was drafted by Donald C. Chaput
Registered Land Surveyor S-1316

CHAPUT LAND SURVEYS LLC
234 W. FLORIDA STREET
MILWAUKEE, WI 53204
414-224-8068
www.chaputlandsurveys.com

Drawing No. 1281-grb
Sheet 2 of 5 Sheets

CERTIFIED SURVEY MAP NO.

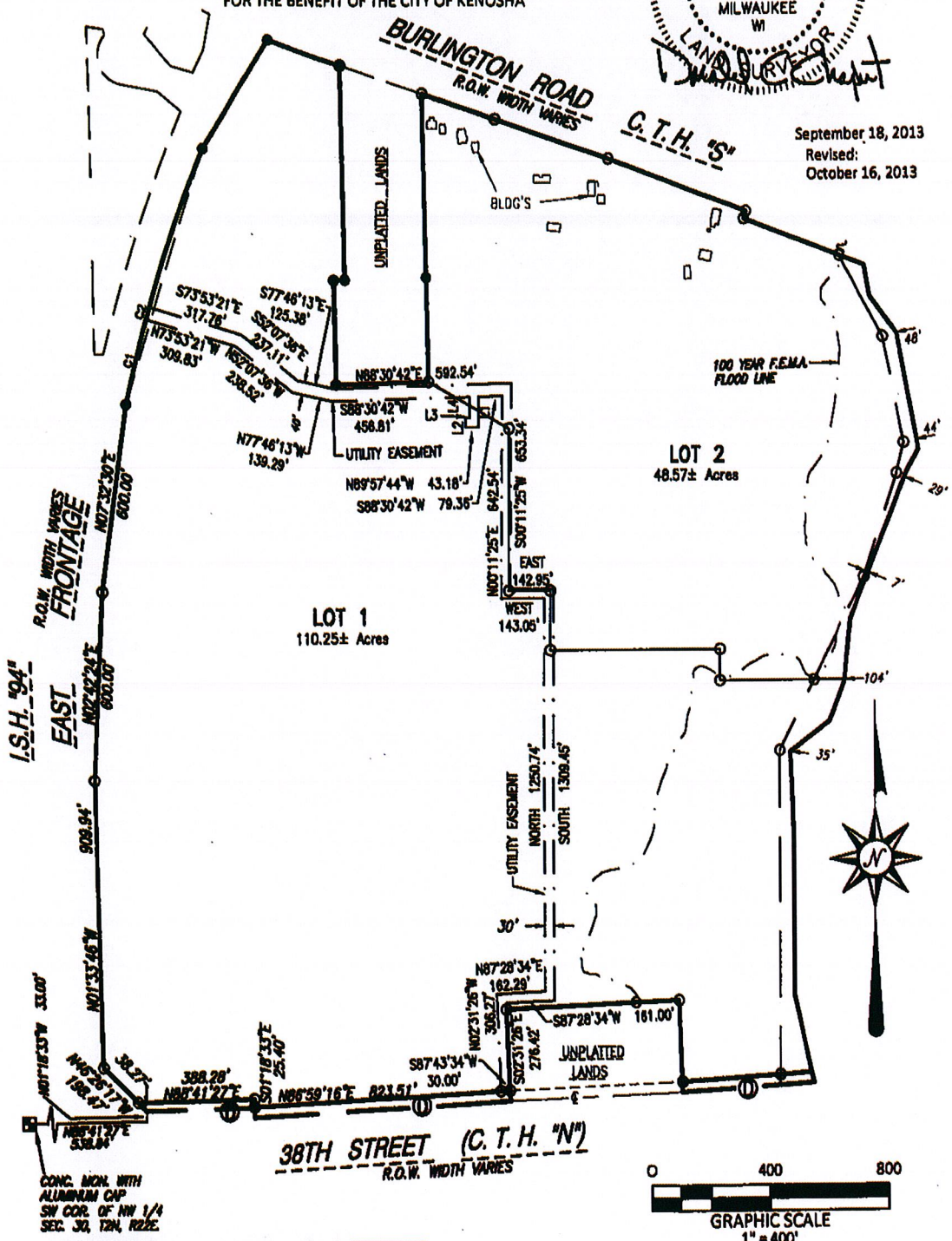
Part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 19 and part of the Southwest 1/4 of the Southeast 1/4 of Section 19 and part of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 30 and part of the Northwest 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 30 and Town 2 North, Range 22 East in the City of Kenosha, Kenosha County, Wisconsin.

UTLITY EASEMENT

FOR THE BENEFIT OF THE CITY OF KENOSHA

DONALD C. CHAPUT S-1316 MILWAUKEE WI LAND SURVEYOR

September 18, 2013
Revised:
October 16, 2013



CURVE	ARC LNG	RADIUS	DELTA ANG	CHORD BRNG	CHORD LNG
C1	274.41'	4950.00'	3°10'35"	N13°58'42"E	274.38'
C2	40.00'	4950.00'	0°27'47"	N15°45'53"E	40.00'

LINE		
L1	S00°02'16"W	96.81'
L2	N00°02'16"E	30.00'
L3	S89°57'44"E	13.20'
L4	N00°02'16"E	66.01'

This instrument was drafted by Donald C. Chaput
Registered Land Surveyor S-1316

CHAPUT LAND SURVEYS LLC
234 W. FLORIDA STREET
MILWAUKEE, WI 53204
414-224-8068
www.chaputlandsurveys.com

Drawing No. 1281-grb
Sheet 3 of 5 Sheets

CERTIFIED SURVEY MAP NO. _____

Part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 19 and part of the Southwest 1/4 of the Southeast 1/4 of Section 19 and part of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 30 and part of the Northwest 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 30 all in Town 2 North, Range 22 East in the City of Kenosha, Kenosha County, Wisconsin.

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN}
:SS
MILWAUKEE COUNTY}

I, DONALD C. CHAPUT, a registered land surveyor, do hereby certify:

THAT I have survey, divided and mapped part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 19 and part of the Southwest 1/4 of the Southeast 1/4 of Section 19 and part of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 30 and part of the Northwest 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 30 all in Town 2 North, Range 22 East in the City of Kenosha, Kenosha County, Wisconsin, bounded and described as follows:

