



Office of the Clerk/Treasurer

W240N3065 Pewaukee Road
Pewaukee, WI 53072
(262) 691-0770 Fax 691-1798

**COMMON COUNCIL
MEETING NOTICE AND AGENDA**

Monday, May 16, 2022

6:30 PM

Common Council Chambers ~ Pewaukee City Hall
W240 N3065 Pewaukee Road ~ Pewaukee, Wisconsin

-
1. Call to Order and Pledge of Allegiance
 2. Public Comment - Please limit your comments to two (2) minutes, if further time for discussion is needed please contact your District Alderperson prior to the meeting.
 3. Consent Agenda
 - 3.1. Approve the Accounts Payable Listing Dated May 16, 2022
 - 3.2. Approve **Ordinance 22-13** Amending Chapter 5 - Traffic, to Remove Lindsay Road from Redford Boulevard (CHT F) to Duplainville Road from and to Add Hughes Trail to Section 5.05(3)(b) (*Second Reading*)
 - 3.3. Approve **Resolution 22-05-15** Giving Notice Regarding Inspection of Public Records
 4. Discussion and Possible Action Regarding the Execution of the Roadside Deer Pick Up Contract with Shawn's Deer Pick Up [Wagner]
 5. Discussion and Possible Action Regarding the Cardinal Meadow Development Agreement and Establish the Amount of the Letter of Credit [Wagner]
 6. Discussion and Possible Action Regarding Amending the Cardinal Meadow Early Grading Agreement [Wagner]
 7. Discussion and Possible Action Regarding Leaving Trees Planted in the Right-of-Way Near N43W22726 Victoria Street as Requested by the Property Owner [Wagner]
 8. Public Comment - Please limit your comments to two (2) minutes, if further time for discussion is needed please contact your district Alderperson prior to the meeting.
 9. Adjournment

Kelly Tarczewski
Clerk/Treasurer

May 13, 2022

NOTICE

It is possible that members of other governmental bodies of the municipality may be in attendance to gather information that may form a

quorum. At the above stated meeting, no action will be taken by any governmental body other than the governmental body specifically referred to above in this notice.

Any person who has a qualifying disability under the Americans with Disabilities Act that requires the meeting or materials at the meeting to be in an accessible format must contact the Clerk/Treasurer, Kelly Tarczewski, at (262) 691-0770 three business days prior to the meeting so that arrangements may be made to accommodate your request.

**CITY OF PEWAUKEE
COMMON COUNCIL AGENDA ITEM 3.1.**

DATE: May 16, 2022

DEPARTMENT: Clerk/Treasurer

PROVIDED BY:

SUBJECT:

Approve the Accounts Payable Listing Dated May 16, 2022

BACKGROUND:

FINANCIAL IMPACT:

RECOMMENDED MOTION:

ATTACHMENTS:

Description

A/P 5/16/2022

Check Date	Check	Vendor Name	Description	Amount
Bank 100 GENERAL FUND CHECKING				
05/04/2022	134751	CAROL SAZAMA	PAYROLL ADJ PAYDATE 5/6/22	188.47
05/06/2022	134752	AIR ONE EQUIPMENT	FD KEY FIRE HOSE	989.00
05/06/2022	134753	AIRGAS USA	FD OXYGEN	264.74
			FD OXYGEN	99.32
			FD OXYGEN	201.26
			FD OXYGEN	124.96
			FD OXYGEN	142.52
				832.80
05/06/2022	134754	AMERICAN LITHO	P&R SUMMER 2022 GUIDE	5,892.00
05/06/2022	134755	ANGELICA OBERRATH	P&R RENTAL REFUND	100.00
05/06/2022	134756	ASPEN HOMES	BD Bond Refund	500.00
05/06/2022	134757	AUTO ZONE	FD WAX	47.40
			FD CABIN AIR FILTER	38.18
			FD MIRROR	6.04
				91.62
05/06/2022	134758	BOND TRUST SERVICES CORP	DEBT PYMT	10,405.00
05/06/2022	134759	CHERRIE LARSON	P&R KIDVENTURES SESSION 3	604.80
			P&R LEARN & PLAY SESSION 4	156.00
			P&R STORYTIME ART	268.80
				1,029.60
05/06/2022	134760	DIVERSIFIED BENEFIT SERVICES, INC.	MAY HRA FEE	347.12
05/06/2022	134761	ELEVITY	IT MONTHLY M365, EMAIL, MONITORING	4,444.50
05/06/2022	134762	FIRE SERVICE INC	FD VEHICLE REPAIRS	3,346.64
			FD VEHICLE REPAIRS	700.00
				4,046.64
05/06/2022	134763	GGLEAGUES INC	P&R PROGRAMS	168.00
05/06/2022	134764	HALEN HOMES	BD Bond Refund	500.00
05/06/2022	134765	HASTINGS	FD TAILPIPE ADAPTER	170.74
05/06/2022	134766	HEARTLAND BUSINESS SYSTEMS	IT PAL ALTO RENEWAL	5,812.48
05/06/2022	134767	IS OUTFITTERS	IT PARKS GARAGE SWITCH TO AT&T	225.00
05/06/2022	134768	JK LAWN SERVICE	FD LAWN SERVICE	70.00
			FD LAWN SERVICE	53.00
			FD LAWN SERVICE	84.00
			FD LAWN SERVICE	140.00
				347.00
05/06/2022	134769	KMB ELECTRIC	P&R WIRE HAND DRYERS	2,489.54
			P&R ELECTRICAL WORK AT PARKS	150.00
				2,639.54
05/06/2022	134770	LAURA JUNG	P&R PROGRAM REFUND	45.00
05/06/2022	134771	LIFE-ASSIST INC	FD SALINE FLUSH	67.50
			FD SAFETY RESTOCK	8.25
			FD SAFETY RESTOCK	976.37

Check Date	Check	Vendor Name	Description	Amount
				1,052.12
05/06/2022	134772	MENARDS	P&R CLEANING SUPPLIES	57.49
			P&R CLEANING SUPPLIES	22.97
				80.46
05/06/2022	134773	MUNICIPAL LAW & LITIGATION GROUP S.	LEGAL FEES	14,367.60
05/06/2022	134774	NATIONWIDE RETIREMENT SOLUTIONS	RETIREMENT PD 5-6-22	2,109.09
05/06/2022	134775	OFFICE COPYING EQUIPMENT, LTD	FD SHARP MX3071 CONTRACT	19.15
05/06/2022	134776	PROHEALTH PHARMACY WAUKESHA	FD PHARMACY TRANSFERS	2,257.37
05/06/2022	134777	REGISTRATION FEE TRUST	SWEEPER PLATES APPLICATION	169.50
05/06/2022	134778	SEAT OF THE PANTS PRODUCTIONS LLC	P&R PROGRAMS	434.00
05/06/2022	134779	STACI JOERS	P&R COOKING WITH CLASS	396.00
05/06/2022	134780	STRYKER SALES CORPORATION	FD EQUIP REPAIR	126.40
05/06/2022	134781	VILLAGE OF PEWAUKEE	APR 2022 VILLAGE BUILDING PERMITS	8,230.52
			P&R MONTHLY INCOME SPLIT APRIL 2022	37,628.31
				45,858.83
05/06/2022	134782	WAUKESHA CO TECHNICAL COLLEGE	FD TRAINING	262.00
05/06/2022	134783	WISCONSIN DEPARTMENT OF	HR EXAMS	167.00
05/12/2022	134784	ALL CITY COMMUNICATIONS INC.	SW ANSWERING SERVICE	78.60
05/12/2022	134785	ARC DOCUMENT SOLUTIONS LLC	ENG PLOT BOND	36.50
05/12/2022	134786	AT&T CAROL STREAM IL	CH TELEPHONE	104.92
05/12/2022	134787	AT&T CAROL STREAM IL	P&R INTERNET AT PARK	162.80
05/12/2022	134788	BAKER TILLY VIRCHOW KRAUSE LLP	AUDIT SERVICES	3,200.00
05/12/2022	134789	BATTERIES PLUS LLC	SW BATTERIES	108.70
05/12/2022	134790	BIG JIM'S SMALL ENG SERV	FD CARBIDE CHAIN	255.96
05/12/2022	134791	BUMPER TO BUMPER HARTLAND	SW LAMP	12.40
05/12/2022	134792	CHARLIE DWYER	BLD MILEAGE REIMBURSEMENT	126.36
05/12/2022	134793	CONWAY SHIELD	FD TRAINING SMOKE	29.50
05/12/2022	134794	DEAN EPPLER	BLD MILEAGE REIMBURSEMENT	61.43
05/12/2022	134795	FIRE SERVICE INC	FD VEHICLE REPAIRS	1,355.41
			FD VEHICLE REPAIRS	44.45
				1,399.86
05/12/2022	134796	GALLS	FD CLOTHING	108.91
05/12/2022	134797	GRAINGER	FD SPRING CHECK VALVE	213.78
			SW BALL VALVE	91.08
				304.86
05/12/2022	134798	GREGG MARTIN INSTRUMENTATION	SW FLOW METER CALIBRATION	1,980.00
05/12/2022	134799	HAWKINS, INC.	SW CHEMICALS	3,641.48
05/12/2022	134800	HEARTLAND BUSINESS SYSTEMS	IT CITRIX NETSCALER UPGRADE	4,038.74
05/12/2022	134801	HOME DEPOT CREDIT SERVICE	P&R NAILER/NAILER KIT	330.98
05/12/2022	134802	JOHN'S DISPOSAL SERVICE	ENG GARBAGE FEES	53,659.60
05/12/2022	134803	LIFE-ASSIST INC	FD SAFETY RESTOCK	733.86
05/12/2022	134804	MENARDS	SW WHIP HOSE	14.99
			SW TOOLBOX	24.98
				39.97
05/12/2022	134805	NAPA	FD OIL	47.55
05/12/2022	134806	NICK FUCHS	BLD TRAVEL EXPENSE REIMBURSEMENT	49.17
05/12/2022	134807	NORTHERN LAKE SERVICE, INC	SW WATER TESTING	69.00

Check Date	Check	Vendor Name	Description	Amount
			SW WATER TESTING	92.00
			SW WATER TESTING	69.00
			SW WATER TESTING	69.00
			SW WATER TESTING	276.00
			SW WATER TESTING	92.00
			SW WATER TESTING	69.00
				736.00
05/12/2022	134808	OFFICE COPYING EQUIPMENT, LTD	BLD SHARP MX3071 CONTRACT	86.95
			ENG SHARP 4070N CONTRACT	348.50
				435.45
05/12/2022	134809	OFFICE DEPOT	BLD OFFICE SUPPLIES	11.22
			BLD OFFICE SUPPLIES	17.19
				28.41
05/12/2022	134810	POWER HAWK TECHNOLOGIES	FD EQUIPMENT REPAIR	136.50
05/12/2022	134811	R&R INSURANCE SERVICES	WORKERS COMP INSTALLMENT	20,224.00
05/12/2022	134812	RANDY ROMENS	BLD MILEAGE REIMBURSEMENT	50.31
05/12/2022	134813	RUEKERT & MIELKE, INC.	SW WELL STATION 5 CONSTRUCTION	162.00
			SW BLUEMOUND RD WATER MAIN EXTENSION	4,559.10
			SW BLUEMOUND RD WATER MAIN EXTENSION	6,279.00
			SW SCADA SERVICE	876.51
			ENG WOODLEAF RESERVE	22,445.84
			ENG WOODLEAF RESERVE CONSTRUCTION	699.01
			ENG SHADY LANE DESIGN AND BIDDING	21,006.90
			ENG OAK & PENINSULA CONSTRUCTION	636.38
			ENG LAKEWOOD BAPTIST CHURCH CONSTRUCTION	636.38
			ENG PAUL RD WATER	1,566.76
			ENG NORTHMOUND EROSION CONTROL	270.00
			ENG INLET REPAIR	318.00
			ENG SWAN VIEW FARMS CONSTRUCTION REVIEW	898.26
			ENG SWAN VIEW CONSTRUCTION REVIEW	908.76
			ENG GLEN AT PARKWAY RIDGE CONSTRUCTION	664.88
			ENG JOSEPH RD CONSTRUCTION	526.59
			ENG ZIGNEGO REPAIR CONSTRUCTION	260.26
			ENG MEADOWBROOK FARMS PHASE 1 CONSTRUCTI	241.00
			ENG PEWAUKEE SOUTH CONSTRUCTION REVIEW	260.26
			ENG WATERS CONSTRUCTION REVIEW	15,211.63
			ENG GREENLAND SUBDIVISION FILL SITE	260.26
			ENG ROUNDY CIR CONSTRUCTION OBSERVATION	260.26
			ENG CENTURY FENCE CONSTRUCTION	260.26
			ENG MEADOWBROOK DESIGN & CONSTRUCTION	1,419.00
			ENG HILL N DALE DESIGN	10,823.00
				91,450.30
05/12/2022	134814	SCBAS	FD AIR TEST KIT	455.53
05/12/2022	134815	T/A TRUCK PAINTING, INC.	FD VEHICLE REPAIR	5,934.57
05/12/2022	134816	TOTAL MECHANICAL	SW VENTER MOTOR, FITTINGS, VERSA CAP	2,016.89
05/12/2022	134817	ULINE	FD MOBILE SHELVEING	429.07
05/12/2022	134818	VILLAGE OF PEWAUKEE	APRIL 2022 LIFEQUEST COLLECTIONS	35,434.32
05/12/2022	134819	VISU-SEWER	SW VACTOR	2,208.00
05/12/2022	134820	WATER REMEDIATION TECHNOLOGY	SW BASE TREATMENT CHG	3,812.88
05/12/2022	134821	WAUKESHA WATER UTILITY	SW SEWER SERVICE CHG	26,545.76
05/12/2022	134822	WI DNR	SW WATER USE FEES	125.00
05/12/2022	134823	XEROX CORPORATION	SW METER USG CHGS	336.78

Check Date	Check	Vendor Name	Description	Amount
05/12/2022	134824	XYLEM WATER SOLUTIONS U.S.A. INC	SW REPAIR KIT	539.00
			SW VALVES	4,700.10
				5,239.10
100 TOTALS:				
Total of 74 Disbursements:				372,185.05

**CITY OF PEWAUKEE
COMMON COUNCIL AGENDA ITEM 3.2.**

DATE: May 16, 2022

DEPARTMENT: Public Works

PROVIDED BY: Magdelene Wagner

SUBJECT:

Approve **Ordinance 22-13** Amending Chapter 5 - Traffic, to Remove Lindsay Road from Redford Boulevard (CHT F) to Duplainville Road from and to Add Hughes Trail to Section 5.05(3)(b) (*Second Reading*)

BACKGROUND:

Lindsay Road is currently Heavy Weight Restricted year round to 6 Tons. With the upcoming Duplainville Road Reconstruction, the intersection improvements at Redford Boulevard (CHT F) and Lindsay Road, and development plans for the remaining land in this corridor, Staff is recommending removing the 6 Ton Heavy Weight Restriction between Redford Boulevard (CHT F) and Duplainville Road.

Lindsay Road west of Redford Boulevard would remain heavy weight restricted as this area is largely residential and plans to remain this zoning.

The Public Works Committee is recommending this change and the Common Council reviewed this item and concurred on April 18, 2022.

The second change which has not been discussed before is adding Hughes Trail to the year round weight restriction. There has been reports of trucks using Hughes Trail to turn around when it appears they miss the entrance to the Pewaukee Industrial Park Development just south of this roadway. Hughes Trail was not constructed to handle the loading from these trucking operations on a regular basis. Therefore, Staff is requesting adding a 6 Ton year round heavy weight restriction to the roadway.

This is the first reading of amending the Chapter 5.05(3)(b) reflecting both changes discussed above.

