

**JS CHISUM LAND, LLC  
RED HAWK FARMS SECOND ADDITION  
DEVELOPER'S AGREEMENT**

This Agreement made this \_\_\_day of June, 2022, between **JS Chisum Land, LLC**, a Wisconsin Limited Liability Company, hereinafter called "Developer" and the **City of Milton**, a Municipal Corporation of the State of Wisconsin, located in Rock Counties, hereinafter called the "City."

WHEREAS, Developer has purchased approximately 34.6 acres of land (the "Land") which is legally described as follows:

PT SW1/4  
COM W1/4 COR, S 282.93' TO SW COR  
RED HAWK FARMS 1ST ADD FOR POB;  
E ALG S LN PLAT 141.98', S 40.38',  
E ALG S LN PLAT 1608.20', N 30',  
E 130', TO W LN RED HAWK FARMS PLAT,  
S 270' TO SW COR OL 1 OF SAID PLAT,  
S 556.14', SW 419.06', NW 252.04',  
NW 1739.54', TO W LN SW1/4,  
N 355.60' TO POB

WHEREAS, Developer desires to subdivide and develop the Land for residential purposes, which development is to be known as Red Hawk Farms Second Addition (the "Subdivision"); and

WHEREAS, the Land is presently zoned R-2 Residential District Two in the City of Milton;  
and

WHEREAS, Developer has filed a Plat with the City to subdivide approximately 4.94 acres of land into 12 residential lots;  
and

WHEREAS, the Plan Commission of the City has recommended to the Common Council of the City that the proposed Subdivision of the above-described Land be given approval when the final plat thereof, substantially in the form attached hereto as Exhibit A, has been presented to the Plan Commission and the Common Council on the condition that the Developer and City enter into an agreement relative to the manner and method by which the Land is to be developed; and

WHEREAS, City has expressed the need to expand the residential base of the City to meet the needs of its residents and those wishing to become residents, and promote growth; and

WHEREAS, the installation and development of certain infrastructure in and on the subject property of Developer as described above is necessary for developing said property; and

WHEREAS, Developer agrees to develop the Land as herein described in accordance with this Agreement.

NOW, THEREFORE, in consideration of the Common Council of the City granting approval of a plat of the above-described Land, the Developer agrees to subdivide and develop the Land as follows:

SECTION I. Improvements.

A. Public Streets. The Developer hereby agrees:

1. To grade and surface all streets in the Subdivision in accordance with the plat of said subdivision and the plans and specifications on file with the City Clerk's office as well as all applicable City ordinances, specifications, Regulations, and guidelines for the construction of roads in the City of Milton and as reasonably approved by the City Engineer. All streets are to be constructed with curb and gutter.
2. The streets will be completed and presented for preliminary acceptance by the City through installation of road base, curbs and gutters, before any building permits are issued.
3. That the first lift of asphalt of the streets will be completed and presented to the City no later than one year after the initial commencement of road and street work or as extended by the City Council.
4. The final lift of asphalt of the streets will be completed and presented for acceptance by the City after at least one winter season, but not later than two years after the initial commencement of construction of the streets, unless extended by the Common Council.
5. To furnish "as-built" plans of all streets pursuant to the specifications on file with the City Clerk upon completion and acceptance thereof.
6. Developer shall maintain streets until accepted by resolution, adopted by the Common Council of the City of Milton, which acceptance may not be unreasonably delayed and which shall be done in accordance with Section II(A).

B. Sanitary Sewer. The Developer hereby agrees:

1. To construct, furnish, install, and provide a complete sewerage system throughout the entire Subdivision all in accordance with the plans and specifications, on file in the City Clerk's office and all applicable Federal, State and City of Milton ordinances, specifications, regulations and guidelines for the construction of sewerage systems in the City of Milton and as reasonably approved by the City Engineer.
2. To clean all sanitary sewers prior to acceptance of the improvements and issuance of building permits by the City of Milton.  
  
To furnish as-built plans of the entire system including locations of laterals at the main and ten (10) feet beyond the lot lines, pursuant to specifications of the City of Milton.
4. To deflection test and low pressure air test the entire sanitary sewer collection system, repair any defects as determined by the City Engineer, prior to issuance of building permits and acceptance of the improvements by the City.

5. To televise the sanitary sewer system; repair any defects as determined by the City Engineer and supply a digital copy of the video to the City of Milton prior to issuance of building permits and acceptance of the improvements by the City of Milton.
6. That no building permits shall be issued until the sanitary sewer system has been completed and dedicated to and accepted by the City of Milton.