COMMENCING at the Southwest corner of the Northwest 1/4 of Section 30, thence North 88°41'27" East along the South line of said 1/4 Section 538.84 feet to a point; thence North 01°18'33" West 33.00 feet to a point on the North line of 38th Street and the East line of a Frontage Road and the point of beginning of the lands to be described; thence North 46°26'17" West along said East line 160.20 feet to a point; thence North 01°33'46" West along said East line 909.94 feet to a point; thence North 02°42'24" East along said East line 600.00 feet to a point; thence North 07°32'30" East along said East line 600.00 feet to a point; thence Northeasterly 843.94 feet along said East line and arc of a curve, whose center lies to the Southeast, whose radius is 4950.0 feet and whose chord bears North 17°14'27" East 842.92 feet to a point; thence North 32°08'25" East along said East line 403.01 feet to a point on the South line of Burlington Road; thence Southeasterly 252.85 feet along said South line and arc of a curve, whose center lies to the Northeast, whose radius is 2912.93 feet and whose chord bears South 71°32'54" East 252.77 feet to a point; thence South 71°53'14" East along said South line 1.20 feet to a point; thence South 01°44'07" East 678.24 feet to a point; thence South 88°30'42" West 37.00 feet to a point; thence South 01°43'46" East 330.00 feet to a point; thence North 88°30'42" East 310.50 feet to a point; thence North 01°43'46" West 330.00 feet to a point; thence North 01°44'07" West 580.69 feet to a point on the South line of Burlington Road; thence South 71°53'14" East along said South line 257.61 feet to a point; thence South 71°31'58" East along said South line 395.52 feet to a point; thence South 70°05'03" East along said South line 500.00 feet to a point; thence South 19°54'57" West along said South line 25.00 feet to a point; thence South 70°05'03" East along said South line 350.33 feet to a meander corner, said point being North 70°05'03" West 91 feet more or less from the center of the Kilbourn Ditch; thence South 29°29'37" East along a meander line 296.76 feet to a point; thence South 11°50'39" East along said meander line 344.16 feet to a point; thence South 13°50'26" West along said meander line 100.35 feet to a point; thence South 18°05'42" West along said meander line 344.81 feet to a point; thence South 27°32'23" West along said meander line 620.00 feet to a point; thence due South along said meander line 1060.94 feet to the centerline of 38th Street, said point being South 86°24'38" West 114 feet more or less from the center of the Kilbourn Ditch; thence South 86°24'38" West along said centerline 329.52 feet to a point; thence South 87°36'38" West along said centerline 0.87 feet to a point; thence North 02°23'22" West 290.40 feet to a point; thence South 87°36'38" West 150.00 feet to a point; thence South 87°28'34" West 435.00 feet to a point; thence South 02°31'26" East 289.42 feet to a point on the centerline of 38th Street; thence South 87°43'34" West along said centerline 31.43 feet to a point; thence South 86°59'16" West along said centerline 824.27 feet to a point; thence North 01°18'33" West 31.42 feet a point; thence South 88°41'27" West 361.16 feet to a point; thence North 46°26'17" West along the East line of a Frontage Road 38.27 feet to the point of beginning. Together with those lands lying between the aforesaid meander line and the center of the Kilbourn Ditch.

THAT I have made this survey, land division and map by the direction of Next Partners I, LLC, a Wisconsin limited liability company, owner of said land.

THAT such map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with the provisions of Section 236.34 of the Wisconsin Statutes, the Land Division Ordinance of the Land Division Ordinance of Kenosha County in surveying, dividing and mapping the same.

WISCONSIN DONALD C. CHAPUT MILWAUKEE WI LAND SURVEYOR

DONALD C. CHAPUT
REGISTERED LAND SURVEYOR S-1316

DATE: September 18, 2013
Revised: October 16, 2013

This instrument was drafted by Donald C. Chaput, Registered Land Surveyor S-1316

CERTIFIED SURVEY MAP NO. _____

Part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 19 and part of the Southwest 1/4 of the Southeast 1/4 of Section 19 and part of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 30 and part of the Northwest 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 30 all in Town 2 North, Range 22 East in the City of Kenosha, Kenosha County, Wisconsin.

OWNER'S CERTIFICATE

Next Partners I, LLC, a Wisconsin limited liability company, as owner, certify that I caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map in accordance with the City of Kenosha ordinance regulating the platting of land and the Kenosha County ordinance regulating the platting of land, and Chapter 236.34 of the Wisconsin Statutes.

WITNESS the hand and seal of _____, this _____ day of _____, 2013.

_____
Phil Jennings, Member

STATE OF WISCONSIN}
:SS
COUNTY}

Personally came before me this ___ day of _____,2013, the above named _____, Phil Jennings, Member to me known as the person who executed the foregoing instrument and acknowledged the same.

_____,
Notary Public, State of _____
My commission expires._____
My commission is permanent.

CITY OF KENOSHA APPROVAL

Adopted this ___ day of _____, 2013

ATTEST: _____
Debra L. Salas, City Clerk - Treasurer

APPROVE: _____
Keith G. Bosman, Mayor

WISCONSIN
DONALD C. CHAPUT
S-1316
MILWAUKEE
WI
LAND SURVEYOR

September 18, 2013
Revised: October 16, 2013

This instrument was drafted by Donald C. Chaput, Registered Land Surveyor S-1316

Exhibit C

Conditional Use Permit

Planning & Zoning Division 625 52nd Street Kenosha, WI 53140 262.653.4030	***Kenosha City Plan Commission Conditions of Approval***	**Project Onyx** Northeast corner of 38th street and 120th Avenue	September 19, 2013

1. The following Conditions of Approval will run with the land and shall be included in a document recorded with the Kenosha County Register of Deeds:

   a. The applicant shall obtain all required construction permits from the Department of Community Development & Inspections. This includes, but is not limited to Erosion Control, Building, Plumbing, Electrical and Occupancy permits.

   b. The applicant shall obtain Driveway, Sidewalk, Street Opening and Parking Lot permit from the Department of Public Works.

   c. All signs shall comply with Chapter 15 of the Code of General Ordinances and the applicant shall obtain sign permits for all new signs. A separate submission and permits are required for all signs. Sign information provided under the Conditional Use Permit is for reference only and does not constitute sign permit approval.

   d. The development shall be constructed per the approved plans on file with the Department of Community Development & Inspections, Room 308, 625 52nd Street, Kenosha, WI 53140. Any changes to the approved plans shall require an amendment to the Conditional Use Permit. All changes shall be submitted to the Department of Community Development & Inspections for review and approval.

   e. Prior to the issuance of any Occupancy permits, all parking areas, drives and designated paved areas shall have the initial lift of asphalt installed. Any improvements required in the Developer's Agreement shall be completed. The building exterior shall be completed per the approved plans, the exterior lighting shall be installed and the Conditional Use Permit shall be recorded with the Kenosha County Register of Deeds. All improvements indicated on the plans, including landscaping, shall be installed prior to the issuance of a final Occupancy permit. The recording fees for the Conditional Use Permit shall be submitted by the applicant.

   f. Compliance with City and State and/or Federal Codes and Ordinances and any Conditions noted in the recorded Developers Agreement. The buildings shall comply with the current Code standards in effect upon application for a building permit.

   g. All trash containers shall be stored within the enclosure or building. The applicant/owner shall be responsible for waste collection and removal for the development. The City of Kenosha shall not provide waste collection or removal services or incur any cost in this regard.

   h. The applicant shall meet all applicable Conditions of Approval and obtain a building permit within six (6) months of Common Council approval of the Conditional Use Permit or the Conditional Use Permit shall be null and void.

i. All vehicles shall be parked within the designated paved areas.

j. All improvements, including landscaping, shall be maintained per the approved plans. Any damaged fencing, landscaping or building shall be replaced or reconstructed per the approved plans.

k. Cross access shall be provided to adjacent parcels if required at a future date by the City.

l. Compliance with the Operational Plan dated August 20, 2013.

2. The following conditions of approval shall be satisfied with City Staff prior to the issuance of any construction permits.
   a. The Drainage Plan shall be revised and resubmitted for review and approval addressing comments listed in the Public Works memo dated September 11, 2013.

   b. The Utility Plan shall be revised and resubmitted for review and approval addressing the comments listed in the Kenosha Water Utility Memo dated September 9, 2013.

   c. Storm water detention basins shall be constructed and operational prior to the issuance of a Footing and Foundation permit.

   d. A Land Division shall be recorded prior to the issuance of a Footing and Foundation permit.

   e. The proposed public road at the north end of the property shall be shown on all plans as a private road.

   f. Additional fire hydrants shall be shown in the east and west parking lots. Contact the Fire Prevention Bureau for further details.

   g. Indicate on the Site Plan the breakdown in square footage dedicated to paving, landscaping/open space, retention and building .

   h. A Developer's Agreement shall be approved by the City and executed by all parties prior to the issuance of any construction permits. A cash escrow or letter of credit shall be posted with the City and/or KWU prior to the installation of any public improvements.