FINANCIAL IMPACT:

RECOMMENDED MOTION:

Common Council adopt the amendment to Ordinance Chapter 5.05(3)(b)

ATTACHMENTS:

Description

Ordinance 22-13 Revised

ORDINANCE NO. 22-13

**AN ORDINANCE TO AMEND SECTION 5.05(3)(b)
OF THE CITY OF PEWAUKEE CODE OF ORDINANCES
CONCERNING SPECIAL AND SEASONAL WEIGHT LIMITS**

WHEREAS, Section 349.16 of the Wisconsin Statutes grants the City authority to impose special and seasonal weight limitations to prevent injury to the roadway of any highway, bridge or culvert within the jurisdiction of the City or for the safety of users of such highway, bridge or culvert; and

WHEREAS, Section 349.16(3) of the Wisconsin Statutes further grants the City the authority to exempt or set different weight limitations for vehicles that are carrying certain commodities specified by the City or that are used to perform certain services specified by the City from the special weight limitations which are imposed under Section 349.16(1)(a) of the Wisconsin Statutes if the exemption or limitation is reasonable and necessary to promote the public health, safety, and welfare; and

WHEREAS, the City of Pewaukee has acted in Section 5.05(3)(a) of the City of Pewaukee Code of Ordinances to prohibit vehicles having a gross weight of more than 12,000 pounds are prohibited from traveling on any highway except as authorized by Section 349.17(1) of the Wisconsin State Statutes; and

WHEREAS, the City of Pewaukee has further acted in Section 5.05(3)(b) of the City of Pewaukee Code of Ordinances to designate streets in which Heavy Traffic is prohibited; and

NOW, THEREFORE, the Common Council of the City of Pewaukee, Wisconsin do ordain as follows:

SECTION 1. Chapter 05, entitled “Traffic”; Section 5.05, entitled “Vehicular Weight Limitations”, subsection (3), entitled “Regulations of Heavy Traffic”, subsection 9b), entitled “Main Heavy Traffic Routes” is amended as follows:

- 5) Lindsay Road from Ryan Road (CTH KF) to Redford Boulevard (CTH F).
- 24) Hughes Trail in its entirety.

SECTION 2: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are

hereby repealed as to those terms that conflict.

SECTION 3: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and publication as provided by law.

Passed and adopted at a regular meeting of the Common Council of the City of Pewaukee this 16th day of May 2022.

CITY OF PEWAUKEE

Steve Bierce, Mayor

ATTEST:

Kelly Tarczewski, City Clerk/Treasurer

**CITY OF PEWAUKEE
COMMON COUNCIL AGENDA ITEM 3.3.**

DATE: May 16, 2022

DEPARTMENT: Clerk/Treasurer

PROVIDED BY:

SUBJECT:

Approve **Resolution 22-05-15** Giving Notice Regarding Inspection of Public Records

BACKGROUND:

FINANCIAL IMPACT:

RECOMMENDED MOTION:

ATTACHMENTS:

Description

Resolution 22-05-15

RESOLUTION 22-05-15
NOTICE REGARDING INSPECTION OF PUBLIC RECORDS

Except as otherwise provided, any person has a right to inspect public records and to make or receive a copy of any public records as provided in Chapter 19, Subchapter II, Wisconsin Statutes, and applicable municipal ordinances.

Requests to inspect public records must be made to the City Clerk/Treasurer at the Pewaukee City Hall, W240 N3065 Pewaukee Road, Pewaukee, Wisconsin, 53072.

Public records may be requested, inspected and copies obtained during normal business hours Monday through Friday, 8:00 a.m. to 4:30 p.m. In some cases, records may require retrieval from archives and therefore may not be immediately available for inspection.

The cost of photocopying shall be .10¢ per page, plus sales tax, which has been calculated to be the actual, necessary, and direct cost of reproduction. In some cases, additional charges may apply, such as to recover costs for locating a record, mailing or shipping costs, or photographing and photographic processing costs, and in some cases, prepayment may also be required, as allowed by law.

Pursuant to the requirements of Section 19.34(1), Wisconsin Statutes, the following is a list of the holders of any “local public office” as that term is defined and used therein:

- | | |
|---|---|
| • Steve Bierce – Mayor | • Kelly Tarczewski – Clerk/Treasurer |
| • Phil Vetterkind – Alderman District #1 | • Magdelene Wagner – Engineer/Public Works Director |
| • Rich Reinbold – Alderman District #1 | • Bobby Kewan – Information Technology Director |
| • Colleen Brown – Alderman, District #2 | • Kevin Bierce – Fire Chief |
| • Ian Clark – Alderman, District #2 | • Nick Phalin – Parks & Recreation Director |
| • Brian Dziwulski – Alderman, District #3 | • Jane Mueller – Utility Manager |
| • Jerry Wamser – Alderman, District #3 | • Lieutenant Marc Moonen - Police Services C/O Waukesha County Sheriff's Department |
| • Scott Klein – Administrator | • Nick Fuchs – Planner & Community Development Director |
| • Rhett Tuff – Assessor | |
| • Kelley Woldanski – Director of People & Culture | |

Passed and adopted by the City of Pewaukee this 16th day of May 2022.

Steve Bierce, Mayor

Attest:

Kelly Tarczewski, Clerk/Treasurer

**CITY OF PEWAUKEE
COMMON COUNCIL AGENDA ITEM 4.**

DATE: May 16, 2022

DEPARTMENT: PW - Streets

PROVIDED BY: Magdelene Wagner

SUBJECT:

Discussion and Possible Action Regarding the Execution of the Roadside Deer Pick Up Contract with Shawn's Deer Pick Up [Wagner]

BACKGROUND:

The City contracts with a Contractor for the collection of deer carcasses within the City's right of way. This collection has been via a service contract which piggybacks off Waukesha County which piggybacks off the State Department of Natural Resources Contract. Waukesha County is in the process of negotiating a new contract with its vendor. As such, we need to review our services.

The entire southern half of Wisconsin is serviced by two Contractors for deer carcass pickup. The first Contractor services local municipalities and the County. The second Contractor services the State Highway system.

Shawn's Deer Pick Up currently picks up deer carcasses for a current rate of \$110 per deer, recently increased from \$85. This is billed to the City on a monthly basis. The County contracts with this Contractor for a flat fee rate. We requested what a flat rate fee would be for the City due to the substantial increase in the per carcass rate. The Contractor quoted \$1,600 per month for this service. We average roughly 8 deer carcass per month. At this time, it is cheaper for the City to continue the per deer pick up rate.

The Contractor is seeking the City to execute a contract for this service separate from the County. Attached you will find the proposed contract.

FINANCIAL IMPACT:

RECOMMENDED MOTION:

Common Council recommend approval of the contract contingent on City Engineer and City Attorney review and approval of the contract language.

ATTACHMENTS:

Description

Proposed Contract

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (this "Agreement") is made effective as of Jan,01, 2022, by and between City of Pewaukee (the "Recipient"), of Pewaukee Wisconsin and Shawn's Deer Pick Up (the "Contractor"), of 1516 Pine St, South Milwaukee, Wisconsin 53172. In this Agreement, the party who is contracting to receive the services shall be referred to as "Recipient", and the party who will be providing the services shall be referred to as "Contractor."

1. DESCRIPTION OF SERVICES. Beginning on Jan, 01, 2022, the Contractor will provide the 3-5 year terms.2022-2025Or 2022-2027 Please write in which you prefer. _____

Following services (collectively, the "Services"):

1-72Hr Window Deer Removal Service

Residents are reliable for private property removals

Do not remove on state or county unless approved an paid for

All deer must be reported with gender and size if possible to make out to Deer pick up immediately upon report to plan accordingly.

2. PAYMENT FOR SERVICES. The Recipient will pay compensation to the Contractor for the Services in the amount of \$110 per deer. This compensation shall be payable in a lump sum End of The Month. No other fees and/or expenses will be paid to the Contractor, unless such fees and/or expenses have been approved in advance by the appropriate executive on behalf of the Recipient in writing. The Contractor shall be solely responsible for any and all taxes, Social Security contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes applicable to such compensation.

3. TERM/TERMINATION. This Agreement may be terminated by either party upon 60 days' written notice to the other party.

A regular, ongoing relationship of indefinite term is not contemplated. The Recipient has no right to assign services to the Contractor other than as specifically contemplated by this Agreement. However, the parties may mutually agree that the Contractor shall perform other services for the Recipient, pursuant to the terms of this Agreement.

4. RELATIONSHIP OF PARTIES. It is understood by the parties that the Contractor is an independent contractor with respect to the Recipient, and not an employee of the Recipient. The Recipient will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Contractor.

It is contemplated that the relationship between the Contractor and the Recipient shall be a non-exclusive one. The Contractor also performs services for other organizations and/or individuals. The Recipient has no right to further inquire into the Contractor's other activities.

5. RECIPIENT'S CONTROL. The Recipient has no right or power to control or otherwise interfere with the Contractor's mode of effecting performance under this Agreement. The Recipient's only concern is the result of the Contractor's work, and not the means of accomplishing it. Except in extraordinary circumstances and when necessary, the Contractor shall perform the Services without direct supervision by the Recipient.

6. PROFESSIONAL CAPACITY. The Contractor is a professional who uses its own professional and business methods to perform services. The Contractor is not an employee of the Recipient and will not receive training from the Recipient regarding how to perform the Services.

7. PERSONAL SERVICES NOT REQUIRED. The Contractor is not required to render the Services personally and may employ others to perform the Services on behalf of the Recipient without the Recipient's knowledge or consent. If the Contractor has assistants, it is the Contractor's responsibility to hire them and to provide materials for them.

8. NO LOCATION ON PREMISES. The Contractor has no desk or other equipment either located at or furnished by the Recipient. Except to the extent that the Contractor works in a territory as defined by the Recipient, its services are not integrated into the mainstream of the Recipient's business.

9. NO SET WORK HOURS. The Contractor has no set hours of work. There is no requirement that the Contractor work full time or otherwise account for work hours.

10. EXPENSES PAID BY CONTRACTOR. The Contractor's business and travel expenses are to be paid by the Contractor and not by the Recipient.

11. CONFIDENTIALITY. Contractor may have had access to proprietary, private and/or otherwise confidential information ("Confidential Information") of the Recipient. Confidential Information shall mean all non-public information which constitutes, relates or refers to the operation of the business of the Recipient, including without limitation, all financial, investment, operational, personnel, sales, marketing, managerial and statistical information of the Recipient, and any and all trade secrets, customer lists, or pricing information of the Recipient. The nature of the information and the manner of disclosure are such that a reasonable person would understand it to be confidential. The Contractor will not at any time or in any manner, either directly or indirectly, use for the personal benefit of the Contractor, or divulge, disclose, or communicate in any manner any Confidential Information. The Contractor will protect such information and treat the Confidential Information as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, the Contractor will return to the Recipient all Confidential Information, whether physical or electronic, and other items that were used, created, or controlled by the Contractor during the term of this Agreement.

This Agreement is in compliance with the Defend Trade Secrets Act and provides civil or criminal immunity to any individual for the disclosure of trade secrets: (i) made in confidence to a federal, state, or local government official, or to an attorney when the disclosure is to report suspected violations of the law; or (ii) in a complaint or other document filed in a lawsuit if made under seal.

12. INJURIES. The Contractor acknowledges the Contractor's obligation to obtain appropriate insurance coverage for the benefit of the Contractor (and the Contractor's employees, if any). The Contractor waives any rights to recovery from the Recipient for any injuries that the Contractor (and/or Contractor's employees) may sustain while performing services under this Agreement and that are a result of the negligence of the Contractor or the Contractor's employees. Contractor will provide the Recipient with a certificate naming the Recipient as an additional insured party.

13. NO RIGHT TO ACT AS AGENT. An "employer-employee" or "principal-agent" relationship is not created merely because (1) the Recipient has or retains the right to supervise or inspect the work as it progresses in order to ensure compliance with the terms of the contract or (2) the Recipient has or retains the right to stop work done improperly. The Contractor has no right to act as an agent for the Recipient and has an obligation to notify any involved parties that it is not an agent of the Recipient

14. ENTIRE AGREEMENT. This Agreement constitutes the entire contract between the parties. All terms and conditions contained in any other writings previously executed by the parties regarding the matters contemplated herein shall be deemed to be merged herein and superseded hereby. No modification of this Agreement shall be deemed effective unless in writing and signed by the parties.

15. WAIVER OF BREACH. The waiver by the Recipient of a breach of any provision of this Agreement by Contractor shall not operate or be construed as a waiver of any subsequent breach by Contractor.

16. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

17. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Wisconsin.

18. SIGNATORIES. This Agreement shall be signed by _____ on behalf of City of Pewaukee and by Shawn Kremsreiter on behalf of Shawn's Deer Pick Up. This Agreement is effective as of the date first above written.

CONTRACTOR:
Shawn's Deer Pick Up
Date:
Shawn Kremsreiter

RECIPIENT:
City Of Pewaukee
Date
By:

**CITY OF PEWAUKEE
COMMON COUNCIL AGENDA ITEM 5.**

DATE: May 16, 2022

DEPARTMENT: Public Works

PROVIDED BY: Magdelene Wagner

SUBJECT:

Discussion and Possible Action Regarding the Cardinal Meadow Development Agreement and Establish the Amount of the Letter of Credit [Wagner]

BACKGROUND:

Development that involve the construction of public infrastructure require a development agreement and letter of credit. The Cardinal Meadow subdivision development consists of 24 single family lots that will be created along Bluemound Road (CTH JJ). The subdivision has public infrastructure for roads, sanitary sewer, water main, and storm sewer which will be installed to support the development of the parcel. The attached construction cost spreadsheet indicates the cost is \$1,398,112. After adding 20% as required in our Ordinances, the recommended value of the letter of credit be established by the Common Council at \$1,677,734.40.

FINANCIAL IMPACT:

All City costs are paid by the Developer. Long term financial impacts were not reviewed.

RECOMMENDED MOTION:

We recommend the Common Council approve the Cardinal Meadow Development Agreement, contingent upon any requirements of the City Attorney and City Engineer, and establish the initial amount of the letter of credit at \$1,677,734.40 in a form approved by the City Attorney.

ATTACHMENTS:

Description

Draft Developer's Agreement

LOC Verification

~~Caution: This is a model form -- as changes are made, paragraph and exhibit numbers, and references to the same, must change.~~

~~MODEL~~ DEVELOPER'S AGREEMENT
FOR
~~(name of Development)~~ CARDINAL MEADOW
CITY OF PEWAUKEE, WAUKESHA COUNTY, WISCONSIN

THIS DEVELOPER'S AGREEMENT ("AGREEMENT") made this _____ day of _____, 2022 (the "Effective Date") _____, between Bielinski Homes, Inc. (Developer's Name), a Wisconsin Corporation (type of entity), 1830 Meadow Lane, Suite A, Pewaukee, Wisconsin 53072 (Address), hereinafter called "DEVELOPER", and the CITY OF PEWAUKEE in the County of Waukesha and the State of Wisconsin, hereinafter called the "CITY".