C. Water. The Developer hereby agrees:

1. To construct, install, furnish, and provide a complete system of water distribution throughout the entire Subdivision, in accordance with the plans and specifications 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 of Milton and as reasonably approved by the City Engineer.
2. To furnish as-built plans of the entire system including hydrant valve locations and locations of laterals at the main and to ten (10) feet beyond the lot lines, pursuant to specifications approved by the City Engineer.
3. To pressure test, leakage test and obtain a clean water sample of the entire water system, repair any defects as determined by the City Engineer, prior to issuance of building permits and acceptance of the improvements by the City.
4. The final plat calls for the installation 2-inch blow offs at the end of various water mains which will be extended in the future. The developer shall remove these blow offs with the development of subsequent phases, or shall replace the blow off valves with permanent hydrants in the event that no subsequent phase of development occurs within 3-years of the recording of the final plat.
5. That no building permits shall be issued until the water system has been completed and dedicated to and accepted by the City.

D. Surface Water Drainage. The Developer hereby agrees:

1. To construct, install, furnish, and provide adequate facilities for storm and surface water drainage throughout the entire Subdivision and grading plan, in accordance with the plans and specifications on file in the City Clerk's office and all applicable Federal, State, and City ordinances, specifications, regulations and guidelines for the construction of storm and surface water drainage systems in the City and subject to the reasonable approval of the City Engineer.
2. That site grading and construction of surface and storm water drainage facilities will be completed and accepted by the City prior to any building permits being issued.

3. To provide facilities to transmit the existing surface drainage across the Subdivision which shall be designed to accommodate the anticipated storm water flows resulting from development of the adjacent properties
4. Developer further agrees to provide proper facilities to transmit the surface drainage from the Subdivision to a stream, waterway or dedicated easement that has adequate capacity to transmit the anticipated flows from the Subdivision and adjacent property.
4. To maintain streets free from mud and dirt from construction of the Subdivision.
5. That the City retains the right to require Developer to install additional storm and surface water drainage measures and erosion control measures as needed in accordance with generally accepted engineering standards prior to acceptance by the City of the storm and surface water drainage improvements.
6. That in consideration of Developer's performance of the obligations of this paragraph D, the City will waive its standard storm sewer assessment for the Subdivision.
7. The City encourages the use of native plantings in the construction of the storm and surface water drainage facilities required in this paragraph D. Developer agrees to utilize to the extent reasonably possible such native plantings in a natural variety of species for such facilities subject to the review and acceptance of same by the City Engineer.

E. Landscaping. The Developer hereby agrees:

1. To preserve to the maximum extent possible existing trees, shrubbery, vines, and grasses not actually lying in public roadways, drainageways, building foundation sites, private driveways, soil absorption waste disposal areas, paths, and trails by use of sound conservation practices.
2. To remove and lawfully dispose of all barns, outbuildings, destroyed trees, bush, tree trunks, shrubs, and other natural growth and all left over construction materials, construction debris and rubbish. The Developer shall not bury any of the above in any portion of this Subdivision.

F. Street Lamps. The Developer shall have the option at its expense to install a street lighting system within the Subdivision subject to the reasonable approval of the City. If the Developer elects not to install the street lighting system, the City shall do so and Developer shall pay any of the City's costs as charged by the utility thereof within thirty (30) days of billing.

G. Grading, Erosion and Silt Control. The Developer hereby agrees:

1. Prior to commencing site grading, to submit for approval and execution by the City an Erosion and Silt Control Plan. The plan shall provide sufficient control of the site, to prevent siltation downstream from the site. The Developer shall provide to the City written certification from the Developer's Engineer that the plan, in its execution, shall meet all Federal, State, County and local regulations, guidelines, specifications, laws and ordinances.
2. To cause all grading, excavation, open cuts, and site slopes and other land surface disturbances to be mulched, seeded, sodded or otherwise protected so that erosion, siltation, sedimentation and washing are prevented in accordance with the plans and specifications on file with the City Clerk.
3. The Developer shall immediately place effective erosion control procedures along downslope areas and along sideslope areas as required to prevent or reduce erosion where erosion during construction will result in a loss of soil to waters of the state, public sewer inlets or off-site. During the period of construction at a site, all erosion control procedures necessary to meet the performance standards of Wisconsin Administrative Code SPS Section 321.125 shall be properly implemented, installed and maintained by the

Developer, the building permits applicant and the subsequent landowner. If erosion occurs after building construction activities have ceased, some or all of the erosion control procedures shall be maintained until the site has been stabilized.