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) 653-4066
EMAIL PUBLICWORKS@KENOSHA.ORG

TO: Brian Wilke, Development Coordinator

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

Shelly Billingsley, P.E.
City Engineer

DATE: **September 11, 2013**
SUBJECT: **PLAN REVIEW COMMENTS**
Project Description: **Project Onyx**
Location: **East Frontage Road and 38th Street**

Our staff has reviewed the plans for this project. The following comments are provided:

Parking Lot Ordinance Compliance	Sufficient	Deficient	Not Applicable
Parking Lot Paved	X		
Standard Stall Width	X		
Parking Lot Layout	X		
Parking Lot Lighting Shown	X		
Parking Lot Lighting Adequate	X		
Handicapped Parking	X		
Driveway Locations	X		
Driveway Width	X		
Passing Blister or Accel/Decel Lanes ***			
Sidewalks Adequate		X	
Drive Thru Lane Design			X

*** Comments will be provided when the TIA is submitted.

Public Streets	Sufficient	Deficient	Not Applicable
Geometric Design ***			
Pavement Width ***			
Pavement Thickness Design		X	
Established Grades		X	
Plan Details		X	
Sidewalks		X	
Street Lights		X	

*** Comments will be provided when the TIA is submitted.

Site Grading/Drainage	Sufficient	Deficient	Not Applicable
Drainage Plan		X	
Storm Sewer		X	
Storm Water Detention		X	
Drainage Calculations		X	

Project Approval/Permits Needed	Yes	No	Not Applicable
Project Approved for Permitting		X	
Withhold Permits: See Comments	X		
Approve Footing/ Foundation Only (per condition)			X
Parking Lot Permit Required		X	
Driveway Permits Required		X	
Sidewalk Permit Required		X	
Street Opening Permit Required		X	
Stormwater Permit Required	X		
Erosion Control Required	X		
State Permit Required		X	

Grading & Drainage Comments:

1. Note that all comments from the "Kenosha Fulfillment Center Mass Grading" CUP review dated August 16, 2013 still apply. It is anticipated that the project engineer will address those comments in an updated submittal that will include a revised stormwater management plan.
2. Provide a table in the plans showing the total site area, total disturbed area, and pre and post-construction impervious areas.
3. If the private roads on the north side of the site are ever to be dedicated as public streets, the storm sewer in these areas needs to be constructed to meet City standards. The City requires all public storm sewer under the pavement of a street be concrete. Also, the City has specific details for public storm sewer structures. If the developers intention is to build the street to

public street standards, contact Jeff Hansen and request the City's standard details for inclusion in the plans.

4. The City's published stormwater criteria requires that any storm sewer entering or exiting a stormwater pond be concrete.
5. Provide additional spot grades on the pavement and curb lines around the entrances to the site from public streets.
6. The site grading plan includes several proposed contours that are incorrectly labeled.
7. Show overland flow paths on the site grading plan.
8. Provide a detail on the proposed retaining wall located near the south pond. Note that any retaining wall greater than 2' in height requires a fence.
9. The top of the 36" storm sewer between ES 1 and CB 2 appears to conflict with the bottom of the 42" storm sewer between MH 54 and MH 55.
10. The storm sewer between CB 20 and CB 19 is labeled as a 36" pipe. There is 42" storm sewer on each side of this pipe segment.
11. Provide storm sewer access easements to the east and north ponds. Easements need to provide for vehicular access to the pond outlet structures.
12. Provide additional detail on the pond overflows. Dimension the areas of riprap or turf reinforcement mats (TRMs) and specify which specific products of TRM are to be used (or specify a class of TRM in from the Wisconsin DOT's Product Acceptability List).

Traffic Comments:

1. Obtain an address for the site.
2. The asphalt thickness of the streets should be 8 inches minimum and the base should be 6 inches minimum.
3. Comments for the public R.O.W improvements on 38th Street will be provided when plans for the improvements are submitted.
4. Handicap ramps are recommended for the sidewalk serving the bus drop-off locations.
5. Install sidewalk on the driveway linking 38th Street. The sidewalk should connect to the sidewalk network in the parking lot.
6. The Public Works Department reserves the rights to make further comments on street design when the TIA and the public improvement plans are submitted.

cc: **Jeff Hansen**
Clement Abongwa
Kile Kuhlmey
Gerard Koehler

Engineering Services
4401 Green Bay Road
Kenosha WI 53144

Phone (262) 653-4315
Fax (262) 653-4303

"Providing and Protecting Kenosha's Greatest Natural Resource"

MEMO

To: Brian Wilke, Development Coordinator

From: Ian C. Bagley, P.E., Water Engineer

Date: September 9, 2013

Subject: Project Onyx

Location: Northeast Corner of 38th Street and 120th Avenue

The Kenosha Water Utility (KWU) has reviewed the submittal for the above referenced project. Further information from the Developer is required before the Utility can complete this review. Please withhold all permits until the following information is submitted.

1. According to KWU records, the cul-de-sac labeled as "32nd Place" is actually 29th Street.
2. Show the water meter size and location, including a detail or diagram, on the construction plans, not with the MEP submittal. The water meter shall have unobstructed access, twelve inches (12") from the inside wall, twelve to twenty-four inches (12"-24") above the floor. The meter shall have a gate valve on the inlet and outlet pipe.
3. All water meters one and one half inches (1-1/2") or greater shall have a bypass with a two way ball valve with locking handle as manufactured by RuB, or approved equal.
4. Meters three inches (3") and larger shall have a two inch (2") test plug provided between the outlet side of the meter and the outlet valve.
5. A 3C18 gauge cable by Belden-M, or approved equal, shall be installed in a one half inch (½") conduit through the exterior wall for the remote meter reader. Remote reader to be field located by KWU meter division.
6. Water services larger than two inches (2") shall be flushed and bacteria tested in accordance with KWU Chapter XXXII Rules & Regulations, Rule 06-34.
7. Show any existing wells. (Wells must be properly abandoned before connection to water distribution system)
8. Water services shall have a minimum of 5-1/2' of cover to finished grade.
9. Label invert elevations on all water service stubs and fittings and provide pipe slopes for all water service lines.

10. Valve spacing along the public main shall be no more than 500 feet in accordance with NR 811.70.
11. Provide elevations for the invert, flange and the center of large coupling at each fire hydrant.
12. All water main materials, installation and testing shall conform to Kenosha Water Utility specifications. A copy of these specifications shall be included in the project manual or incorporated into the construction drawings. These specifications can be found at: http://www.kenoshawater.org/images/KWU_Water_Main_Specifications4-10.pdf.
13. Water main and services shall have a blue 12 gauge locator wire installed along the entire length. Locator wire shall be brought to the surface in the curb box, at each fire hydrant and at the edge of the building and enclosed in a curb box with "water" on the cover.
14. "Internal / External" manhole seals as manufactured by Adaptor, Inc. shall be provided for each sanitary sewer manhole installed. A detail for the seal can be found at http://www.adaptorinc.com/pdf/inexspec.pdf.
15. Sanitary sewer laterals shall have a green 12 gauge locator wire installed along the entire length. Locator wire shall be brought to the surface at the edge of the building and enclosed in a curb box with "sewer" on the cover.
16. If there is any potential for food processing or food service at this site a sampling manhole will need to be installed along the sanitary sewer lateral, upstream of the sanitary sewer main, in accordance with Rule 08-05(02) of the Kenosha Water Utility Rules and Regulations. The developer must provide KWU with written authorization to access the sampling manhole.
17. All sanitary sewer materials, installation and testing shall conform to Kenosha Water Utility specifications. A copy of these specifications shall be included in the project manual or incorporated into the construction drawings. These specifications can be found at: http://www.kenoshawater.org/images/sewer%20specifications.pdf.
18. The KWU water main and sanitary sewer detail sheets shall be included on a separate sheet and shall not be placed within the designer's title block or include utility plan notes specific to this project. These detail sheets can be found on the KWU website (http://www.kenoshawater.org/engineering.html).
19. Include the following notes on the Utility Plans:
    a. All sanitary sewer and water to be installed in accordance with Kenosha Water Utility (KWU) Standards.
    b. All applications and fees for sanitary sewer and water must be completed and paid prior to connection to sewer/water systems.
    c. All water connections to existing water mains shall be completed by KWU, with excavation and backfill by the developer. Developer shall provide 72 hours notice to KWU when connection is to be made.
    d. Any utility work in the right-of-way, public utility easement and all sanitary sewer connections to be inspected by KWU. Notify KWU 48 hours in advance of connecting to sewer.
20. All sanitary sewer and water main shall be installed by the developer under the terms of a Developer's Agreement with KWU.