WITNESSETH:

WHEREAS, the DEVELOPER is the owner of land in the CITY, said land being described on EXHIBIT A attached hereto and incorporated herein and designated as Tax Key No. PWC 0928 980, hereinafter called "SUBJECT LANDS"; and

WHEREAS, the DEVELOPER desires to divide and develop the SUBJECT LANDS for residential purposes as a residential subdivision consisting of a total of twenty-four (24) single-family lots and two (2) outlots, by use of the standard regulations as set forth in Chapter 236 of the Wisconsin Statutes and the municipal ordinance regulating land division and development; and

WHEREAS, Section 236.13 of the Wisconsin Statutes provides that as a condition of approval, the governing body of a municipality within which the SUBJECT LANDS lie may require that the DEVELOPER make and install any public improvements reasonably necessary and/or that the DEVELOPER provide financial security to ensure that the DEVELOPER will make these improvements within a reasonable time; and

WHEREAS, said SUBJECT LANDS are presently zoned _____, Rs-6 (Single Family Residential District), which allows the above-described development; and

WHEREAS, the DEVELOPER may be required to grant additional easements over a part of the SUBJECT LANDS for sanitary sewer, storm sewer and water; and

WHEREAS, the DEVELOPER and CITY desire to enter into this agreement AGREEMENT in order to ensure that the DEVELOPER will make and install all public improvements which are reasonably necessary and further that the DEVELOPER shall dedicate the public improvements to the CITY, provided that said public improvements are constructed to municipal specifications, all applicable government regulations, this agreement AGREEMENT and as required by the CITY Engineer, without cost to the CITY; and

WHEREAS, this agreement AGREEMENT is necessary to implement the CITY zoning and land division ordinances; and

WHEREAS, the DEVELOPER agrees to develop the SUBJECT LANDS as herein described in accordance with this ~~agreement~~AGREEMENT, conditions approved by the CITY Plan Commission and CITY Common ~~council~~Council, conditions of certain agencies and individuals in the County, all CITY ordinances and all laws and regulations governing said development; and

WHEREAS, the Plan Commission of the CITY has given conditional Preliminary Plat approval to the development, as shown on the document marked "Preliminary Plat" on file in the CITY Clerk's office, conditioned in part upon the DEVELOPER and the CITY entering into a DEVELOPER's Developer's Agreement, as well as other conditions as approved by the CITY Common ~~council~~Council; and

WHEREAS, DEVELOPER intends to submit the final plat for approval by the CITY Common Council prior to December 31, 2022~~the DEVELOPER is now seeking from the Plan Commission and CITY Common council of the CITY final plat approval for the development.~~

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the DEVELOPER does hereby agree to develop the SUBJECT LANDS as follows and as otherwise regulated by CITY ordinances and all laws and regulations governing said development, the parties hereto agree as follows:

DEVELOPER'S COVENANTS

SECTION I. IMPROVEMENTS

A. PUBLIC STREETS: The DEVELOPER hereby agrees that:

1. Prior to the start of construction of improvements, the DEVELOPER shall provide to the CITY written certification from the DEVELOPER'S Engineer or Surveyor that all public street plans are in conformance with all federal, state, county and CITY specifications, regulations and ordinances, and written proof from the CITY Engineer evidencing review and approval of said plans.
2. The DEVELOPER shall grade and install all planned public streets (inclusive of binder course and curbs and gutters) in accordance with the preliminary plat, or approved development plan of said development or subdivision, ~~or final plat~~ as the case may be, and the plans and specifications on file in the CITY Clerk's office.
3. Construction of the public streets providing access to and fronting a specific lot will be completed, presented and accepted by the CITY Common ~~council~~Council through the first lifts of asphalt before any building permits are issued for said lot.
4. The first lifts of the public streets will be completed and presented to the CITY Common ~~council~~Council no later than December 10 November 23, 2022, or as extended by the CITY Common council. ~~If the public street plan is phased pursuant to a phasing plan approved by the CITY Common council, the first lifts of the second phase of the public streets will be completed and presented to the CITY Common council no later than _____, or as extended by the CITY Common council.~~

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5. The final lift of asphalt shall be placed on all public streets at the discretion of DEVELOPER after at least one (1) winter season, but not later than November 30 October 15, 2024, unless extended by the CITY Common ~~council~~Council, which such extension ~~shall~~may be granted in the event fewer than half of the lots in the development have improvements constructed on them. If the public street plan is phased pursuant to the phasing plan approved by the CITY Common council, the final lift of asphalt shall be placed on all the public streets after at least one winter season, but no later than _____, unless extended by the CITY Common council.

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Commented [SR3]: his is a policy issue for DPW Director

Commented [WM4R3]: I'm not opposed to this, however, I can't bind the Council in granting an extension.

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6. The DEVELOPER shall maintain public streets, including snowplowing, and salting/ice control, unless otherwise approved by the CITY Administrator, until accepted by resolution by the CITY Common ~~council~~Council. The CITY shall snowplow, and shall perform salt/ice control services with respect to, the public streets upon completion of the first lift of asphalt.

Commented [WM5]: Agree with Stan.

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7. The DEVELOPER shall furnish "as built" plans showing changes from the construction plans, pursuant to specifications approved by the CITY Engineer. Said "as built" shall be ~~on reproducible mylar and digital files~~, and shall include field locations and hydrant valves and curb stops, if any.

Commented [SR6]: Delete

Commented [WM7R6]: Agree. We will not maintain the streets until the final lift of asphalt is placed.

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8. Contractors working on the development or on individual lots are required to clean up all mud, dirt, stone or debris on the streets no later than the end of each working day. In addition, the DEVELOPER shall have ultimate responsibility for cleaning up any and all mud, dirt, stone or debris on the streets until such time as the final lift of asphalt has been installed by the DEVELOPER and accepted by the CITY Common ~~council~~Council. The CITY shall make a reasonable effort to require the contractor, who is responsible for placing the mud, dirt, stone or debris on the street, to clean up the same or to hold the subject property owner who hired the contractor responsible. The DEVELOPER and/or subject property owner shall clean up the streets within twenty-four (24) hours after receiving a notice from the CITY. If said mud, dirt, stone or debris are not cleaned up after notification, the CITY will do so at the DEVELOPER's and/or the subject property owner's expense, at the option of the CITY.

B. SANITARY SEWER: The DEVELOPER hereby agrees:

1. Prior to the start of construction of improvements, DEVELOPER shall provide to the CITY written certification from the DEVELOPER's Engineer that the sanitary sewer plans are in conformance with all Federal, State and CITY specifications, regulations, ordinances and guidelines and written proof that the CITY Engineer has approved said plans.

2. To construct, furnish, install and provide a complete sewerage system for the SUBJECT LANDS, all in accordance with the plans, specifications and drawings on file in the CITY Clerk's office and all applicable Federal, State and CITY ordinances, specifications, regulations and guidelines for the construction of sewerage systems in the CITY and as approved by the CITY Engineer.

3. To clean all sanitary sewers in the SUBJECT LANDS prior to acceptance of the improvements and issuance of building permits by the CITY.

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4. To furnish "as built" plans of the sanitary sewage system for the SUBJECT LANDS, including locations of laterals to lot lines, pursuant to specifications approved by the CITY Engineer prior to the issuance of ~~building-occupancy~~ permits.

Commented [WM9]: We need to know if any defects before we allow connections of proposed buildings.

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5. To televise the sanitary sewer system for the SUBJECT LANDS, repair any defects as determined by the CITY Engineer, supply the video tape to the CITY and clean all sewer lines prior to the issuance of ~~occupancy~~ **building** permits and acceptance of the improvements by the CITY.

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6. That no **building** permits shall be issued until the sanitary sewer system for the SUBJECT LANDS has been dedicated to and accepted by the CITY.

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~~7. the sanitary sewer system for the SUBJECT LANDS has been dedicated to and accepted by the CITY.~~

C. WATER: The DEVELOPER hereby agrees:

1. Prior to the start of construction of improvements, DEVELOPER shall provide to the CITY written certification from the DEVELOPER's Engineer that the water system plans are in conformance with all Federal, State and CITY specifications, regulations, ordinances and guidelines and written proof that the CITY Engineer has approved said plans.

2. To construct, furnish, install and provide a complete water system for the SUBJECT LANDS, all in accordance with the plans, specifications and drawings on file in the CITY Clerk's office and all applicable Federal, State and CITY ordinances, specifications, regulations and guidelines for the construction of water systems in the CITY and as approved by the CITY Engineer.

3. The DEVELOPER shall furnish "as built" plans showing changes from the construction plans, pursuant to specifications approved by the CITY Engineer. Subject to intellectual property rights, said "as built" plans shall ~~be on reproducible mylar and~~ **be on reproducible mylar and** digital files, and shall include field locations and hydrant valves and curb stops, if any.

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Commented [SR10]: Policy issue for DPW Director

Commented [WM11R10]: Okay to delete mylar requirement.

Commented [WM12]: Agree with Stan

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4. That no ~~building~~ permits shall be issued until the water system for the SUBJECT LANDS has been dedicated to and accepted by the CITY.

D. SURFACE AND STORM WATER DRAINAGE: The DEVELOPER hereby agrees that:

1. Prior to the start of construction of improvements, the DEVELOPER shall provide to the CITY written certification from the DEVELOPER'S Engineer or Surveyor that all surface and storm water drainage facilities and erosion control plans are in conformance with all federal, state, county and CITY regulations, guidelines, specifications, laws and ordinances, and written proof that the CITY Engineer ~~and the Waukesha County Department of Park and Land Use, Land Resources Division, if applicable, have~~ reviewed and approved said plans.

2. The DEVELOPER shall construct, install, furnish and provide adequate facilities for surface and storm water drainage throughout the development with adequate

capacity to transmit the anticipated flow from the development and adjacent property, in accordance with all plans and specifications on file in the CITY Clerk's office, and all applicable federal, state, county and CITY regulations, guidelines, specifications, laws and ordinances, and as reviewed and approved by the CITY Engineer ~~and the Waukesha County Department of Park and Land Use, Land Resources Division, if applicable~~, including where necessary as determined by the CITY Engineer, curb, gutter, storm sewers, catch basins and infiltration/retention/ detention basins.

3. The DEVELOPER agrees that the site grading and construction of surface and storm water drainage facilities shall be completed and accepted by the CITY Common ~~council~~ Council before any building permits are issued.

Commented [WM13]: Agree with Stan.

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4. To maintain roads free from mud and dirt from construction of the development.

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5. The CITY Common ~~council~~ Council will not accept the surface and storm water drainage system until the entire surface and storm water drainage system is installed and the landscaping for the surface and storm water drainage system is completed ~~landscaped~~ in accordance with plans and specifications to the reasonable satisfaction of the CITY Engineer.

6. If reasonably determined necessary by the CITY, the DEVELOPER shall clean all storm sewers, if any, prior to issuance of building permits and acceptance of improvements by the CITY Common ~~council~~ Council. ~~Televising the storm sewer shall not be required.~~

Commented [WM14]: Agree with Stan.

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7. The CITY retains the right to require DEVELOPER to install additional surface and storm water drainage measures if it is determined by the CITY Engineer that the original surface and storm water drainage plan as designed and/or constructed does not provide reasonable stormwater drainage within the development and surrounding area.

Commented [WM15]: Televising of the storm sewer is required.

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Commented [SR16]: Policy issue for DPW Director

Commented [WM17R16]: Yes. This needs to remain in.

8. ~~To~~The Developer shall furnish "as built" plans of the entire drainage system, pursuant to specifications approved by the CITY Engineer prior to the issuance of building permits, if required by the CITY Engineer.

Commented [WM18]: Agree with Stan.

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E. GRADING, EROSION AND SILT CONTROL: The DEVELOPER hereby agrees that:

1. Prior to commencing site grading and excavation, the DEVELOPER shall provide to the CITY written certification from the DEVELOPER'S Engineer or Surveyor that said grading, erosion and runoff control plan, once implemented, shall meet all federal, state, county and local regulations, guidelines, specifications, laws and ordinances, including proof of notification of land disturbances to the State of Wisconsin Department of Natural Resources, if applicable, and written proof that the CITY Engineer, ~~and the Waukesha County Department of Park and Land Use, Land Resources Division, and the Army Corps of Engineers, if applicable,~~ has approved said plans.
2. The DEVELOPER shall cause all grading, excavation, open cuts, side slopes and other land surface disturbances to be so seeded and mulched, sodded or otherwise protected that erosion, siltation, sedimentation and washing are

reasonably prevented in accordance with the plans and specifications reviewed and approved by the CITY Engineer, ~~the Waukesha County Department of Park and Land Use, Land Resources Division, and Army Corps of Engineers, if applicable.~~

3. All disturbed areas which are not actively being graded for a period of seven (7) days shall be temporarily or permanently restored to the satisfaction of the CITY Engineer within seven (7) days of disturbance. The final release of the Any cash or letter of credit guarantee posted with the CITY will not be released until the CITY Engineer ~~is~~ reasonably satisfied that no further erosion measures are required.

Commented [SR19]: DPW Issue

Commented [WM20R19]: Okay. Matches development plans

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F. LANDSCAPING AND SITE WORK: The DEVELOPER hereby agrees that:

1. The DEVELOPER shall preserve to the maximum extent possible existing trees, shrubbery, vines, and grasses not actually lying on the public streets, drainageways, building foundation sites, private driveways, soil absorption waste disposal areas, paths and trails by use of sound conservation practices.
2. The DEVELOPER, as required by the CITY, shall remove and lawfully dispose of buildings, destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish existing at the SUBJECT LANDS as of the Effective Date.
3. Landscaping and removal of unwanted items, including buildings, will be completed and certified as complete by the CITY Engineer prior to the issuance of any building permits.
4. The DEVELOPER shall delineate all wetlands that are on or adjacent to private lots by means of cedar posts, as approved by the CITY staff prior to the issuance of building permits.
5. The CITY has the right to trim and remove any features which would unreasonably interfere with safe operation and maintenance of the CITY right-of-ways and drainageways. A permit is required for any features to be installed within the City's right-of-way and easements.

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Commented [WM21]: Agree with Stan.

Commented [WM22]: The posts are required.

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G. STREET SIGNS AND TRAFFIC CONTROL SIGNS: The DEVELOPER hereby agrees that:

1. Street signs, traffic control signs, culverts, and posts ~~and guard rails~~ as required by the CITY shall be obtained and placed by the CITY, ~~or by the DEVELOPER with approval of the CITY,~~ and the cost thereof shall be paid by the DEVELOPER within thirty (30) days of invoicing from the City.
2. All traffic control signs and street signs, as required by the CITY will be installed by the CITY within five (5) working days of the placement of the first lifts of asphalt.

Commented [SR23]: delete

Commented [WM24R23]: Can keep. We will install since he struck #1 above and opted for us to install the signs.

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~~H. STREET LIGHTS: The DEVELOPER hereby agrees to install a street lighting system in the development according to a plan prepared by the Wisconsin Electric Power Company and on file with the CITY Clerk and approved by the CITY prior to issuance of building permits unless waived by CITY Staff.~~

Commented [SR25]: If no street lights OK

(Note: Other specific required improvements should be listed as separate lettered categories, as may be necessary with regard to specific developments.)

I.H. ADDITIONAL IMPROVEMENTS:

The DEVELOPER hereby agrees that if, at any time after plan approval and during construction, the CITY Engineer determines that modifications to the plans including additional improvements such as additional drainage ways, erosion control measures, and surface and storm water management measures are necessary in the interest of public safety, are necessary in order to comply with current laws or are necessary for implementation of the original intent of the improvement plans, the CITY is authorized to order DEVELOPER, at DEVELOPER'S expense, to implement the same. If DEVELOPER fails to construct the additional improvement within a reasonable time under the circumstances, the CITY may cause such work to be carried out and shall charge against the financial guarantee held by the CITY pursuant to this agreement.

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SECTION II. TIME OF COMPLETION OF IMPROVEMENTS:

The improvements set forth in Section I above shall be completed by the DEVELOPER in total within twelve (12) months of the Effective Date of this ~~agreement~~ AGREEMENT ~~being signed~~ except as otherwise provided for in this ~~agreement~~ AGREEMENT.

SECTION III. FINAL ACCEPTANCE.

Throughout this ~~agreement~~ AGREEMENT, various stages of the development will require approval by the CITY. "Final Acceptance" as used herein, ~~however~~, shall be the ultimate acceptance of all of the improvements set forth in Section I(A) and Section 1(B) (collectively, the "Public Improvements") ~~in the completed development as a whole, except including the final lift of asphalt~~, and shall be granted specifically by separate resolution of the CITY Common ~~council~~ Council. Final Acceptance by the CITY Common Council shall not be unreasonably withheld, conditioned, or delayed, and the CITY'S review of the Public Improvements shall occur within sixty (60) days of written notice by DEVELOPER that DEVELOPER desires to have the CITY inspect and accept certain or all Public Improvements. The ~~oneto~~ one-year guarantee period provided for in this ~~agreement~~ AGREEMENT shall ~~not~~ commence upon to run until Final Acceptance by the CITY Common Council. The issuance of building permits and approval of various items of development shall not commence the ~~oneto~~ one-year guarantee period.

Commented [SR27]: Maggie- 236.13 allows max of 14 months of surety to be held if you are OK with 12 then OK - This applies to rest of document

Commented [WM28R27]: One year is fine. However final acceptance is the final lift of asphalt.

SECTION IV. DEDICATION OF IMPROVEMENTS:

Subject to all of the other provisions of this ~~agreement~~ AGREEMENT, the DEVELOPER shall, without charge to the CITY, upon completion of the Public Improvements ~~above described improvements~~, unconditionally give, grant, convey and fully dedicate the ~~p~~ Public Improvements to the CITY, its successors and assigns, forever, free and clear of all encumbrances whatever, together with and including, without limitation because of enumeration, any and all land, buildings, structures, mains, conduits, pipes, lines, plant machinery, equipment, appurtenances and hereditaments which may in any way be a part of or pertain to such Public Improvements and together with any and all necessary easements for access thereto. After such dedication, the CITY shall have the right to connect or integrate other improvements as the CITY decides, with no payment or award to, or consent required of, the DEVELOPER.

The CITY shall be responsible for preparing the necessary documents required to dedicate the Public Improvements and necessary easements, ~~at the sole cost of the CITY,~~ for approval of the dedication by the CITY Common Council. The ~~d~~Dedication shall not constitute acceptance of any ~~Public i~~Improvement by the CITY Common ~~council~~Council. All ~~Public i~~Improvements will be accepted by the CITY Common ~~council~~Council by separate resolution at such time as such improvements are in acceptable form and according to the CITY specifications. Said resolution shall be recorded, if needed, with the Waukesha County Register of Deeds. DEVELOPER will furnish proof to the CITY, prior to the dedication required, that the ~~public land and improvements~~Public Improvements proposed for dedication are free of all liens, claims and encumbrances, including mortgages.

Commented [WM29]: All costs related to the development of these items will be charged to the Developer in accordance with City Ordinances.

SECTION V. ACCEPTANCE OF WORK ~~AND DEDICATION:~~

When the DEVELOPER shall have completed the ~~Public i~~Improvements herein required and shall have dedicated the same to the CITY as set forth herein, the same shall be accepted by the CITY Common ~~council~~Council if said ~~Public i~~Improvements have been completed as required by this ~~agreement~~AGREEMENT and as required by all federal, state, county or CITY guidelines, specifications, regulations, laws and ordinances and approved by the CITY Engineer.

As set forth in Section XXXII of this AGREEMENT, the CITY shall provide timely notice to DEVELOPER whenever observation reveals that any Public Improvements do not conform to the CITY's standards and ~~specifications, or~~ specifications or are otherwise defective. The DEVELOPER shall have no less than thirty (30) days from the issuance of such notice to correct or substantially correct the defect. The CITY shall not declare a default under this AGREEMENT during the thirty (30) day cure period on account of any such defect unless DEVELOPER has notified CITY in writing that DEVELOPER does not intend to correct the defect.

SECTION VI. APPROVAL BY CITY NOT TO BE DEEMED A WAIVER.

The ultimate responsibility for the proper design and installation of ~~the Public Improvements streets, water facilities, drainage facilities, ditches, landscaping and all other improvements are~~ upon the DEVELOPER. The fact that the CITY or its engineer, or its attorney, or its staff may approve a specific project shall not constitute a waiver, or relieve the DEVELOPER from the ultimate responsibility for the design, performance and function of the development and related infrastructure.

SECTION VII. GUARANTEES OF IMPROVEMENTS:

A. Guarantee. The DEVELOPER shall guarantee after Final Acceptance, the ~~public Public improvements~~Improvements and all other improvements described in Section I hereof, against defects due to faulty materials or ~~workmanship~~workmanship, provided that such defects appear within a period of ~~two-one~~ years from the date of Final Acceptance, by providing the CITY with ~~cash or a~~ letter of credit, issued by a commercial bank licensed to conduct business in the State of Wisconsin, in a form acceptable to the CITY Attorney in an aggregate amount of ten percent (10%) of the total cost of all ~~Public i~~Improvements. The DEVELOPER shall pay for any damages to CITY property and/or ~~the Public improvements~~Improvements resulting from such faulty materials or ~~workmanship~~workmanship. This guarantee shall not be a bar to any action the CITY might have for negligent ~~workmanship~~workmanship or materials.

Wisconsin law on negligence shall govern such situations. If the DEVELOPER fails to pay for any damages or defects to CITY property and/or the Public Improvements, the City shall provide notice to Developer of such failure, and shall provide Developer with an opportunity to cure the same (in accordance with Section XXXII of this AGREEMENT) prior to making any demand for payment against the guarantee. In the event theand the CITY is required to draw against the ~~cash or~~ letter of credit on file with the CITY, the DEVELOPER is required to replenish said monies up to the aggregate amount of ten percent (10%) of the total cost of all Public Improvements.

B. Obligation to Repair. The DEVELOPER shall make or cause to be made, at its own expense, any and all repairs which may become necessary under and by virtue of the DEVELOPER'S guarantee and shall leave the Public Improvements in good and sound condition, reasonably satisfactory to the CITY Common ~~council~~ Council at the expiration of the guarantee period.

C. Notice of Repair. If during said guarantee period, the Public Improvements shall, in the reasonable opinion of the CITY Staff, require any repair or replacement which, in their reasonable judgment, is necessitated by reason of settlement of foundation, structure of backfill, or other defective materials or ~~workmanship~~ workmanship, the DEVELOPER shall, upon notification by the CITY of the necessity for such repair or replacement, make such repair or replacement, at its own cost and expense. Should the DEVELOPER fail to make such repair or replacement within a reasonable time period, taking into account the nature of the repair or replacement and the expected time to complete the same, -within the time specified by the CITY in the aforementioned notification, after notice has been sent as provided herein, the CITY Common ~~council~~ Council may cause such work to be done, but has no obligation to do so, either by contract or otherwise, and the CITY Common ~~council~~ Council may draw upon such guarantee security to pay any costs or expenses incurred in connection with such repairs or replacements. Should the costs or expenses incurred by the CITY Common ~~council~~ Council in repairing or replacing any portion of the Public Improvements covered by this guarantee exceed the amount of the guarantee security, then the DEVELOPER shall immediately pay any excess cost or expense incurred in the correction process.

D. Maintenance Prior to Acceptance.

1. All Public Improvements shall be maintained by the DEVELOPER so they conform to the approved plans and specifications at the time of their Final Acceptance by the CITY Common ~~council~~ Council. ~~Such~~ This maintenance shall include routine maintenance, such as crack filling, roadway patching and the like. In cases where emergency maintenance is required, the CITY Common ~~council~~ Council retains the right to complete the required emergency maintenance in a timely fashion, the CITY shall provide notice to DEVELOPER of the required emergency maintenance as soon as practicable, which such notice shall detail the nature of the emergency maintenance and itemize the repairs completed, and shall bill the DEVELOPER for all such-reasonable associated costs. Said bill shall be paid ~~immediately~~ by the DEVELOPER within thirty (30) days of invoicing from the City. The DEVELOPER'S obligation to maintain all Public Improvements ~~improvements~~ shall expire at the expiration of the guarantee period.

2. Street sweeping and dust suppression shall be done by the DEVELOPER upon a regular basis as needed to ensure a reasonably clean and safe roadway until Final Acceptance by the CITY Common ~~council~~Council. Should the DEVELOPER fail to meet this requirement, the CITY Common ~~council~~-Council will cause the work to be done and will bill the DEVELOPER on a time and material basis. Said bill shall be paid ~~immediately~~ by the DEVELOPER within thirty (30) days of invoicing from the City.
3. In the event drainage problems arise within the SUBJECT LANDS or related activities on the SUBJECT LANDS, the DEVELOPER shall correct such problems to the reasonable satisfaction of the CITY ~~Staff~~Engineer. Such correction measures shall include, without limitation because of enumeration, cleaning of soil, loose aggregate and construction debris from culverts, drainage ditches and streets; dredging and reshaping of siltation or retention ponds; replacing of siltation fences; sodding and seeding; construction of diversion ditches, ponds and siltation traps; and restoration of all disturbed areas. This responsibility shall continue until such time as the roads, ditches, and other disturbed areas have become adequately vegetated and the CITY Common ~~council~~-Council is reasonably satisfied that the DEVELOPER has restored all areas which were disturbed because of this development.

(Note: This paragraph may need to be modified depending upon the required public improvements in for specific developments.)

SECTION VIII. CITY RESPONSIBILITY FOR IMPROVEMENTS:

With the exception of snow plowing and salting/ice control, ~~t~~The CITY shall not be responsible to perform repairs or, maintenance, or snow plowing, ~~unless otherwise approved by the CITY Administrator,~~ on any Public improvements until accepted by the CITY Common ~~council~~Council.

Commented [SR30]: delete

Commented [WM31R30]: agreed. Snowplowing will be required to be completed by the Developer.

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SECTION IX. RISK OF PROCEEDING WITH IMPROVEMENTS PRIOR TO APPROVALS OF FINAL PLAT:

~~This Section has been intentionally left blank.~~ If a DEVELOPER proceeds with the installation of public improvements or other work on the site prior to approval of the final plat, it proceeds at its own risk as to whether or not the final plat will receive all necessary approvals. The DEVELOPER, prior to commencement of the installation of public improvements or other work on site, shall notify the CITY of the DEVELOPER'S intention to proceed with the installation of public improvements or other work on site, prior to approval of the final plat. Additionally, DEVELOPER shall make arrangements to have any public improvements and/or other work on site inspected by the CITY Engineer.

SECTION X. FINANCIAL GUARANTEE:

Prior to the execution of this agreement by the CITY Common ~~council~~ ~~Prior to the recording of the final plat,~~ the DEVELOPER shall file with the CITY ~~cash or a letter of credit for Public Improvements and for the guarantee defined in Section VII(A) above,~~ setting forth terms and conditions in a form reasonably approved by the CITY Attorney in the amount as reasonably approved by the CITY Engineer, but in no event more than one hundred ten percent (110%) of the estimated costs to secure performance of this

Commented [WM32]: The guarantee must be posted prior to the execution of the DA or at the same time the DA is executed.

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AGREEMENT, as a guarantee that the DEVELOPER will perform all terms of this ~~agreement~~ AGREEMENT no later than one year from the signing of this ~~agreement~~ AGREEMENT except as otherwise set forth in this ~~agreement~~ AGREEMENT. Subject to DEVELOPER's right to cure, as set forth in Section XXXII of this AGREEMENT, ~~if~~ at any time:

- A. The DEVELOPER is in material default of ~~any aspect of~~ this ~~agreement~~ AGREEMENT, or
- B. The DEVELOPER does not complete the installation of the Public Improvements (with the exception of the final lift of asphalt on the public roads) within one (1) year from the signing of this ~~agreement~~ AGREEMENT unless otherwise extended by this ~~agreement~~ AGREEMENT or by action of the CITY Common ~~council~~ Council, or
- C. The letter of credit on file with the CITY is dated to expire ~~thirty~~ sixty (60) days prior to the expiration of the same if the same has not been extended, renewed or replaced, or
- D. The DEVELOPER fails to maintain ~~a cash deposit or~~ letter of credit in an amount approved by CITY Engineer, and in a form approved by the CITY Attorney, to pay the costs of the Public Improvements in the development,

then, the DEVELOPER shall be deemed in violation of this ~~agreement~~ AGREEMENT and the CITY Common ~~council~~ Council shall have the authority to draw upon the letter of credit.

The amount of the letter of credit may be reduced from time to time as and to the extent that the portion of work required under this ~~Agreement~~ AGREEMENT is completed and paid for, provided that the remaining letter of credit is sufficient to secure payment for any remaining improvements and also provided that no reduction shall occur until it is approved in writing by the CITY Administrator. The CITY acknowledges and agrees that DEVELOPER may request, in writing, acceptance of Public Improvements as they are completed, and that, in accordance with this Section X(D), the letter of credit shall be reduced accordingly.

Commented [WM33]: We do one acceptance of the Public Improvements, but will reduce the LOC when improvements are installed even if they are not "accepted".

The lending institution providing the irrevocable letter of credit shall pay to the CITY Common ~~council~~ Council all sums available for payment under the irrevocable letter of credit upon demand, subject to the terms and conditions of the irrevocable letter of credit, and upon its failure to do so, in whole or in part, the CITY shall be empowered in addition to its other remedies, without notice or hearing, to impose a special charge for the amount of said completion costs, upon each and every lot in the development payable with the next succeeding tax roll.

SECTION XI. BUILDING AND OCCUPANCY PERMITS:

It is expressly understood and agreed that no building or occupancy permits shall be issued for any homes, ~~including model~~ excluding, in accordance with Section XI(J) of this AGREEMENT, building permits for Redi Homes (as such term is defined in Section XI(J) of this AGREEMENT) ~~homes~~, until the CITY Engineer has determined that:

- A. The installation of the first lift of asphalt of the public street(s) providing access to and fronting a specific lot for which a building permit is requested has been

completed to the reasonable satisfaction of the CITY Engineer ~~and accepted by the CITY Common council.~~

- B. The site grading and construction of surface and storm water drainage facilities required to serve such homes are completed to the reasonable satisfaction of the CITY Engineer, are connected with an operating system as required herein, and are cleaned as needed, ~~and are accepted by the CITY Common council.~~
- C. All ~~landscaping and~~ removal of unwanted items will be completed and, including buildings, has been certified as complete by the CITY Engineer.
- D. All required grading plans have been submitted to, reviewed by and approved by the CITY Engineer.
- E. The DEVELOPER has paid in full all permit fees and reimbursement of administrative costs as required by this ~~agreement~~ AGREEMENT.
- F. The DEVELOPER has prepared appropriate deed restrictions which are approved by the CITY, filed with the CITY Clerk, and recorded with the Register of Deeds for Waukesha County, Wisconsin.
- G. All destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish are removed from the development and disposed of lawfully.
- H. All required "as built" plans for the SUBJECT LANDS have been submitted to ~~and approved by~~ the CITY Engineer.
- I. All public and private utilities have been installed in the SUBJECT LANDS, including ~~street lighting fixtures (unless waived by the CITY Administrator),~~ the sanitary sewer system, and the water system.
- J. The DEVELOPER is not in material default of any aspect of this ~~agreement~~ AGREEMENT.

~~There is no default of any aspect of this agreement as determined by the CITY Administrator.~~

- K. The DEVELOPER has delineated the wetlands that are on or adjacent to private lots by means of cedar posts, as approved by the CITY Staff prior to the issuance of building permits.

- L. Early Start Permits: Notwithstanding anything contained in this AGREEMENT to the contrary, eight (8) early issue building permits to facilitate model home, spec home, or "Redi Home" (collectively the "Redi Homes") construction will be allowed by the CITY in the SUBJECT LANDS upon execution of this AGREEMENT. Building permits for such Redi Homes may be issued prior to the installation of natural gas and electric service and prior to the completion of all Public Improvements; provided, however, the Redi Homes may not be occupied for residential living purposes until the DEVELOPER has installed all utility services, and until the DEVELOPER has installed and the CITY has accepted, all necessary Public Improvements, except the second lift of asphalt on the roads.

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Commented [SR34]: Maggie-

Has this been agreed to? If so, other portions of the agreement need to be modified.

Commented [WM35R34]: We have not agreed to this. It has not been discussed with Staff to my knowledge. We have concerns regarding access to homes under construction without the Public Improvements being installed. This will require additional discussion with Staff and Council before it can be approved. We can have the discussion at the Council when discussing this DA on 5/16 to determine if they want to allow such request.

SECTION XII. RESERVATION OF RIGHTS AS TO ISSUANCE OF BUILDING PERMITS:

The CITY reserves the right to withhold issuance of any and all building permits if DEVELOPER is in ~~material default violation of this agreement~~ AGREEMENT beyond the expiration of the DEVELOPER'S cure period as set forth in Section XXXXII of this AGREEMENT.

SECTION XIII. VACANT LOT MAINTENANCE ~~EASEMENT~~.

~~Developer shall grant a vacant lot maintenance easement to the CITY, in a form that is subject to the approval of the CITY Attorney, and which shall be recorded with the Waukesha County Register of Deeds. The easement shall grant the CITY the right (but not the obligation) to enter upon any vacant Lot in the SUBJECT LANDS in order to inspect, repair, or restore the property so that it is in compliance~~ DEVELOPER shall comply with all applicable provisions of the CITY Municipal Code, including but not limited Chapter 10, entitled "Public Nuisance", and Chapter 11, entitled "Health and Sanitation", including Section 11.07 entitled "Property Maintenance Code", with respect to maintenance of vacant lots located in the SUBJECT LANDS. DEVELOPER acknowledges that the CITY shall have such enforcement rights as set forth in the applicable provisions of the CITY Municipal Code. A vacant lot shall include any lot that does not have an occupied principal structure that is used for single family purposes at the time of inspection, repair or restoration. All costs incurred by the CITY in exercising its right to inspect, repair or restore the Lot shall be borne by the owner of the Lot necessitating such inspection, repair or restoration and if not paid for by such Lot owner within forty-five (45) days of receipt of any invoice therefore, may be placed against the tax roll for the Lot and collected as a special charge by the CITY.

Commented [WM36]: Agree that this must stay in.

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SECTION XIV. VACANT LOT MAINTENANCE FINANCIAL SECURITY.

~~Developer shall provide a letter of credit in an amount approved by the CITY Staff, and in a form approved by the CITY Attorney, to guarantee that all vacant lots in the SUBJECT LANDS shall, at all times, be properly maintained to the minimum standards described in the CITY Municipal Code, including but not limited to Chapter 10, entitled "Public Nuisance", and Chapter 11, entitled "Health and Sanitation", including Section 11.07 entitled "Property Maintenance Code". Said letter of credit shall be in full force and effect until such time as all Lots in the development are rough graded with an established growth of grass. This Section has been intentionally left blank.~~

SECTION XV. RESTRICTION AGAINST UNFINISHED OR UNOCCUPIED HOMES.