21. Provide copies of all approved WDNR/DSPS submittals, including sanitary sewer sizing calculation worksheet for the area being served.

The following comments relate to specific items noted by page number:

Sheets C-16, C-18 and C-20

- The hydrants along the East Frontage Road shall be provided with access drives as they are all within a 4:1 backslope.

Sheets C-17 and C-21

- The utility easement shall have a cross slope of no greater than 25:1 (4%). Currently, slopes are as high as 4:1 (25%). Additionally, there shall be paved access along the utility easement. As an alternative, the sanitary sewer may be placed within the paved loading area, east of the building, within an easement.

Sheet C-23

- Note 7 states that all on-site utilities shall be privately owned and maintained by the property owner. However, the sanitary sewer within the utility easement in Lot 3 and the sanitary sewer and water main within the east/west road will be owned and maintained by KWU.
- Eliminate the references to sanitary and water in Note 8 as the City of Kenosha Public Works Department is not the correct contact.
- Revise the hydrants portion of Note 16 to read as follows: All fire hydrants, public and private, shall meet the requirements of the Kenosha Water Utility. Hydrants shall be compression type with a five and one-quarter inch (5-1/4") valve opening, two (2) two and one-half inch (2-1/2") NST nozzle connections, one (1) Kenosha Standard pumper connection (Traverse City Iron Works #405-26, 4 threads per inch and 5.812 inch diameter). The base shall have a six inch (6") mechanical joint connection with a rubber gasket and fluorocarbon coated Cor-Blue T-Bolts and nuts. Hydrant top operating nut and nozzle cap nuts shall be one and one-quarter inch (1-1/4") pentagon. All hydrants shall close in a clockwise direction. Hydrants shall be Mueller Super Centurion 200 or Kennedy Guardian. Each hydrant shall receive a final coat of red paint after installation.

Sheets C-24, C-26 and C-28

- Plan and profile sheets for public water main shall be provided. This includes all main along the East Frontage Road, within 29th Street and the East/West Road.

Sheet C-29

- The invert elevation of San Stub 10.1 does not appear to work with the east invert elevation of San MH 10 shown on Sheet C-34. Additionally, this stub appears to be in direct conflict with the storm sewer between MH 60 and MH 61.
- The water stub shown at the east limit of the water main shall be extended to the east limit of the utility easement for future connection.

Sheet C-31

- Some of the sanitary sewer manholes have a drop of 0.10 feet across them and some do not. As a general note for the sanitary sewer; provide a drop of 0.10 feet across all manholes.

- Plan and profile sheets shall not be placed on City of Kenosha Department of Public Works – Engineering title blocks. The designer shall use their typical title blocks for all plan and profile sheets.
- The invert elevation of the storm sewer crossing at Sta. 503+05 appears to be incorrect.

Sheet C-32

- The invert elevations of the three storm sewer crossings and the sizes of the crossings at Sta. 509+33 and 511+60 appear to be incorrect.

Sheet C-33

- The invert elevation of the storm sewer crossing at Sta. 516+34 appears to be incorrect.
- Storm sewer crossings at Sta. 519+35 and 522+49 are missing from the profile view.

Sheet C-34

- The sanitary sewer length between San MH 11 and San MH 12 appears to be incorrect.
- Storm sewer crossings at Sta. 111+43 and 112+25 are missing from the profile view.

Sheet C-35

- The invert elevation of the storm sewer crossing at Sta. 102+92 appears to be incorrect.
- Storm sewer crossings at Sta. 102+63 and 105+31 as well as the water main crossing at Sta. 100+70 are missing from the profile view.

Sheet C-36

- The water main crossing at Sta. 3451+85 is missing from the profile view.
- There shall be slurry backfill along the sanitary sewer and water main pavement crossings at 29th Street.
- There shall be an additional valve and stub for future extension of the water main north of the tee at the north limit of the water main along the East Frontage Road.

Sheet C-37

- The water main crossing at Sta. 19+41 is missing from the profile view.
- A second valve shall be shown for the service to the parcel at the southwest corner of the intersection of the East Frontage Road and Burlington Road. This valve shall be located in the right-of-way within ten feet (10') of the east parcel line.
- Stub 26 shall be extended north to the south property line of 11809 Burlington Road and Valve 25.0 shall be moved to within ten feet (10') of the property line.
- It shall be noted that if the parcel along the south side of 29th Street uses the stub provided to connect to the public water main an additional valve will need to be installed in the right-of-way within ten feet (10') of the parcel line.

Sheet C-47

- It shall be noted that the fire hydrant detail is for private hydrants only. All public hydrants shall conform with the standard KWU details.

Sheets L1.5 and L1.6

- There shall be no trees within the public utility easement.

CC: Mr. Robert Carlson, P.E., Director of Engineering Services

Exhibit I

Maintenance Agreement

Exhibit K

Wisconsin Department of Transportation letter dated October 17, 2013

Division of Transportation System Development
Southeast Regional Office
141 N.W. Barstow Street
P.O. Box 798
Waukesha, WI 53187-0798

Scott Walker, Governor
Mark Gottlieb, P.E., Secretary
Internet: www.dot.wisconsin.gov

Telephone: (262) 548-5903
Facsimile (FAX): (262) 548-5662

E-Mail: waukesha.did@dot.wi.gov

October 17, 2013

JEFF LABAHN
CITY OF KENOSHA
625 52ND STREET, RM 308
KENOSHA, WI 53140

Subject: Log #3473 – Development Submittal
Project Onyx
IH-94 East Frontage Road & CTH S
Kenosha County

Dear Mr. Labahn:

The Traffic Impact Analysis (TIA) performed by Traffic Analysis & Design, Inc (TADI) covering the Project Onyx development has allowed the Department to understand the impacts of the subject development and identify the necessary improvements. The attached lists the improvements that are to be constructed as a result of this development, as well as future year improvements to the surrounding road network which are needed as a result of current and potential future developments in the area. Some design issues and improvement requirements have been noted on the attached to aid in the development of the plans.

The development can now proceed to the Department's Permit Process. The permit plans will require design preparation (please see attached plan requirements). **All permits will be issued to the maintaining authority and the design consultant will need to forward permit plans for review and submittal. Permits from multiple maintaining authorities shall be tied and constructed at the same time.**

If you have any questions regarding traffic issues, please contact the undersigned at (262) 548-5626. Please direct any questions regarding the Trans 233 process to Sue King, Land Division Coordinator, at (262) 548-6713. Andy Maxwell at (262) 521-5344 will coordinate any permit issuance for this project. Please reference the log number (#3473) when forwarding all correspondence.

Sincerely,

Art Baumann, P.E.
Traffic Operations Engineer

Attachments

Cc: Sheri Schmit / Brian Bliesner / Robert Elkin, DOT
Hans Higdon / Dave Brantner / Judy Johnson, DOT
Allison Blackwood / Andy Maxwell / Susan Voight, DOT
Sue King / Tom Heydel / Chris Squires, DOT
Gary Sipsma, Kenosha County
Mike May, Traffic Analysis and Design, Inc.
John Bieberitz, Traffic Analysis and Design, Inc.