~~The parties intend that all homes in the Subject Land shall be owned, occupied and used for single family purposes. The parties also intend that homes on the lots will not be left unfinished or unoccupied for extended period of time. Therefore, no more than 4 Lots owned by the Developer and/or by any person or entity for the benefit of the Developer, shall be subject to a current building permit at any one time. Following the sale and residential occupancy of one such Lot, the Developer is entitled to receive one additional building permit for an additional Lot, and so forth, provided that at no time shall the number of unfinished or unoccupied homes on Lots owned, or beneficially owned, by the Developer exceed said number. This Section has been intentionally left blank.~~

Commented [SR37]: Policy Issue for Administrator's review

Commented [WM38R37]: Concur with Stan.

Commented [WM39R37]: (From the administrator) Why do you want to delete this?

SECTION XVI. MISCELLANEOUS REQUIREMENTS: The DEVELOPER shall:

A. EASEMENTS:

Provide any easements including vision easements and utility easements for all municipal utility facilities in the development on SUBJECT LANDS deemed necessary by the CITY Engineer before the final plat is signed or on the final plat and such easements shall be along lot lines if at all possible.

B. TREE PLANTING:

Guarantee and warrant the installation of all street trees. DEVELOPER shall plant trees approximately fifty (50) feet apart, between the street and the property line or sidewalk, if applicable, within 6 months after the issuance of an occupancy permit. The lot owners shall plant two trees in the street right of way in front of the home, or in the case of a corner lot, shall plant one additional tree on the side of the home in the right of way. The trees to be planted in the street right of way shall be installed as required in the CITY OF PEWAUKEE Land Division Ordinance. Each lot owner shall ultimately be responsible for the maintenance of the required street trees. Plant one tree, having a diameter of 2 1/2 inches at breast height at the time of planting, in the front yard of each lot in the development. The CITY acknowledges and agrees DEVELOPER reserves the right not to plant trees between October 1 and May 1 of each calendar year as a result of seasonal weather conditions.

Commented [WM40]: No trees may be planted within the City's right of way. All trees must be planted on the private property of the lots. Delete all references to planting within the City's ROW.

C. MANNER OF PERFORMANCE:

Cause all construction called for by this ~~agreement~~ AGREEMENT to be carried out and performed in a good and workerlike manner.

D. SURVEY MONUMENTS:

Properly place and install any lot, block or other monuments required by State Statute, CITY Ordinance or the CITY Engineer.

E. DEED RESTRICTIONS:

Execute and record deed restrictions in a form that is subject to the approval of the CITY Common council and CITY Attorney, and provide proof of recording prior to sale of lots for the SUBJECT LANDS. The Deed Restrictions shall contain language to require the lot owners and/or homeowner's association within the subdivision to maintain all stormwater management facilities in accordance with the ~~"Owners Maintenance Requirements: Stormwater Management Systems Detention/Retention Ponds and Grass Swales"~~ specifications on file with the CITY, dated July, 2002, including such amendments as may be made thereto from time to time by the City Engineer Cardinal Meadows Storm Water Management Practices Maintenance Agreement. The deed restrictions shall also contain the following language:

Commented [KW41]: Copy of current specifications to be provided to Developer for review

Commented [WM42R41]: This development will have a maintenance agreement specific to the development which will be required to be followed.

(Alternate No. 1: Use this language if there will be a master lot grading plan:)

"Each lot owner must strictly adhere to and finish grade its lot in accordance with the Master Lot Grading Plan or any amendment thereto

approved by the CITY Engineer on file in the office of the CITY Clerk. The DEVELOPER and/or the CITY and/or their agents, employees or independent contractors shall have the right to enter upon any lot, at any time, for the purpose of inspection, maintenance, correction of any drainage condition, and the property owner is responsible for cost of the same."

(Alternate No. 2: Use this language if there will not be a master lot grading plan:)

~~"No owner of any lot shall or will at any time alter the grade of any lot from that which is naturally occurring on that lot at the time the site development improvements have been completed by the DEVELOPER unless and until the lot owner shall first obtain the written approval of the CITY Engineer for such grade alteration. In order to obtain this approval, it shall first be necessary for the lot owner, at the lot owner's expense, to have prepared a grading plan which shows in detail the area to be re-graded, the existing and proposed topography, analyzes the effects on site drainage, states that the effects on site drainage will not be in violation of law as to alteration of natural drainage courses, and is a plan which does not unreasonably affect an adjacent property owner as regards drainage or their viewing of unreasonable slope treatment. The CITY Engineer's approval, if granted, shall not relieve the lot owner from the ultimate responsibility for the design, performance, and function of the grade alteration and/or drainage condition, and the lot owner by requesting the alteration, and/or by altering the grade, thereby agrees to indemnify and hold harmless the CITY and its agents, employees and independent contractors regarding the same. The DEVELOPER and/or the CITY and/or their agents, employees or independent contractors shall have the right to enter upon any lot, at any time, for the purpose of inspection, maintenance, correction of any drainage condition, and the property owner is responsible for cost of the same."~~

F. GRADES:

Prior to the issuance of a building permit for a specific lot, the DEVELOPER and/or lot owner and/or their agent shall furnish to the Building Inspector of the CITY a copy of the stake out survey showing the street grade in front of the lot, the finished yard grade, the grade of all four corners of the lot, and the lot corner grades of the buildings on adjoining lots where applicable, as existing and as proposed. An existing and proposed grading plan is required for each lot.

G. RESERVE CAPACITY ASSESSMENTS - ~~SANITARY SEWER:~~

~~This Section has been intentionally left blank.~~ As provided in the CITY Land Division Ordinance, the DEVELOPER agrees to pay a reserve capacity assessment to be used for the costs of reserve capacity created by the CITY in the CITY's sanitary sewerage collection and treatment facilities for the benefit of the DEVELOPER. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII, Wisconsin Statutes. The reserve capacity assessments against the above-described property shall be in an amount established by the CITY's Land Division Ordinance and including annual increases.

Commented [KW43]: Not applicable pursuant to City of Pewaukee Municipal Ordinance

Commented [SR44R43]: Maggie-

Please confirm

Commented [WM45R43]: I am uncomfortable removing this language. It should stay in.

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The DEVELOPER hereby waives, pursuant to Section 66.0703(7)(b), Wisconsin Statutes, any and all requirements of the Wisconsin Statutes which must be met prior to the imposition of special assessments [including, but not limited to, the notice and hearing requirements of Chapter 66 Subchapter VII] and agrees that the municipality may proceed immediately to levy the special assessments as outlined herein.

The DEVELOPER further waives its right to appeal from the special assessments and stipulates that the amount of special assessment levied against its property has been determined on a reasonable basis and that the benefits to its property from the proposed improvements exceed the amount of the special assessment against such property. In addition, the DEVELOPER waives its right under Section 66.0627 and agrees to promptly pay any special charges which may be levied against its property. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII and Section 66.0627, Wisconsin Statutes.

H. RESERVE CAPACITY ASSESSMENTS - WATER:

The DEVELOPER agrees to pay a reserve capacity assessment as required in Section ~~16.0400-22.23(2)(b)~~ and other relevant sections of the CITY Code, to be used for the costs of reserve capacity created by the CITY in the CITY's water system for the benefit of the DEVELOPER. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII, Wisconsin Statutes. The reserve capacity assessments against the above-described property shall be an amount established in the CITY's Land Division Ordinance and is subject to annual increases.

The DEVELOPER hereby waives, pursuant to Section 66.0703(7)(b), Wisconsin Statutes, any and all requirements of the Wisconsin Statutes which must be met prior to the imposition of special assessments [including, but not limited to, the notice and hearing requirements of Chapter 66 Subchapter VII] and agrees that the municipality may proceed immediately to levy the special assessments in accordance with Section 16.0400 of the CITY Code, and as outlined herein. The DEVELOPER further waives its right to appeal from the special assessments and stipulates that the amount of the special assessments levied against its property has been determined on a reasonable basis and that the benefits to its property from the proposed improvements exceed the amount of the special assessment against such property.

In addition, the DEVELOPER waives its rights under Section 66.0627 and agrees to promptly pay any special charges which may be levied against its property. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII and Section 66.0627, Wisconsin Statutes.

I. UNDERGROUND UTILITIES:

Install all electrical, telephone, cable and gas utilities underground. Coordination of installation and all costs shall be the responsibility of the DEVELOPER.

(Note: This paragraph will change if underground utilities are not required in specific situations.)

Commented [KW46]: Developer would like additional details on expected amount of RCAs for Water and timing of required payments

Commented [WM47R46]: RCA's are paid at the time of the building permit for the homes. Current rate is \$5,468 and increases annually by an index. This section needs to remain in the DA, but we can discuss details and answer questions outside of the DA.

J. PERMITS:

Provide and submit to the CITY requesting the same, valid copies of any and all governmental agency permits.

K. REMOVAL OF TOPSOIL:

The DEVELOPER agrees that no topsoil shall be removed from the SUBJECT LANDS without approval from the CITY Engineer.

L. PARK AND PUBLIC SITE DEDICATION FEES:

To pay as provided in the CITY'S Ordinances, a fee per lot developed in lieu of dedication of lands for park and public sites. The fee for the entire development shall be paid prior to final approval of the final plat.

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Commented [SR48]: Why is this not applicable?

Commented [WM49R48]: I believe it is and should stay in.

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M. -DIGGERS HOTLINE.

Developer shall become a member of Diggers Hotline and provide evidence of such membership to the CITY Clerk before commencement of any land disturbing activities on the ~~Subject Lands~~SUBJECT LANDS. Developer shall maintain said membership until all subsurface Improvements required under Section I have been finally accepted by the CITY as provided in Section III.

(Additional items that may be added include sight distance, sump pump connection, wetland regulation, street lights, dedication fees, dedications, impact fees, etc.)

N. ~~PREVAILING WAGE RATES AND HOURS OF LABOR:~~

~~If any aspect of the development involves a project of public works that is regulated by Wisconsin Statutes Section 66.0903 or 66.0904 then: (1) The Developer shall pay wage rates not less than the prevailing hourly wage rate as described and regulated pursuant to such statutes and related laws; and (2) The Developer shall comply with the prevailing hours of labor as described and regulated pursuant to such statutes and related laws; and (3) The Developer shall fully comply with the reporting obligations, and all other requirements of such laws; and (4) The Developer shall ensure that the Developer's subcontractors also fully comply with such laws. The Developer's General Indemnity obligation of this Agreement shall apply to any claim that alleges that work contemplated by this Agreement is being done, or has been done, in violation of prevailing wage rates, prevailing hours of labor, or Wisconsin Statutes Section 66.0903 or 66.0904, for any work arising out of this agreement.~~

O-N. NOISE:

Make every effort to minimize noise, dust and similar disturbances, recognizing that the SUBJECT LANDS are located near existing residences. Construction of improvements, including equipment start up, shall not begin before 7:00 a.m. during weekdays and Saturdays, and 9:00 a.m. on Sundays. Construction of Public improvements shall not continue beyond 7:00 p.m. during weekdays and Saturdays, and 5:00 p.m. on Sundays.

P-O. DEBRIS:

Have ultimate responsibility for cleaning up debris that has blown from buildings under construction within the SUBJECT LANDS until such time as all Public Improvements have been installed and accepted by the CITY Common ~~council~~ Council. The CITY shall make a reasonable effort to require the contractor, who is responsible for the debris, to clean up the same or to hold the subject property owner who hired the contractor responsible. The DEVELOPER and/or subject property owner shall clean up the debris within forty-eight (48) hours after receiving a notice from the CITY Engineer. If said debris is not cleaned up after notification, the CITY will do so at the DEVELOPER'S and/or subject property owner's expense.

Q-P DUTY TO CLEAN ROADWAYS:

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The DEVELOPER shall be responsible for cleaning up the mud and dirt on the roadways until such time as the final lift of asphalt has been installed. The DEVELOPER shall clean the roadways within forty-eight (48) hours after receiving a notice from the CITY Engineer. If said mud, dirt and stone is not cleaned up after notification, the CITY will do so at the DEVELOPER's expense. The CITY will do its best to enforce existing ordinances that require builders to clean up their mud from construction.

Commented [WM50]: Agree with stan.

R. PUBLIC CONSTRUCTION PROJECTS:

~~If any aspect of the development involves a public construction project subject to the State law, all requirements of the State Public Construction Bidding Law must be satisfied, including but not limited to, providing a performance bond.~~

S-Q. ZONING CODE:

The DEVELOPER acknowledges that the SUBJECT LANDSlands to be developed are subject to the CITY Zoning Code.

~~(Note: Additional miscellaneous requirements may apply in specific situations, which may then be added to this section. Such additional items may include sight distances, sump pump connections, wetland regulations, impact fees, etc.)~~

SECTION XVII. PAYMENT OF COSTS, INSPECTION & ADMINISTRATIVE FEES:

The DEVELOPER shall pay and reimburse the CITY within thirty (30) days of receiving an itemized and detailed invoice (delivered to Developer monthly) promptly upon billing for all actual and reasonable fees, expenses, costs and disbursements which shall be incurred by the CITY in connection with this development or relative to the construction, installation, dedication and acceptance of the Public Improvements development improvements covered by this ~~agreement~~AGREEMENT, including without limitation by reason of enumeration, design, engineering, review, supervision, inspection and legal, administrative and fiscal work. CITY employee costs shall be based on regular CITY pay rates (or Engineering and administrative overtime, if applicable) plus 40% on the hourly rate for overhead and fringe benefits for any time actually spent on the project. Any costs for outside consultants shall be charged at the rate the consultant charges the CITY. Any such charge not paid by DEVELOPER within thirty (30) days of being invoiced may be charged against the financial guarantee held by the CITY pursuant to

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Commented [WM51]: City Policy so rejected change to 60 days.

this ~~AGREEMENT~~ agreement, or assessed against the development land as a special charge pursuant to §66.0627, Wis. Stats.

SECTION XVIII. GENERAL INDEMNITY:

In addition to, and not to the exclusion or prejudice of, any provisions of this ~~agreement~~ AGREEMENT or documents incorporated herein by reference, the DEVELOPER shall indemnify and save harmless and agrees to accept tender of defense and to defend and pay any and all legal, accounting, consulting, engineering and other expenses relating to the defense of any claim asserted or imposed upon the CITY, its officers, agents, employees and independent contractors ~~growing out of arising from DEVELOPER'S breach of this agreement-AGREEMENT by any party or parties.~~ Indemnification shall not extend to claims arising out of the negligent or intentional acts or omissions of City, its officers, agents, employees, or independent contractors. The DEVELOPER shall also name as additional insureds on its general liability insurance the CITY, its officers, agents, employees and any independent contractors hired by the CITY to perform services as to this development, ~~and shall provide give~~ the CITY evidence of the same upon written request by the CITY.

SECTION XIX. CITY RESPONSIBILITY:

A. The CITY agrees to pay for the following oversizing costs, if it is determined by the CITY that the oversizing is necessary. The oversizing costs shall be calculated by viewing bids for similar improvements to determine the cost differences between the stated sizes. The CITY reserves the right to determine the bid amounts to be used in this calculation.

1. Cost of increasing the size of the water main from eight inches to a larger size, including the cost of larger gate valves.
2. Cost of increasing the size of the sewer main from eight inches to a larger size.

B. The CITY agrees to allow the DEVELOPER to connect to the CITY's municipal water system and sewerage system at such time as the water system and sanitary sewer system required herein has been dedicated to and accepted by the CITY.

~~B-C.~~ The CITY shall provide a qualified inspector on a full time, continuous basis to inspect the construction of the Public Improvements specifically including storm sewer, sanitary sewer, water mains and laterals, proof roll of the road subgrade prior to and after the stone base has been constructed, curb and gutter, and binder and surface course of paving and restoration of the right of way and easements. The cost of inspection shall be paid for by the CITY and then reimbursed by the DEVELOPER in accordance with Section XVII of this AGREEMENT.

SECTION XX. INSURANCE:

The DEVELOPER, its contractors, suppliers and any other individual working on the SUBJECT LANDS in the performance of this ~~agreement~~ AGREEMENT shall maintain at all times until the expiration of the guarantee period, insurance coverage in the forms and in the amounts as reasonably and customarily required by the CITY for similar developments.

SECTION XXI. EXCULPATION OF CITY CORPORATE AUTHORITIES:

The parties mutually agree that the ~~CITY President~~Mayor of the CITY ~~Common council~~, and/or the CITY Clerk, entered into and are signatory to this ~~agreement~~AGREEMENT solely in their official capacity and not individually, and shall have no personal liability or responsibility hereunder; and personal liability as may otherwise exist, being expressly released and/or waived.

SECTION XXII. GENERAL CONDITIONS AND REGULATIONS:

All provisions of the CITY Ordinances are incorporated herein by reference, and all such provisions shall bind the parties hereto and be a part of this ~~agreement~~AGREEMENT as fully as if set forth at length herein. This ~~agreement~~AGREEMENT and all work and improvements required hereunder shall be performed and carried out in strict accordance with and subject to the provisions of said Ordinances.

SECTION XXIII. ZONING:

The CITY does not guarantee or warrant that the SUBJECT LANDS will not at some later date be rezoned, nor does the CITY herewith agree to rezone the lands into a different zoning district. It is further understood that any rezoning that may take place shall not void this ~~agreement~~AGREEMENT.

SECTION XXIV. COMPLIANCE WITH CODES AND STATUTES:

The DEVELOPER shall comply with all current and future applicable codes of the CITY, County, State and federal government and, further, DEVELOPER shall follow all current and future lawful orders of any and all duly authorized employees and/or representatives of the CITY, County, State or federal government.

SECTION XXV. PRELIMINARY PLAT ~~AND FINAL PLAT~~ CONDITIONS:

The DEVELOPER acknowledges that the SUBJECT LANDS are subject to a conditional preliminary plat approval ~~and a conditional final plat approval~~ by the CITY. The DEVELOPER further agrees that it is bound by these conditions. A copy of the conditional preliminary plat approval for the SUBJECT LANDS ~~is attached hereto and incorporated herein as EXHIBIT CB, and the conditional final plat approval for the SUBJECT LANDS is incorporated herein as EXHIBIT D.~~ If there is a conflict between the conditions as forth in said conditional approvals and ~~this the Developer's Agreement~~AGREEMENT, the more restrictive shall apply.

(Note: ~~Additional conditions may also apply, and if so, should be added; e.g., conditions of rezoning, or conditional use permit, etc.~~)

SECTION XXVI. AGREEMENT FOR BENEFIT OF PURCHASERS:

The DEVELOPER agrees that in addition to the CITY'S rights herein, the provisions of this ~~agreement~~AGREEMENT shall be for the benefit of the purchaser of any lot or any interest in any lot or parcel of land in the SUBJECT LANDS.

SECTION XXVII. ASSIGNMENT:

The DEVELOPER shall not assign this ~~agreement~~ AGREEMENT without the written consent of the CITY, which shall not be unreasonably withheld, delayed, or conditioned except that, The assignee must agree to all terms and conditions of this document ~~document~~ AGREEMENT in writing.

SECTION XXVIII. PARTIES BOUND:

The DEVELOPER or its assignees shall be bound by the terms of this ~~agreement~~ AGREEMENT or any part herein as it applies to any phase of the development.

SECTION XXIV. HEIRS & ASSIGNS:

This ~~agreement~~ AGREEMENT is binding upon the DEVELOPER, ~~owners, their~~ its successors and assigns, and any and all future owners of the SUBJECT LANDS.

SECTION XXX. PHASING OF DEVELOPMENT:

~~In that the DEVELOPER has voluntarily agreed to develop the subject land in phases and has further agreed to submit along with the Final Plat of the first phase a phasing plan for the entire development, which shall be in substantial conformity with the phasing plan prepared and discussed by the Plan Commission for the CITY and shall be subject to review and must be specifically approved by the CITY Common council, Section 236.11(b), Wisconsin Statutes, which requires Final Plats to be filed within twenty four (24) months of the date of approval of the Preliminary Plat is hereby waived by the CITY provided the DEVELOPER complies with the approved phasing plan and further provided that the Final Plat of each phase complies substantially with the Preliminary Plat, as provided in Section 236.11(b), Wisconsin Statutes. This Section has been intentionally left blank.~~

~~(Note: This section, of course, only applies if the DEVELOPER is proposing to proceed with the development in phases, and then only if the CITY has approved the phasing plan; otherwise, this section should be deleted.)~~

SECTION XXXI. AMENDMENTS:

The CITY and the DEVELOPER, by mutual consent, may amend this ~~Developer's Agreement~~ AGREEMENT at any meeting of the CITY Common ~~council~~ Council. The CITY shall not, however, consent to an amendment until after first having received a recommendation from the CITY'S Plan Commission.

IN WITNESS WHEREOF, the DEVELOPER and the CITY have caused this ~~agreement~~ AGREEMENT to be signed by their appropriate officers and their corporate seals (if any) to be hereunto affixed in three original counterparts the day and year first above written.

SECTION XXXII. RIGHT TO CURE:

Upon any breach by DEVELOPER of this AGREEMENT, and as a condition precedent prior to the CITY exercising any of its rights and remedies available pursuant to this AGREEMENT for such default, the CITY shall give DEVELOPER written notice of the breach and DEVELOPER shall have thirty (30) days to cure such default. After the CITY has given thirty (30) days' written notice to DEVELOPER of the breach, but only if

the breach has not been cured to the reasonable satisfaction of the CITY within said thirty (30) days, or if the breach cannot be reasonably cured in the determination of the CITY within thirty (30) days and DEVELOPER does not provide assurances reasonably satisfactory to the CITY that the breach will be cured as soon as reasonably practicable, DEVELOPER shall be deemed in default of this AGREEMENT, and the CITY shall be entitled to exercise any and all rights and remedies as set forth in this AGREEMENT.

SECTION XXXIII. RECORDED LIGHTING DECLARATION:

The DEVELOPER shall record with the Register of Deeds for Waukesha County a Declaration of Covenants and Restrictions which shall include a requirement that each lot owner shall be responsible for providing a functioning lamp post on the driveway located on private property.

Commented [SR52]: Should this not be a private restriction?

Commented [WM53R52]: Seems to be but it can't be located within the City's right of way.

SECTION XXXIV. TIME:

For the purpose of computing the commencement and completion periods set forth in this AGREEMENT, and the time periods for DEVELOPER or CITY action, such times in which war, civil disasters, acts of God, pandemics, or extreme weather conditions occur or exist shall not be included if such events prevent the DEVELOPER or CITY from performing its obligations under this AGREEMENT.

(Developer's Name) BIELINSKI HOMES, INC.

By: _____

Name: Frank Bielinski

Title: President

By: _____

Authorized Signatory

STATE OF WISCONSIN)
)ss.
COUNTY OF (County))

Personally came before me this _____ day of _____, 2022_____,
the above named _____, Frank Bielinski, Authorized Signatory of
_____, Bielinski Homes, Inc., to me known to be the person
who executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

CITY OF PEWAUKEE
WAUKESHA COUNTY, WISCONSIN

MAYOR

CLERK

STATE OF WISCONSIN)
)ss.
COUNTY OF WAUKESHA)

Personally came before me this _____ day of _____, _____, the
above-named _____, Mayor, and _____,
Clerk, of the above-named municipal corporation, to me known to be the persons who
executed the foregoing instrument and to me known to be such Mayor and Clerk of said
municipal corporation and acknowledged that they executed the foregoing instrument as
such officers as the deed of said municipal corporation by its authority and pursuant to
the authorization by the CITY Common council from their meeting on the _____ day of
_____, _____.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

APPROVED AS TO FORM:

CITY Attorney

As Revised ~~May 12, 2022~~ ~~May 2, 2022~~ ~~April 18, 2022~~ ~~April 6, 2022~~
C:\MyFiles\Devagr\model\VOD.sewer and water.06-10-09.docx

Letter of Credit Value

New Berlin Grading	1 LS	\$ 16,550.00	\$ 16,550.00	
Clear and Grub	1 LS	\$ 21,000.00	\$ 21,000.00	
Strip Topsoil	1 LS	\$ 34,400.00	\$ 34,400.00	
Rough Grading	1 LS	\$ 86,800.00	\$ 86,800.00	
Move Onsite Pile	1 LS	\$ 115,200.00	\$ 115,200.00	
Compaction of Site Fills	1 LS	\$ 20,000.00	\$ 20,000.00	
Compaction of Imported Fill	1 LS	\$ 45,550.00	\$ 45,550.00	
Clay Line Ponds	1 LS	\$ 16,000.00	\$ 16,000.00	
Mix & Place Infiltration Mix	1 LS	\$ 38,500.00	\$ 38,500.00	
Finish Grade to subgrade	1 LS	\$ 34,700.00	\$ 34,700.00	
Respread 6" of salvaged Topsoil	1 LS	\$ 68,600.00	\$ 68,600.00	
Place Rip Rap at FES	1 LS	\$ 7,200.00	\$ 7,200.00	
Seed and Erosion Mat	1 LS	\$ 41,800.00	\$ 41,800.00	
Seed, Fertilize and Mulch	1 LS	\$ 24,400.00	\$ 24,400.00	
Place Ditch and Rock Bags Checks	1 LS	\$ 5,400.00	\$ 5,400.00	
				\$ 576,100.00

Sanitary Sewer

48" Precast Concrete Manhole	10 EA			
Connection to Existing Manhole	2 EA			
8" SDR-35 PVC Sanitary Sewer	1357 LF			
6" PVC sanitary lateral (24)	730 LF			\$ 226,765.00

Water Main

Connection to Existing	2 EA			
Hydrant & Valve Assembly	4 EA			
8" C-900 PVC Water Main	1411 LF			
6" C-900 PVC Hydrant Lead	40 LF			
8" Gate Valves	4 EA			
1 1/4" Corp, curb stop, & Box	24 EA			
1 1/4" Water Lateral (24)	778 LF			\$ 222,803.00

Storm Sewer

Curb Inlet w/ Frame & Grate	12 EA			
48" Precast Concrete Manhole	9 EA			
36" Precast Concrete OCS Pond MH	4 EA			
18" CL III RCP Storm Sewer	252 LF			
15" CL IV RCP Storm Sewer	450 LF			
15" CMP Storm Sewer	60 LF			
12" CL V RCP Storm Sewer	1234 LF			
18" RCP End Section w/ Trash Rack	3 EA			
15" RCP End Section	2 EA			
15" CMP End Section	4 EA			
12" RCP End Section	6 EA			
Anti Seep Collar	6 EA			\$ 172,879.00

Granular Backfill	13320 Ton	\$ 11.00	\$ 146,520.00	
Pavement & Shoulder Restoration in Road	1 LS	\$ 22,000.00	\$ 22,000.00	

Pavement

Stone Placing	3733 SY	\$ 14.28	\$ 53,300.00	
Binder Course	3733 SY	\$ 17.13	\$ 63,931.00	
Surface Course	3733 SY	\$ 10.50	\$ 39,200.00	
Curb & Gutter/Flumes	2730 LF	\$ 15.80	\$ 43,134.00	\$ 199,565.00

\$ 1,398,112.00

\$ 1,677,734.40

**CITY OF PEWAUKEE
COMMON COUNCIL AGENDA ITEM 6.**

DATE: May 16, 2022

DEPARTMENT: Public Works

PROVIDED BY: Magdelene Wagner

SUBJECT:

Discussion and Possible Action Regarding Amending the Cardinal Meadow Early Grading Agreement [Wagner]

BACKGROUND:

The Developer is requesting to amend the Grading and Stockpile Agreement for the Cardinal Meadow Subdivision off Bluemound Road. They are requesting permission for an additional 50,000 CY of fill to support the construction of a landscaping berm along HWY 16.

The Developer's Engineer provided a cut/fill spreadsheet based upon the final approved plans which shows the site needs an additional 75,000 CY of fill above the original 50,000 CY permitted to be brought to the site.

The Developer is concurrently working to get the full Developer's Agreement and Letter of Credit executed, but this will not be executed in time to secure the fill available which is why they are seeking this amendment.

FINANCIAL IMPACT:

RECOMMENDED MOTION:

Common Council approve the amendment to the Grading and Stockpile Agreement contingent on City Engineer and City Attorney approvals.

ATTACHMENTS:

Description

Current Grading & Stockpile Agreement

Draft Amendment

Cut/Fill Computations

GRADING AND STOCKPILING OF FILL MATERIAL AGREEMENT

THIS AGREEMENT, made and entered into this 11th day of June, 2021, by and between Bielinski Homes, Inc. hereinafter collectively and individually called the "Developer," and the CITY OF PEWAUKEE, a Wisconsin municipal corporation of the State of Wisconsin, hereinafter called the "City."

WITNESSETH:

WHEREAS, the Developer proposes to develop certain lands located in the City of Pewaukee, Waukesha County, Wisconsin, being particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), commonly referred to as Greenland Subdivision Pewaukee, Wisconsin; and

WHEREAS, the City previously approved the Developer's preliminary plat for the development of single-family lots (the "Subdivision") on the Property; and

WHEREAS, the City has reviewed the Developer's conceptual Grading Plan; and

WHEREAS, one of the requisites for development of the Subdivision is the installation of various private, as well as public, improvements to be implemented pursuant to a development agreement; and

WHEREAS, said development agreement has not yet been prepared and executed; and

WHEREAS, the Developer has requested the City to authorize and permit grading and stockpiling of fill material on the Property at this time; and

WHEREAS, the City recognizes that timing is a factor to be considered and is willing to allow Developer, at its risk, to perform grading and stockpiling as requested upon the condition, however, that the Developer agrees to those certain terms and conditions as more fully hereinafter set forth.

NOW THEREFORE, in consideration of the sum of one dollar (\$1.00) to each in hand paid, the receipt and sufficiency whereof is hereby acknowledged, and in further consideration of the mutual premises and covenants hereinafter set forth, it is hereby agreed by and between the parties hereto as follows:

I. THE CITY AGREES:

1. To permit the Developer to perform all rough grading work on the Property, including, but not limited to, the installation of silt fencing, general grading of the site and the construction of storm water management ponds (collectively the "Grading"), upon the terms and conditions set forth below.

2. To permit the Developer to stockpile appropriate fill materials on the Property, not to exceed the total amount 50,000 cubic yards, in anticipation of using said fill materials in the development of the Property (collectively the "Stockpiling"), upon the terms and conditions set forth below.

II. THE DEVELOPER AGREES:

1. All Grading and Stockpiling shall be done at the Developer's risk.

2. All Grading and Stockpiling shall comply with site grading, drainage and soil erosion plan and related specifications as approved by the City Engineer. All plans for such Grading and Stockpiling have been or will be prepared on behalf of the Developer by a professional engineer licensed by the State of Wisconsin.

3. The City shall be reimbursed by the Developer for all costs incurred by the City in relation to the Grading and Stockpiling. These costs shall include, but not be limited to, plan review, inspection and related overhead costs. Said reimbursement shall be guaranteed by the Developer as set forth and required in Paragraph 9 below.

4. In the event the preparation and/or final review of the Master Grading Plans by the City dictate revisions to the proposed grades, either at the Developer's request or at the direction of the Engineer, such re-grading shall be performed by the Developer without any recourse to the City whatsoever, prior to the commencement of any underground installations in the Subdivision development.

5. The Grading and Stockpiling shall be performed with proper control of soil erosion and with minimum siltation of existing drainage facilities. Any damage to the existing drainage facilities, including siltation removal, shall be immediately repaired by the Developer. As appropriate, by virtue of delay in the development process, vegetative cover shall be re-established by the Developer and/or effective erosion control measures shall be installed and continually maintained by the Developer where vegetation has been removed, covered or destroyed.

6. In the event installation of improvements and/or buildings on the lots does not begin as of 8/31/2021, for any reason whatsoever, all of the graded or disturbed area shall have vegetative cover re-established by the Developer to an extent as to be determined by the City. In the event vegetative cover is not established by 10/1/2021 the City shall arrange for such work to be done, which shall be paid by the Developer.

7. In the event installation of improvements and/or buildings on the lots does not begin as of 8/31/2021, for any reason whatsoever, all of the stockpiled fill material shall be removed and all disturbed area shall have vegetative cover re-established by the Developer to an extent as to be determined by the City. In the event the Stockpiled material is not removed or vegetative cover is not established by 10/1/2021, the City shall arrange for such work to be done, which shall be paid by the Developer.