Log #3473 – The Project Onyx Development

Location:	IH-94 East Frontage Road & CTH S, Kenosha County
Prepared by:	Traffic Analysis and Design, Inc.
Review Unit:	Traffic Operations
Reviewer:	Dan Malicki / Art Baumann / Nikki Gibson / Laura Schroeder
Date:	October 17, 2013

Improvement Measures

General Notes

Design

1) Contact the WisDOT permit coordinator (Andy Maxwell at 262-521-5344) prior to plan submittal to identify the plans that are required and obtain any supplemental design guidelines. **Incomplete submittals will be returned without review.**
2) The design for the improvements along WIS 142 and the IH-94 East Frontage Road shall be prepared in accordance with the FDM requirements for design and plan preparation. The design shall accommodate a WB-65 truck. All lanes are to be a minimum of 12 feet in width unless otherwise specified (final width to be determined during design). All left-turn lanes *should* be opposing. All necessary drainage, utility, signage and pavement marking improvements shall be provided. The signing plan shall include sign details and signs that require moving.
3) Signing, pavement marking and work zone traffic control plans shall be approved by Tom Heydel, WisDOT Traffic Operations, prior to issuance of the permit. For questions regarding signing or pavement marking, please contact Tom Heydel at tom.heydel@dot.wi.gov or (262) 548-6763. For questions regarding work zone traffic control plans, please contact Tom Heydel or the permit coordinator.
4) Pedestrian/Bicycle accommodations and ADA requirements shall be addressed where appropriate. Please contact Chris Squires, WisDOT Pedestrian/Bicycle Facilities Coordinator, at (262) 521-4417 or christopher.squires@dot.wi.gov with questions regarding pedestrian/bicycle accommodations.

Right of Way

1) A party other than the WisDOT and the city of Kenosha shall acquire any required right-of-way for the permit plans.

Utilities

1) Utility coordination may be the responsibility of the municipality/developer (or their consultant representative) constructing the work.
2) Utility relocations that occur as a result of this work may not be covered under Wisconsin Administrative Rule TRANS 220. The municipality/developer (or their consultant representative) requesting the work shall be responsible for all costs associated with the needed relocation of any utility facility as a result of the work.

Access

1) Access restrictions allow for four access points to the IH-94 East Frontage Road for this development. The location and number of access points to the Project Onyx property shall be determined by Kenosha County on CTH S and the City of Kenosha on CTH N/38th Street.
2) **The municipality/developer (or their consultant representative) shall be responsible for notifying any offsite property or business owners whose access or operations will be impacted as a result of the proposed development. The municipality/developer shall provide the department with written documentation verifying that all impacted property or business owners have been contacted prior to permit submittal.**

Traffic Signals

1) The WisDOT Traffic Operations team reserves the right of first refusal to design the traffic signal plans owned by WisDOT. Please contact Allison Blackwood at (262) 521-5367 to discuss who will be responsible for designing the traffic signals. Traffic signal plans prepared by a consulting firm shall be submitted to Judy Johnson for final approval by a WisDOT signal engineer. Upon receiving final approval, the consultant shall submit an original signed and sealed hard copy to Dave Brantner at (262) 548-8736. **Traffic signal plans submitted for permit without a WisDOT signal engineer signature approval will be returned.** Final electronic (MicroStation) traffic signal plan files shall be submitted to Judy Johnson prior to issuance of permit.
2) The design consultant retained by the developer/municipality shall contact Allison Blackwood to schedule a scoping meeting prior to the signal design/update.
3) An engineering services agreement shall be required for the traffic signal work by WisDOT. This agreement will cover WisDOT signal design work and plan preparation (if any), the cost of any State furnished signal control equipment (above ground) and WisDOT staff time for site visits, coordination, review, and field inspection. **Requests for the engineering services agreement shall be made to Allison Blackwood a minimum of 15 days prior to the scoping meeting. The engineering services agreement shall be signed and submitted to Allison Blackwood prior to the submission of the electronic intersection geometric plans. A *signed* Engineering Services Agreement shall be in place prior to WisDOT performing any engineering services.**
4) Traffic signal plans shall be prepared in accordance with FDM and TSDM (Traffic Signal Design Manual) standards for all signalized intersections (current or proposed) whose design and/or operational improvements will conflict with the location of existing traffic signal system infrastructure (including, but not limited to: conduit, pull boxes, cabinets, signal poles, hardwire, and loop detectors), require readjustments to the current timing or phasing plans, or require the installation of additional or new signal infrastructure or hardware. **Plans shall be submitted in MicroStation 2D V8 format per FDM standards requirements to WisDOT or the consultant firm preparing the traffic signal plans. Plans submitted shall be in the county coordinate system.** If further verification of signal infrastructure or timing impacts based on recommended improvements is needed, questions or concerns should be directed to the WisDOT Signal Operations team (Dave Brantner) prior to permit issuance.
5) **If traffic signal loops are to be placed on private property as part of the signal installation, a maintenance easement to the benefit of WisDOT shall be obtained from the private property owner.** The easement shall allow the WisDOT to enter the property at its discretion to maintain the loops. The easement shall encompass an area equal to the width of the driveway and extend from the road right-of-way to 20 feet past the furthest loop detector.

A Memorandum of Understanding (MOU) between WisDOT, the city of Kenosha, Kenosha County and the developer will be required to confirm responsibility for implementation of the improvements, timeframes for implementation and cost share responsibilities.

Year 2014 Improvements (WisDOT)

The following improvements shall be designed, constructed and paid for by WisDOT at the earliest opportunity.

WIS 142 & IH-94 Eastbound Ramps

1) A fully-actuated traffic signal shall be installed at the IH-94 Eastbound Ramps with protected plus permitted phasing for the westbound left-turn movement. The new signal shall be in coordination with the proposed signal at the IH-94 East Frontage Road.
2) Signal interconnect shall be installed, and the new signal shall be interconnected with the proposed signal at the IH-94 East Frontage Road.
3) Flashing yellow arrow indications shall be installed for the westbound protected plus permitted left-turn phasing.
4) The north approach shall have three southbound lanes (one exclusive left-turn lane, one shared through/left-turn lane and one exclusive right-turn lane). The southbound left-turn lane shall have a minimum storage length of 425 feet and a proper taper length. The southbound shared through/left-turn lane shall be continuous back to the freeway. The southbound right-turn lane shall maintain a storage length of 425 feet and the existing taper length.
5) The east approach shall maintain three westbound lanes (two through lanes and one exclusive left-turn lane). The westbound left-turn lane shall be continuous to the adjacent intersection.

Year 2014 Permit Improvements (Developer)

The following improvements shall be designed, constructed and paid for by the developer prior to the development opening.

General Improvements

1) A 24 foot-wide raised median shall be installed along the IH-94 East Frontage Road from its intersection with CTH S through its intersection with Proposed Access #2. From south of Proposed Access #2 through Proposed Access #3, the I-94 East Frontage Road shall be constructed to accommodate two-stage left-turn maneuvers at Access #3.
2) It is recommended that a raised median be installed along CTH S through its intersection with Proposed Access #1. The raised median is recommended to provide storage for two vehicles at Proposed Access #1.
3) It is recommended that CTH S be constructed to accommodate two-stage left-turn maneuvers at the Proposed Outlot Access.