8. All truck traffic to and from the Property, as part of the operation permitted herein, shall be conducted by the Developer as governed by the applicable codes and regulations of Waukesha County and of the City and as directed by the City Engineer, with respect to method, time and operations and routing, etc. Any public street used for access to the Property shall be kept free of mud, dirt and debris on a daily basis. In the event a clean-up order from the City is not complied with, such work shall be arranged and accomplished by the City and paid for out of the deposit referred to in Paragraph 9 below.

9. To assure compliance with the conditions set forth in this agreement, including, but not limited to, the establishment of positive soil erosion control measures, performance hereunder shall be guaranteed with a deposit by the Developer with the City in the amount of \$100,000.00 cash which shall be paid prior to the commencement of any activity on the Property by the Developer with respect to the Grading and Stockpiling. In the event Developer does not comply with or fully perform this agreement, the City is authorized to stabilize the site or to take other action to correct the Developer's violations hereof by using the cash deposit for such purposes. Upon completion of the performance of this agreement, the deposit, or remaining balance of the deposit, if any, shall be returned to the Developer. In the event said deposit is insufficient in amount to pay all costs related to performance of and compliance with this agreement, the Developer shall remit payment of all owed amounts to the City within ten (10) days of receipt of the City's invoice to the Developer.

10. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

11. Developer is responsible for DNR approval for required culverts in the Subdivision. Further, it is the Developer's responsibility to comply with any and all provisions of DNR approval/denial conditions.

12. Upon execution of a Development Agreement between the City and Developer for the Property, this Agreement shall terminate and any remaining balance of the deposit shall be returned to Developer upon Developer's posting of cash or letter of credit to guaranty the improvements, including the grading of the Property, required under said Development Agreement.

IN WITNESS WHEREOF, the Developer and the City have caused this agreement to be signed individually by the Developer and by the appropriate officers of the City, with its seal to be hereunto affixed the day and year inserted above.

Page 5 of 10

AMENDMENT TO THE GRADING AND STOCKPILING OF FILL MATERIAL AGREEMENT

THIS AMENDMENT TO THE GRADING AND STOCKPILING OF FILL MATERIAL AGREEMENT is made and entered as of the 16th day of May, 2022, by and between Bielinski Homes, Inc. (the “Developer”) and the City of Pewaukee (the “City”). Developer and the City may collectively be referred to as the “Parties”.

RECITALS

A. The Parties entered into a Grading and Stockpiling of Fill Material Agreement dated June 11, 2021 relative to the Cardinal Meadow Subdivision f/k/a Greenland Subdivision located in the City of Pewaukee, Wisconsin (the “Agreement”).

B. Subsequent to the execution of the Agreement and in accordance with Section II, Paragraph 9 of the Agreement, Developer deposited the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the “Deposit”) with the City as a guarantee with respect to the Grading and Stockpiling.

C. Developer completed certain Grading and Stockpiling at the Property, including but not limited to the stockpiling of compactible fill materials on the Property for the purpose of completing the site grading at the Property.

D. Developer has timely complied with all requirements of Developer in the Agreement, including but not limited to the timely re-establishment of vegetative cover on the stockpiled fill.

E. Developer and the City are in the process of negotiating a development agreement (the “Developer’s Agreement”) with respect to the installation by Developer of certain public improvements on the Property, which such Developer’s Agreement is on the agenda for the May 16, 2022 meeting of the City of Pewaukee Common Council.

F. Prior to the anticipated approval of the Developer’s Agreement, Developer has determined that approximately Seventy-Five Thousand Nine Hundred Forty-Two (75,942) cubic yards of additional fill materials are necessary for the Grading at the Property pursuant to the Earthwork Balance Estimate Engineering Report dated February 4, 2022 completed by Trio Engineering, LLC, a copy of which is attached hereto as Exhibit A.

G. Developer wishes to stockpile an additional Fifty Thousand (50,000) cubic yards of fill materials at the Property (for a total of One Hundred Thousand (100,000) cubic yards of fill) for the purpose of building a screening berm on the western portion of the Property and grading and compacting Lots 5-13 on the Property (the “Additional Fill Materials”).

H. The Parties wish to modify the Agreement to authorize Developer to immediately stockpile the Additional Fill Materials at the Property.

NOW, THEREFORE, Developer and the City agree to amend the Agreement as follows:

1. Recitals. The Parties ratify the foregoing Recitals are true, correct, and are incorporated herein by reference.

2. Grading. The definition of Grading, as set forth in Section I, Paragraph 1 of the Agreement, shall be modified to include the construction of a screening berm on the western portion of the Property, and the grading and compaction of Lots 5-13 located on the Property.

3. Stockpiling. The reference to Fifty Thousand (50,000) cubic yards of fill materials in Section I, Paragraph 2 of the Agreement shall be modified to One Hundred Thousand (100,000) cubic yards of fill materials. The City permits Developer to immediately stockpile the Additional Fill Materials at the Property.

4. Remainder of Terms. All other terms of the Agreement shall remain the same and are in full force and effect.

5. Capitalized Terms. Capitalized terms herein that are not otherwise defined shall have the respective meaning ascribed to them in the Agreement.

6. Counterparts/Delivery. This Amendment may be executed in any number of counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one Amendment. This Amendment may be executed and delivered via facsimile or e-mail transmission (in PDF Format) and shall be of the same validity, force and effect as the original.

**REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURES ON FOLLOWING PAGE**

DEVELOPER:

Bielinski Homes, Inc.:

By: _____

Name: Frank Bielinski

Title: President

STATE OF WISCONSIN)
)ss.
COUNTY OF WAUKESHA)

Personally came before me this _____ day of _____, 2022, the above named Frank Bielinski, Authorized Signatory of Bielinski Homes, Inc., to me known to be the person who executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, STATE OF WI
My commission expires:_____

By: _____

Title: Mayor

By: _____

Title: Municipal Clerk

[illegible]

Personally came before me this _____ day of _____, 2022, the above-named Steve Bierce, Mayor, and Kelly Tarczewski, Municipal Clerk, of the City of Pewaukee, to me known to be the persons who executed the foregoing instrument and to me known to be such Mayor and Municipal Clerk of the City of Pewaukee and acknowledged that they executed the foregoing instrument as such officers as the deed of the City of Pewaukee by its authority and pursuant to the authorization by the CITY Common council from their meeting on the _____ day of _____, _____.

NOTARY PUBLIC, STATE OF WI
My commission expires:_____

Earthwork Balance Estimate

Cardinal Meadows

Cardinal Meadows
City of Pewaukee, WI

Project: 966-18021-01

Date: 2/4/2022



Trio Engineering, LLC
4100 N. Calhoun Road, Suite 300
Brookfield, WI 53005
Phone: 262-790-1480

Earthwork Assumptions:									
*Existing surface - Lowered by 7" to subgrade.									
Rough Grading Volumes:									
Cut		1449	cy						
Fill		126228	cy	10% shrinkage =	138,851	cy	Cut	51,449	cy
Stockpile		50000	cy	0% shrinkage =	50,000	cy	Fill	138,851	cy
Additional Lot Hold-down:									
	<u>QTY</u>		<u>Cut/Bldg</u>	<u>Total</u>					
Total Lots	0		0	0					
							Bldg Ex	0	cy
Topsoil:									
Strip Topsoil (7")		13,707	cy						
Respread Topsoil (6")		8,490	cy						
							Excess Topsoil	5,218	cy
							W/ 30% shrinkage	3,652	cy
							(Too be used as fill)		
Utility Trench Spoils:			Approx.	Approx.	Cubic				
		Length	Depth	X-sectional Area	Feet				
Sanitary Sewer		1415	11	77	108955				
Water Main		1450	6	30	43500				
Storm Sewer		1160	3	15	17400				
Laterals		731	8	56	40936				
							Trench Spoils	7,807	cy
							Total Fill	138,851	cy
							Total Cut	62,909	cy
							FILL - CUT	75,942	cy

**CITY OF PEWAUKEE
COMMON COUNCIL AGENDA ITEM 7.**

DATE: May 16, 2022

DEPARTMENT: Public Works

PROVIDED BY: Magdelene Wagner

SUBJECT:

Discussion and Possible Action Regarding Leaving Trees Planted in the Right-of-Way Near N43W22726 Victoria Street as Requested by the Property Owner [Wagner]

BACKGROUND:

The property located at N43W22726 Victoria Street has trees planted within the City's right of way. Permits were not received to plant these trees within the public right of way and the property owner did not contact the City prior to installing these trees. According to the property owner, the trees were planted in 2020, but it came to the City's attention in April 2022. The property owner sent an email (see attached) which summarizes the events.

The property owner states he assumed the right of way was 10' off the back of curb. The plat of survey for the property indicate the property line is greater than 10'. In addition, the Waukesha County GIS shows property lines and the curb and it also has a measuring tool which could give a general distance off the curb line. In addition, Staff, when contacted, will give general guidance on property lines.

We understand the desire for privacy of the lot, but this must be accomplished on private property, not in the public right of way. In addition, specific to this property, we have storm sewer within this terrace area. The trees planted within in the right of way will limit the access to this system and its future maintenance. In addition, the root system of these trees could create maintenance issues at the joints of this storm sewer when they penetrate those joints (similar to sewer laterals).

City Staff does not recommend allowing the trees within the right of way. With the existing storm sewer already in this location, the conflicts and potential maintenance issues are too great to allow the trees to remain.

If the Council decides to allow the trees in the right of way, Staff recommends the property owner and City enter into an agreement which requires the trees to be removed at the expense of the property owner if the trees die, cause damage to the storm sewer, or are in the way of any maintenance of the storm sewer. In addition, the trees would not be allowed to be replaced if they die and the City would not be responsible for replacement of the trees if removed for any reason. This agreement would be required to be recorded against the property so future owners are aware of the requirements and restrictions. To be clear, Staff is not recommending this action as it will set a precedence which can have broad impacts throughout the community.

Staff does not recommend any financial assistance for moving the trees. The trees were planted in a known right of way without permits by the property owner without the knowledge of the City.

FINANCIAL IMPACT:

RECOMMENDED MOTION:

Common Council require the removal of the trees from the public right of way at the expense of the property owner.

ATTACHMENTS:

Description

Property owner email

Sample Agreement

storm sewer location

Waukesha County GIS

Plat of Survey

Tree picture - google earth w/ storm sewer

Wagner, Magdelene

From: Matt Scallon <Matthew.Scallon@hotmail.com>
Sent: Tuesday, May 3, 2022 10:13 PM
To: Wagner, Magdelene
Cc: Reinbold, Rich
Subject: Tree Proposal for City of Pewaukee DPW

Hi Maggie,

As you are aware, I would like to dispute the need to move the 7 Blue Spruces that I have growing in my back yard. Before I get to possible proposals I would like to provide and document the background that has led up to this. We live on the corner of Victoria Station and Bridge Street. Actual address is N43W22726 Victoria Street. Bridge street runs the entire length of our front yard, side yard, and back yard. We had several pine trees planted shortly after building the house to try and provide some privacy from the road to our back yard with the hopes it would also dampen some of the train noise. In May of 2020, we planted several more trees between those existing trees to again try to help provide additional privacy as well eventually reduce noise from the train. When these were planted, I had searched the city guidelines to see if there was anything that stated a minimum distance from a road that vegetation had to be planted. I could not find anything. I assumed the right of way was 10 feet and planted accordingly. I staggered them to avoid them growing together. They had to be staggered on the street side of the original trees because on the house side, I would have run the risk of hitting the sprinkler system or in-ground dog fence. Based on the cards that came on the trees they should be planted 12'-15' apart, meaning radius of these trees are roughly going to be 6'-7.5' when fully grown. These trees bases are all over 10 feet away from the road except for one that is roughly 9.5 feet from the road at the base. I continued this pattern for the trees not only on that side of the house but across the entire back yard and the opposite side of the yard. I have had some trouble getting these trees to take, so I have replaced the random ones that have died when needed. Our back yard has also been an issue as water just sits and it has become too soft to walk on or use a riding mower on. We have worked with two the neighbors west of us on Victoria Street who have the same problem along with All Seasons to schedule putting in a French drain. This will hopefully make our back yards useable again. For this project we had diggers hotline come out to mark our yards. Additionally, I had to mark all my sprinkler heads and dog fence in the back yard before the project started. On Saturday, April 23rd, I replaced two dead trees and planted one new one on the Bridge Street side of our lot. The one replaced on the street side is NOT one of the 7 identified as needing to be moved. On Sunday April 24th, I put black mulch around all of the small pine trees and tied up two that keep getting battered by the wind. This may have made it look like these trees were just planted in the yard, when in reality they have been there since May 2020.

On Wed. April 27th Dave with the City of Pewaukee, rang our doorbell and let me know that a different city employee had reported that new trees had been planted too close to the road. He stated I would need to remove or move several of the trees, potentially up to 7. Dave explained that they were too close to the road and because of this, in 20-25 years if we were not still living in this house and if the trees were to die, the new home owner would report it to the City of Pewaukee to have the trees removed. I explained to him that all of the trees besides one (which is not one of the close ones) has been planted for years or has had a tree there that was replaced in the same location. He said he would follow up with his supervisor (you, Maggie Wagner) and let me know if I would have to remove/re-position the trees. He followed up later that day saying his supervisor said the trees would have to be removed/moved. I asked him to show me which ordinance stated the distance in which I had to plant the trees and identify which trees would need to be moved.

On April 28th Dave called back and stated it was ordinance 78.103 (<https://library.municode.com/> or see image below) that stated I could not plant them there. I asked him what I would have to do to dispute this and he said I would have to present it to the board and to do that I would have to contact my local alderman. Which he could not tell me how to do but provided me the name of Richard Reinbold.

This ordinance does not state a distance nor does it state anything about vegetation/ bushes/trees. None of my trees encroach or obstruct the street currently nor would they in a future state if they were to get full size. The stop sign at the corner of our property is a significant distance from the trees (roughly 60 feet) and unobstructed. He also could not specify which of the trees had to be moved over the phone. I also went to the City of Pewaukee's site for public works (<https://www.cityofpewaukee.us/206/Public-Works>) to see if again I could find out what the distance was that any of these trees would have to be moved to and which ones I could keep where they are. On this site, on the lower left side, I found a link that states "[Brush and trees maintenance within the public right-of-way](#)". I clicked it in hopes it would give me some distance or at least information and it took me to the image below.

Due the fact that I originally looked and could not find any ordinances when I planted these back in 2020, since I have had such a hard time getting these trees to take, the fact that I have someone scheduled to come out and fertilize all of them, and that inability for Dave to give me a distance of which I would have to move the trees, and not specifically identifying which trees, I would like to dispute the need to move these trees due to the financial cost and time it would take me to move them all, as well as the risk it presents to the trees potentially dying when being moved, I would like to dispute the need to move them. The death of the trees would cause additional financial stress and hassle as the Pewaukee Dump/Recycling site has told me they do not take dead trees, even though they are smaller than many of the branches that people have dropped off. These trees are maybe 3-4 feet tall at the moment.

As I feel like I did all the due diligence that I could when planting the trees originally, I would like to present the following proposal options:

1. I would like to keep the trees where they are to prevent any harm to the trees without any further action.
2. Keep the trees where they are to prevent any harm to the trees and put on our deed that home owner is responsible for trees if they were to die and need to be taken down, which was the original concern from Dave and the reason we were told the trees need to move.

3. If neither of those are acceptable, I have gotten a quote to move the trees to 15 feet from the road, back fill where the trees were planted originally and seed those areas. The quote came in at \$950 to have a contractor move the trees and have the City of Pewaukee to pay for this. The City of Pewaukee would need to provide payment information directly to All Seasons Landscaping.

Thank you for your time and help.

Matt Scallon
262-271-2211

Document Number

Statement Regarding
Easement
Document Title

4309587

REGISTER OF DEEDS
WAUKESHA COUNTY, WI
RECORDED ON

November 07, 2017 10:06 AM
James R Behrend
Register of Deeds

5 PGS
TOTAL FEE:\$30.00
TRANS FEE:\$0.00

Book Page -



Recording Area

Name and Return Address

City of Pewaukee
W240N2065 Pewaukee Rd.
Pewaukee, WI 53072

Parcel Identification Number (PIN)

THIS PAGE IS PART OF THIS LEGAL DOCUMENT - DO NOT REMOVE.

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

WRDA Rev. 12/22/2010

STATEMENT REGARDING EASEMENT

THIS STATEMENT is made as of the 3RD day of November, 2017 by Victoria Station Homeowners Association (HOA).

WHEREAS, Victoria Station HOA are the owners of certain real property located in the Victoria Station Subdivision Phases 1, 2, 3, and 4 in the City of Pewaukee, Waukesha County, Wisconsin, which is more particularly described on the Plats for Victoria Station, Victoria Station II, Victoria Station III, and Victoria Station IV recorded at the Waukesha County Register of Deeds which is hereby incorporated herein (the "Property"); and

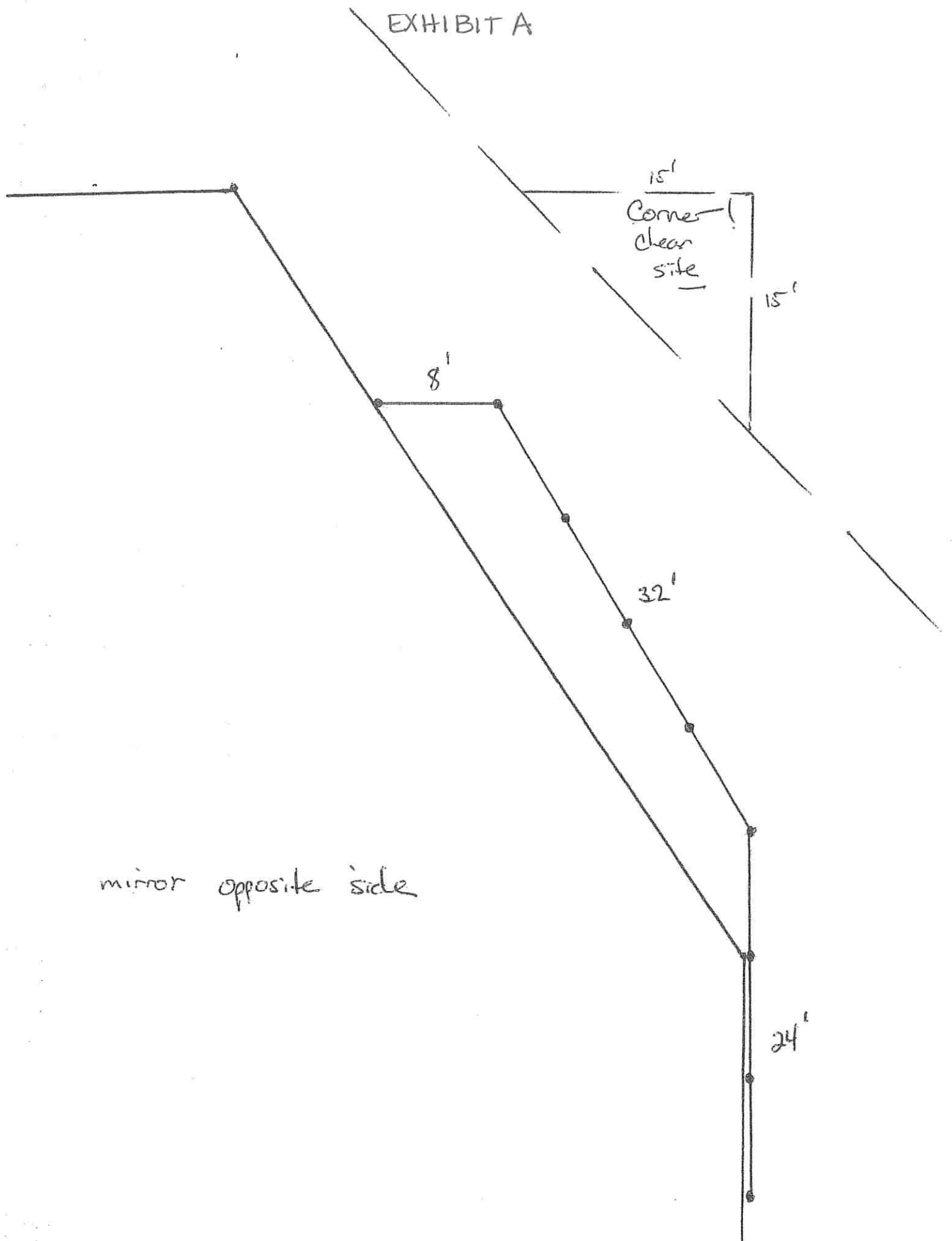
WHEREAS, there exists an easement for drainage, storm sewer, and access purposes in favor of the City of Pewaukee, which was recorded as part of the Victoria Station IV Subdivision Plat; and

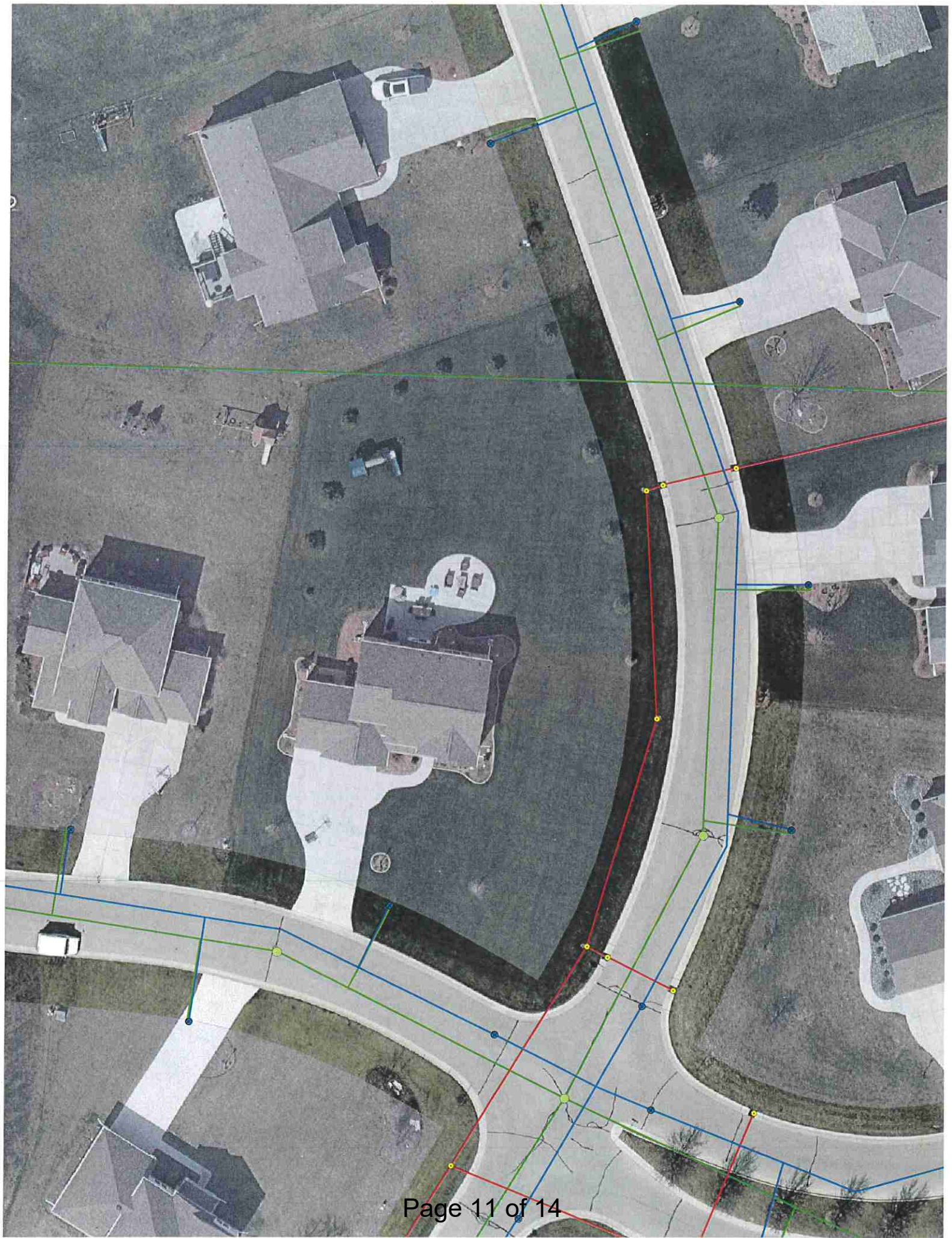
WHEREAS, it is the desire of the above property owner to construct landscaping within the Easement area and the right of way outside of the vision corners;

NOW, THEREFORE, at the request of the City, and in consideration of City permitting the fencing and landscaping placed within the easement area to be constructed and maintained within the Easement, the owner above listed and below signed hereby state as follows:

- (1) Owner acknowledges that the existence of said fence and landscaping placed within the easement area and the right of way are within the Easement Area and the right of way does not constitute a claim of adverse possession against the Easement or right of way of the City.
- (2) The Owner agrees to limit the landscaping and fencing within the Easement Area and right of way to be located in the areas identified in the areas identified in Exhibit A.
- (3) Owner agrees that in the event the City must damage or destroy the fence, landscaping, or any part thereof in connection with the construction, maintenance, or operation of public drainage facilities located within the Easement Area and right of way, Owner agrees that the City will not be responsible for the cost of repairs to, maintenance of, or replacement of the fencing, landscaping or other features placed within the easement area or right of way.
- (4) This Statement is to run with the land and will benefit and burden owner and the City, and their respective successors and assigns.

EXHIBIT A







Legend

- Municipal Boundari
- Parcel_Dimension
- Note_Text_2K
- Lots_2K
 - Lot
 - Unit
 - General Common
 - Outlot
- SimultaneousConv
 - Assessor Plat
 - CSM
 - Condominium
 - Subdivision
- Cartoline_2K
 - EA-Easement_Lin
 - PL-DA
 - PL-Extended_Tie_
 - PL-Meander_Line
 - PL-Note
 - PL-Tie
 - PL-Tie_Line
 - <all other values>
- Railroad_2K

0 34.25 Feet

Notes:

The information and depictions herein are for informational purposes and Waukesha County specifically disclaims accuracy in this reproduction and specifically admonishes and advises that if specific and precise accuracy is required, the same should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means. Waukesha County will not be responsible for any damages which result from third party use of the information and depictions herein, or for use which ignores this warning.



Printed: 5/12/2022

HOLLAND & THOMAS, L.L.C. - LAND SURVEYORS

202 WEST STREET JOHNSON CREEK, WI 53038 (920) 699-3305

GRADE DETAIL

FOR LOT 82 OF VICTORIA STATION III, AND BEING A PART OF THE SE 1/4 OF THE NORTHWEST QUARTER AND NE 1/4 OF THE SOUTHWEST QUARTER OF SECTION 1, TOWN 7 NORTH, RANGE 19 EAST, CITY OF PEWAUKEE, WAUKESHA COUNTY, WISCONSIN.

L2 = S 19°-30'-17" E 49.11'

**CONDITIONALLY
APPROVED**

PEWAUKEE DEPARTMENTS
ZONING ADMINISTRATION

SIGN

DATE

BUILDING SERVICES

SIGN

DATE

ENGINEERING DEPARTMENT

3/28/15

DATE

LOT 81

LOT 82
17,091 SQ. FT.
0.3923 ACRES

PROPOSED
BUILDING

PROPOSED
DRIVEWAY

PROPOSED
WALK AREA

PROPOSED
TOP OF FOUNDATION

PROPOSED
GARAGE FLOOR EL

PROPOSED
FINAL YARD GRADE

PROPOSED
TOP OF FOOTING

DRIVEWAY SLOPE

(ASSUMING 9' WALL - CHECK PLAN)

BEARINGS ARE REFERENCED TO THE NORTH LINE OF
THE SOUTHWEST QUARTER OF SECTION 01-07-18
WHICH IS ASSUMED TO BEAR S 88°-35'-01" E.

40' 0 40'

NOTE: EXCAVATOR AND MASON MUST VERIFY AT LEAST TWO BENCHMARKS SHOWN ABOVE.

LEGEND: These standard symbols may
be found in the drawing.

Lot Corner (Found) w/desc.

Man Hole

Utility Pedestal

Water Valve

Catch Basin

Proposed Electric Meter

Proposed Gas Meter

Traffic Sign

Lateral End

Offset Stake

Platted Utility Easement

Building Setback Line

Proposed Silt Fence

Proposed Contours

Existing Contours

PROJECT: 28-082

BUILDER: Tim O'Brien Homes

N27 W24075 Paul Ct.

Suite 100

Pewaukee, WI 53072

Ph: (262) 542-5750

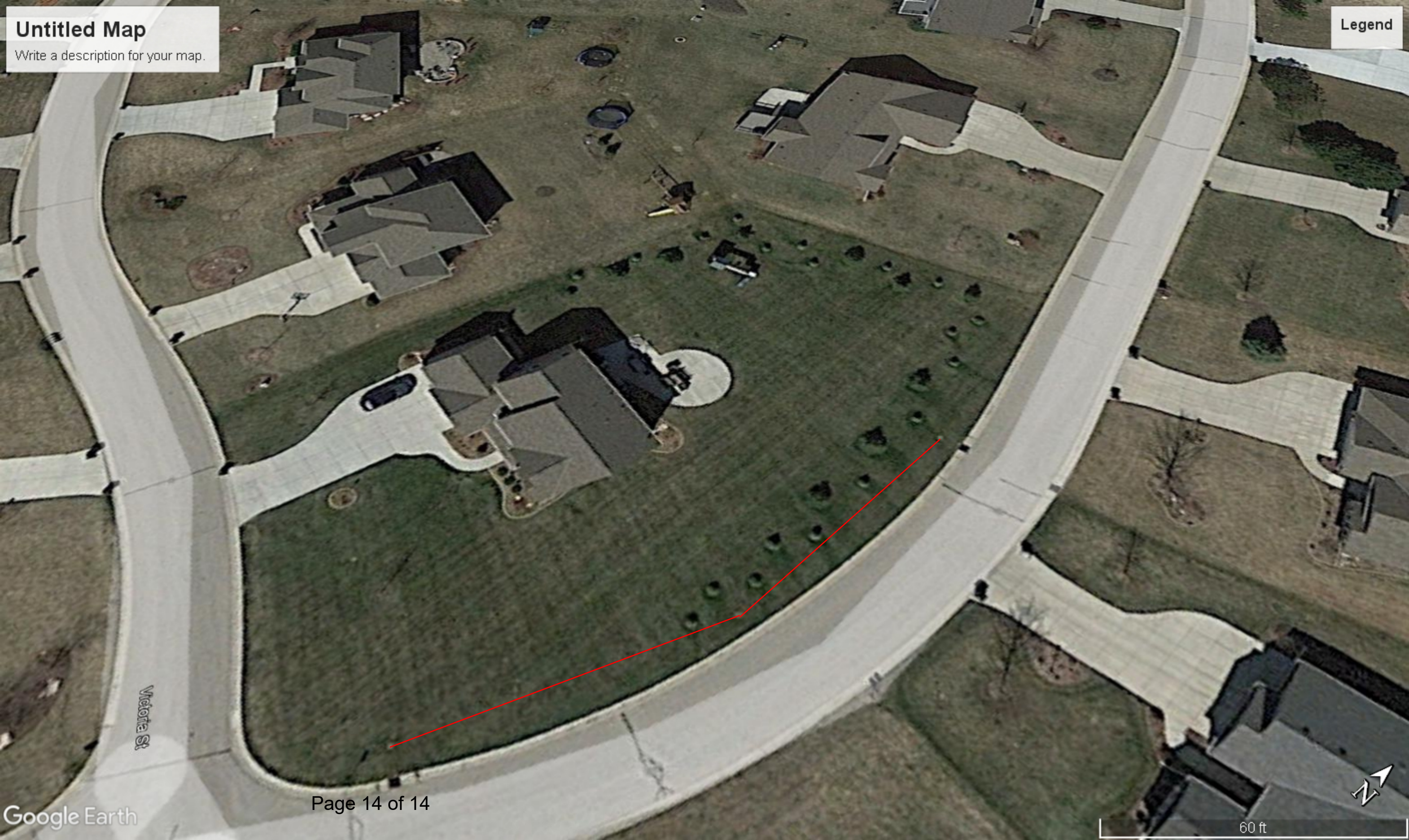
Fax: (262) 542-9780

3/17/15

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PEWAUKEE COMPANIES

C:\Holland&Thomas\150117.dwg; Drawn By: NLH; Checked By: SDT; 03-04-15.



Victoria St