CTH S & IH-94 East Frontage Road

The improvements listed for the south approach of this intersection will impact the wetlands on both sides of the IH-94 East Frontage Road beginning approximately 300 feet south of CTH S. One of the following methods, or other methods agreed upon by all parties, shall be used to implement these improvements:

- *WisDOT will pursue obtaining an Army Corps permit to disturb the wetlands and then construct the improvements as part of the I-94 project in 2014, with the improvements to be completed by October 1st. The developer will be responsible for 100% of the costs incurred by the department to design and construct these improvements.*
- *If WisDOT is unable to obtain an Army Corps permit, the improvements constructed on this approach will initially be limited to those that do not impact the wetlands. The initial improvements would be the developer's responsibility to implement. The improvements described below will then be constructed by the developer via permit in 2015, after the development is complete and operational. The developer will have the option of performing a follow-up traffic analysis to determine if the scope of improvements could be reduced, subject to WisDOT agreement.*
- *WisDOT obtains the Army Corps permit, and the developer implements the improvements in 2014 via permit.*

1) A fully-actuated traffic signal shall be installed at the IH-94 East Frontage Road with protected phasing for the northbound left-turn movement and protected plus permitted phasing for the southbound, eastbound and westbound left-turn movements. The new signal shall be in coordination with the proposed signal at the IH-94 Eastbound Ramps.
2) Signal interconnect shall be installed, and the new signal shall be interconnected with the proposed signal at the IH-94 Eastbound Ramps.
3) Flashing yellow arrow indications shall be installed for all permissive left-turn phases.
4) The north approach shall have three southbound lanes (one exclusive left-turn lane, one through lane and one exclusive right-turn lane). The southbound left-turn lane storage shall be maximized while having a proper taper length. The southbound right-turn lane shall maintain a storage length of 125 feet and the existing taper length.
5) The south approach shall have three northbound lanes (two exclusive left-turn lanes and one shared through/right-turn lane). The northbound left-turn lanes shall be continuous to the adjacent intersection. The northbound shared through/right-turn lane shall have a storage length of 450 feet and a 320-foot taper length.
6) An overhead sign bridge may be required to be constructed on the south approach.
7) The west approach shall maintain four eastbound lanes (one exclusive left-turn lane, two through lanes and one exclusive right-turn lane). The eastbound left-turn lane shall maintain a storage length of 380 feet and the existing taper length. The eastbound right-turn lane shall be continuous back to the IH-94 Westbound Ramps intersection.

CTH S & Proposed Access #1

1) It is recommended that the south approach have two northbound lanes (one exclusive left-turn lane and one exclusive right-turn lane). The northbound right-turn lane is recommended to have a minimum storage length of 200 feet and a proper taper length.
2) It is recommended that the east approach have three westbound lanes (one exclusive left-turn lane and two through lanes). As a practical minimum, at least 100 feet of storage should be provided in the westbound left-turn lane so that a semi and a passenger car can be stored. The desirable storage length for the westbound left-turn lane is 350 feet.

3) It is recommended that the west approach have three eastbound lanes (two through lanes and one exclusive right-turn lane). As a practical minimum, at least 100 feet of storage should be provided in the eastbound right-turn lane so that a semi may exit the traveled way completely prior to executing the right-turn movement. The desirable storage length for the eastbound right-turn lane is 350 feet.

CTH S & Proposed Outlot Access

1) It is recommended that the south approach have two northbound lanes (one exclusive left-turn lane and one exclusive right-turn lane). The northbound right-turn lane is recommended to have a minimum storage length of 100 feet and a proper taper length.
2) It is recommended that the east approach have two westbound lanes (one exclusive left-turn lane and one through lane). As a practical minimum, at least 100 feet of storage should be provided in the westbound left-turn lane so that a semi and a passenger car can be stored. The desirable storage length for the westbound left-turn lane is 350 feet.
3) It is recommended that the west approach have two eastbound lanes (one through lane and one exclusive right-turn lane). The eastbound right-turn lane is recommended to be continuous back to the Proposed Access #1 intersection.

IH-94 East Frontage Road & Proposed Access #2

1) The north approach shall have two southbound lanes (one exclusive left-turn lane and one through lane). The southbound left-turn lane shall have a minimum storage of 250 feet and a proper taper length.
2) The south approach shall have two northbound lanes (one through lane and one shared through/right-turn lane). Both northbound lanes shall be continuous back to the Proposed Access #3 intersection. The northbound shared through/right-turn lane shall have a proper deceleration taper at Proposed Access #2.
3) The east approach shall have two westbound lanes (one exclusive left-turn lane and one exclusive right-turn lane). The westbound right-turn lane shall have a minimum storage of 100 feet and a proper taper length.

IH-94 East Frontage Road & Proposed Access #3

1) The north approach shall have two southbound lanes (one exclusive left-turn lane and one through lane). The southbound left-turn lane shall have a minimum storage of 250 feet and a proper taper length.
2) The south approach shall have one northbound lane (one shared through/right-turn lane) with a proper deceleration taper.
3) The east approach shall have two westbound lanes (one exclusive left-turn lane and one exclusive right-turn lane). The westbound right-turn lane shall have a minimum storage of 100 feet and a proper taper length.

IH-94 East Frontage Road & Proposed Access #4

1) The north approach shall have two southbound lanes (one exclusive left-turn lane and one through lane). The southbound left-turn lane shall have a minimum storage of 250 feet and a proper taper length.
2) The south approach shall have one northbound lane (one shared through/right-turn lane) with a proper deceleration taper.

3) The east approach shall have two westbound lanes (one exclusive left-turn lane and one exclusive right-turn lane). The westbound right-turn lane shall have a minimum storage of 100 feet and a proper taper length.

IH-94 East Frontage Road & Proposed Access #5

1) The north approach shall have two southbound lanes (one exclusive left-turn lane and one through lane). The southbound left-turn lane shall have a minimum storage of 250 feet and a proper taper length.
2) The south approach shall have one northbound lane (one shared through/right-turn lane) with a proper deceleration taper.
3) The east approach shall have two westbound lanes (one exclusive left-turn lane and one exclusive right-turn lane). The westbound right-turn lane shall have a minimum storage of 100 feet and a proper taper length.

The City of Kenosha will require the following improvements to be implemented as part of this development.

38th Street & Proposed Access #6

1) The north approach shall have two southbound lanes (one exclusive left-turn lane and one exclusive right-turn lane). The southbound right-turn lane shall have a minimum storage of 125 feet and a proper taper length.
2) The east approach shall have two westbound lanes (one through lane and one exclusive right-turn lane). As a practical minimum, at least 100 feet of storage shall be provided in the westbound right-turn lane so that a vehicle may exit the traveled way completely prior to executing the right-turn movement. The desirable storage length for the westbound right-turn lane is 350 feet.
3) The west approach shall have two eastbound lanes (one exclusive left-turn lane and one through lane). As a practical minimum, at least 100 feet of storage shall be provided in the eastbound left-turn lane so that a vehicle may exit the traveled way completely prior to executing the left-turn movement. The desirable storage length for the eastbound left-turn lane is 350 feet.

38th Street & Proposed Access #7

1) The north approach shall have one southbound lane (one shared left-turn/right-turn lane).
2) The east approach shall have one westbound lane (one shared through/right-turn lane) with a proper deceleration taper.
3) The west approach shall have two eastbound lanes (one exclusive left-turn lane and one through lane). As a practical minimum, at least 100 feet of storage shall be provided in the eastbound left-turn lane so that a semi and can be stored. The desirable storage length for the eastbound left-turn lane is 350 feet.

<u>Year 2014 Improvements (Kenosha County)</u>

The following improvements shall be designed, constructed and paid for by Kenosha County and should be completed at the earliest opportunity, subject to an intergovernmental agreement involving jurisdictional transfers being fully executed between Kenosha County, City of Kenosha and Town of Somers before March 17, 2014.

CTH N & CTH S

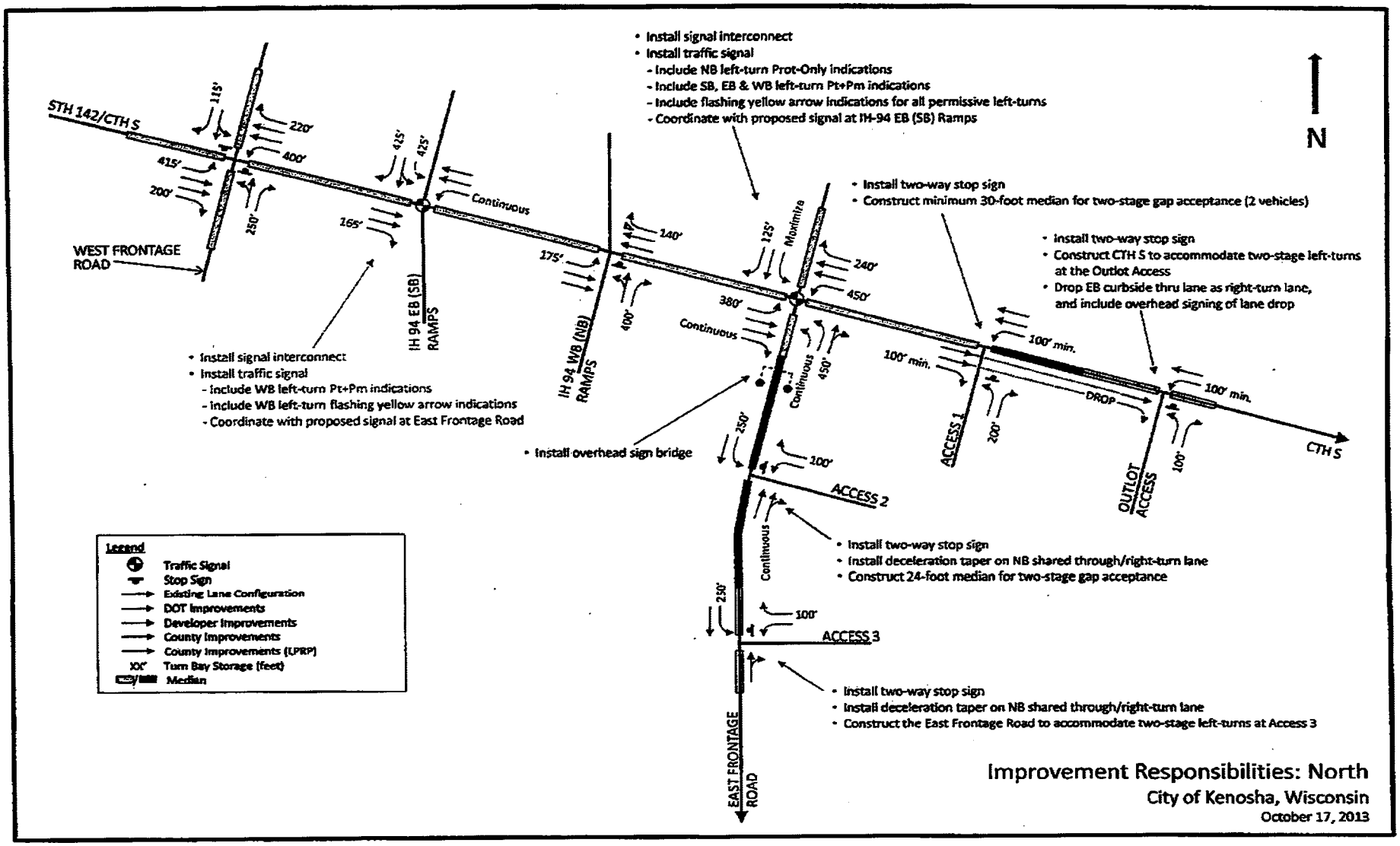
1) It is recommended that the intersection of CTH N and CTH S be moved to the west to accommodate the proposed improvements.
2) It is recommended that the south approach have two northbound lanes (one exclusive left-turn lane and one exclusive right-turn lane). The northbound right-turn lane is recommended to have a minimum storage of 250 feet and a proper taper length. It is recommended that the northbound right-turn operate as a free-flow movement, and that he right-turn traffic be directed into its own lane east of the intersection. The two eastbound lanes should continue to the CTH H intersection.
3) It is recommended that the east approach have two westbound lanes (one exclusive left-turn lane and one through lane). The westbound left-turn lane is recommended to have a minimum storage of 350 feet and a proper taper length.
4) It is recommended that the west approach have one eastbound lane (one shared through/right-turn lane).

Future Year Improvements (Kenosha County)

The following improvements shall be designed, constructed and paid for as part of a Local Program Road Project or other agreed upon method through Kenosha County, subject to an intergovernmental agreement involving jurisdictional transfers being fully executed between Kenosha County, City of Kenosha and Town of Somers before March 17, 2014.

CTH H & CTH S

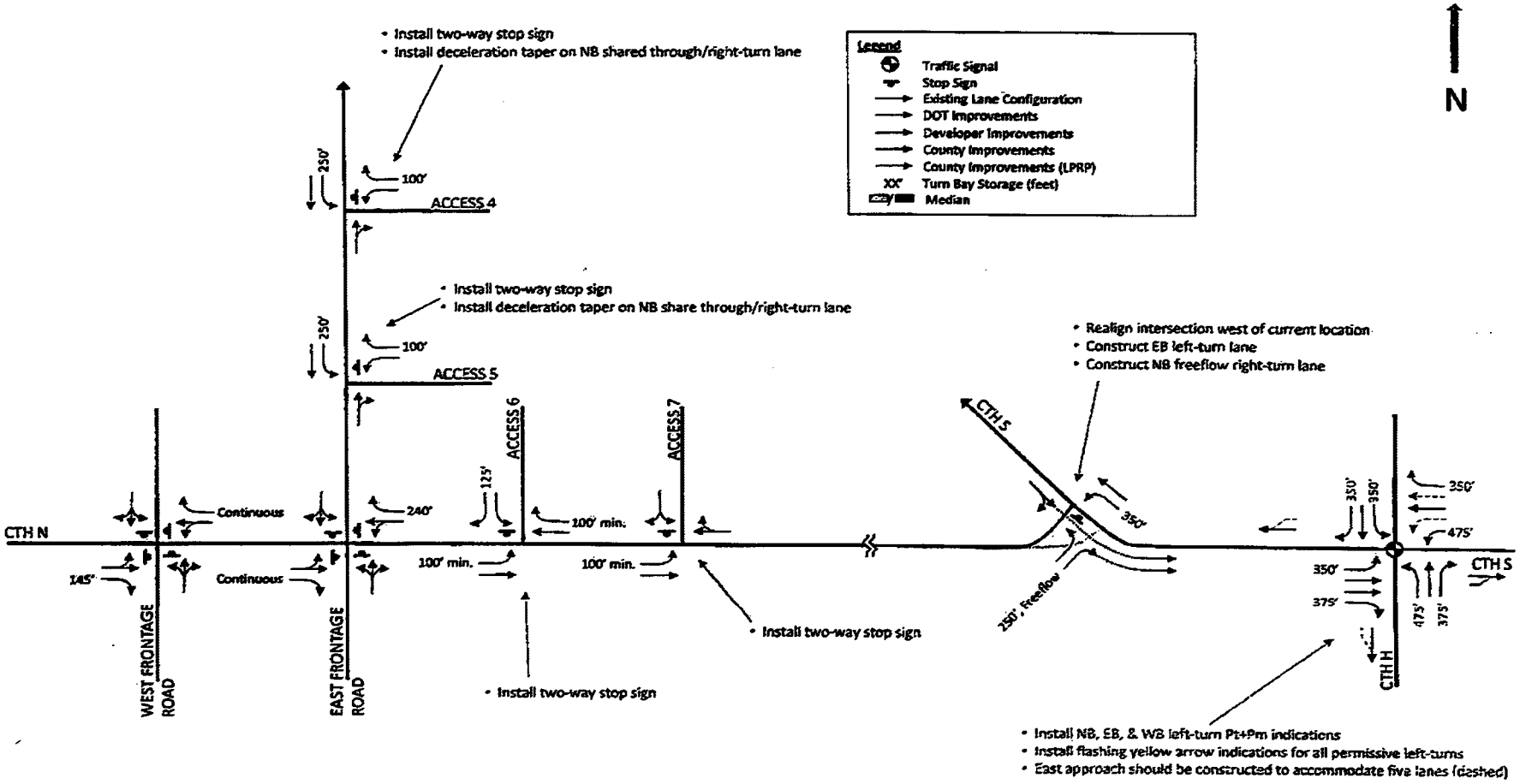
1) It is recommended that protected plus permitted signal heads be installed for the northbound, eastbound and westbound left-turn movements.
2) It is recommended that flashing yellow arrow indications be installed for all permissive left-turn phases
3) It is recommended that the north approach have three southbound lanes (one exclusive left-turn lane, one through lane and one exclusive right-turn lane). The southbound left-turn lane is recommended to have a minimum storage length of 350 feet and a proper taper length. The southbound right-turn lane is recommended to have a minimum storage length of 350 feet and a proper taper length.
4) It is recommended that the south approach have three northbound lanes (one exclusive left-turn lane, one through lane and one exclusive right-turn lane). The northbound left-turn lane is recommended to have a minimum storage length of 475 feet and a proper taper length. The northbound right-turn lane is recommended to have a minimum storage length of 375 feet and a proper taper length.
5) It is recommended that the east approach have three westbound lanes (one exclusive left-turn lane, one through lane and one exclusive right-turn lane). The westbound left-turn lane is recommended to have a minimum storage length of 475 feet and a proper taper length. The westbound right-turn lane is recommended to have a minimum storage length of 350 feet and a proper taper length. *It is recommended that the east approach be constructed to accommodate five westbound lanes (two exclusive left-turn lanes, two through lanes and one exclusive right-turn lane).*
6) It is recommended that the west approach have four eastbound lanes (one exclusive left-turn lane, two through lanes and one exclusive right-turn lane). The eastbound left-turn lane is recommended to have a minimum storage length of 350 feet and a proper taper length. The eastbound right-turn lane is recommended to have a minimum storage length of 375 feet and a proper taper length.



Improvement Responsibilities: North

City of Kenosha, Wisconsin

October 17, 2013



Improvement Responsibilities: South

City of Kenosha, Wisconsin

October 17, 2013

C-5

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

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October 18, 2013

To: Patrick Juliana, Chairman
Stormwater Utility Committee

From: Michael M. Lemens, P.E. 10-18-13
Director of Public Works

Subject: ***Approval of the Stormwater Management Practices Maintenance Agreement for Stormwater Maintenance Facilities by and between the City of Kenosha and KTR WIS III, LLC and KTR WIS IV, LLC (Project Onyx/Amazon)***

BACKGROUND/ANALYSIS

A team of City staff has been reviewing the drafts of various agreements and other documents required for the development of the Project Onyx site. The process of formal approval requires consideration and approval from the standing committees before it goes for approval by the Common Council. The final draft of the formal documentation was unavailable at the deadline for distribution of the agendas, but will be presented at the meeting on Monday.

RECOMMENDATION

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

MML

CC: Ald. Downing, District 16

C-6

ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
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October 18, 2013

To: Patrick Juliana, Chairman
Stormwater Utility Committee

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

10-18-13

Subject: ***Approval of the Permanent Easement by and between the City of Kenosha and KTR WIS III, LLC and KTR WIS IV, LLC (Project Onyx/Amazon)***

BACKGROUND/ANALYSIS

A team of City staff has been reviewing the drafts of various agreements and other documents required for the development of the Project Onyx site. The process of formal approval requires consideration and approval from the standing committees before it goes for approval by the Common Council. The final draft of the formal documentation was unavailable at the deadline for distribution of the agendas, but will be presented at the meeting on Monday.

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. Downing, District 16

Informational

October 18, 2013

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

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

SUBJECT: Stormwater Utility Project Status Report

Project #09-1121 - Forest Park Evaluation – Staff has sent final comments to Strand for storm sewer section of report. (1)

Project #10-1126 Wetland Mitigation Bank - [Wetlands and Waterways Consulting LLC] Staff is working with the DNR regarding comments with the recent submittal. (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 currently reviewing a draft report. (2 and 7)

Project #11-1125 Pennoyer Beach Outfall Stormwater Infiltration Basin (GLRI Grant) – Punchlist items remain (1 and 6)

Project #11-1135 Stormwater Management Plan Development – Staff continues to work through City watershed by watershed. (City wide)

Project #11-1137 Pike River Monitoring (WI Coastal Manag. Grant) – Staff is reviewing draft report. (1 and 4)

Project #12-1111 Misc. Storm Sewer – Sump Pump Connections – Staff is preparing plans and specs for construction in early 2014. (12)

Project #12-1136 Pike River Monitoring (Fund for Lake Michigan Grant) – Staff is reviewing draft report. (1 and 4)

Project #12-1140 Detention Basin Certifications – [Clark Dietz] –Clark Dietz has perform soundings on the city owned detention basins and the basins which we have functional maintenance on through maintenance agreements. (City wide)

Project #12-1420 Shagbark Trail Development – [Western Contractors] Native planting restoration will occur in October. (10)

Project #11-1025 122nd Avenue – 71st Street to 74th Street (Storm Sewer Only) – Work has begun. Estimate completion date is mid-November (16)

Project #13-1012 - Resurfacing I – [Stark] Saw cutting, storm sewer and removals are complete on both Lincoln Road intersections. Lincoln Road and 22nd Avenue closed on Monday, October 7th, 2013 and will remain closed throughout construction. Saw cutting and storm sewer are complete and removals have begun on 70th Street. [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] Saw cutting, storm sewer, removals and curb & gutter are complete on 13th Court and 41st Street. Grading will be completed the week of October 21st, 2013 with paving to follow. [13th Court from Washington Road to 43rd Street, 41st Street from 22nd Avenue to to 350 ft. east of 21st Avenue] (Stormwater Utility funding also) (6)

Project #13-1016 Resurfacing III – [Cicchini] All roads are complete. Punch list items remain. [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 #13-1019 – Crackfilling – [Fahrner] Work has begun. (Citywide)

Project #13-1024 – 60th Street Resurfacing – 39th Avenue to 30th Avenue – [Cicchini] Storm sewer work, curb & gutter, sidewalk and driveway apron work has been completed on 39th Avenue and 60th Street. Asphalt is complete on 39th Avenue and the 3700 block – 3900 block of 60th Street. Milling is taking place from 3100 block – 3700 block of 60th Street. Both 39th Avenue and 60th Street are restricted to one lane of traffic in each direction. (Stormwater Utility funding also) (3, 11, 15)

Project #13-1027 - Pavement Markings – Work is complete. (Citywide)

Project #13-1208 - Sidewalk and Curb and Gutter – [AW Oakes] Project is about 95% complete. Punch list items remain. (Stormwater Utility funding also) (Citywide)

Project #13-1417 – Tree Removal – Project has begun and phase two is out for quotes. (Parks funding) (Citywide)

Design Work- Staff is working on the following projects: Sump Pump Priorities, SWPPP Updates, Website Design, GPS Data Forms, Storm Sewer Investigation for Roadway Projects, Permit Compliance, SWU Reporting, Pollution Prevention Structures, Stormwater Management Facility Inspections, Miscellaneous Storm Sewer projects for contractor and SWU crews, Yardwaste coupons