4. That all disturbed areas shall be restored to the reasonable satisfaction of the City.
5. This requirement shall apply to the construction of sewer main, water main, public streets and private streets and storm water management facilities. Further this requirement shall remain in effect until the completion of the above-named improvements and acceptance of the sewer and water main and public streets by the City.

H. Sidewalks. Developer hereby agrees:

1. To construct, furnish and install concrete sidewalks in the street right of way of all lots in accordance with plans and specifications on file with the City Clerk's office as well as all applicable City Ordinances, specifications, regulations and guidelines for the construction of sidewalks, and as reasonably approved by the City Engineer.
2. The Developer acknowledges that the City requires sidewalks be installed in the proposed land division in the future. Sidewalk locations recommended by the Plan Commission are indicated on the final plat. Sidewalks so designated on the approved final plat or required per City ordinance shall be constructed prior to issuance of an occupancy permit for each parcel in the plat, except that, if construction of a residence begins after October 1 or closings of homes occur after

November 16th, sidewalks shall be constructed by the following July 15th, and an occupancy permit may be issued in the interim. The July 15th deadline shall not apply to lots for which an occupancy permit has not been requested by said date. Further, the Developer must install all sidewalk on a block face where sidewalk is specified within two years of when 80 percent of the lots on the block face are occupied by completed structures.

3. Developer remains obligated to construct, furnish, install and provide sidewalks as specified in this Agreement and the plans and specifications on file with the City Clerk's office even if Developer enters into agreements with lot purchasers obligating lot purchasers to install the sidewalks.
- H. Plans and Specifications. All reference to the plans and specifications on file with the City Clerk for improvements specified in this section shall mean those plans and specifications submitted by the Developer, approved by the City Engineer and reviewed and approved by the Plan Commission and the Common Council. All as-built drawings shall be submitted by Developer both in paper and digital form.
- I.
- I. Advertising Signs. Developer agrees that any temporary signs placed anywhere in the subdivision to advertise the subdivision shall comply with all applicable provisions of the City of Milton Code of Ordinances, including, but not limited to the provisions of Article V. Division 4, Subdivision IV. of the Zoning Ordinance of the City of Milton.
- II.
- J. Construction Trailers. Construction trailers may be located at the Subdivision on a temporary basis during the construction of the above-described improvements.

## SECTION II. Dedication.

A. Subject to all of the other provisions of this Agreement and the Exhibits hereto attached, the Developer shall, without charge to the City, upon completion of all of the above-described improvements, unconditionally give, grant, convey and fully dedicate the same to the City, its successors an assigns, forever, free and clear of all encumbrances whatever, together with, all structures, mains, conduits, pipes, lines, equipment and appurtenances which may in any way be part of or pertain to such improvements and together with any and all necessary easements for access thereto. After such dedication and acceptance by the City, the City shall be responsible for all maintenance and improvements to said facilities and shall have the right to connect or integrate other sewer or water facilities with those facilities provided hereunder as the City decides, with no payment or award to, or consent required of, the Developer. The Developer agrees to file with the City an Irrevocable Letter of Credit from a lending institution approved by the City issued in favor of the City, prior to the commencement of construction, in an amount equal to the costs of all improvements plus ten percent for each phase in a form reasonably approved by the City Engineer and City Attorney. No construction shall commence until such a Letter of Credit is on file with the City. The Letter of Credit shall be in an amount sufficient to pay any costs incurred by the City for completion of all improvements in each applicable phase (see Section I) to include all survey monuments in accordance with Section III herein. The Letter of Credit shall be released when the

requirements of this Developer's Agreement are fulfilled or within fourteen months after final completion of improvements, whichever comes later. The Developer agrees to provide the City Engineer with the Statement of Costs discussed in Section III, which shall be approved by the City Engineer prior to furnishing the Letter of Credit. Dedication shall not constitute acceptance of any Improvement by the City. All improvements will be accepted by the City by separate resolution at such time as said improvements are in acceptable form and conform to City specifications after the issuance of an appropriate letter of acceptance by the City Engineer. The City agrees to accept or reject any improvements within forty-five (45) days after the same are submitted to the City unless otherwise mutually agreed. The Developer agrees that the Public Improvements will not be accepted by the City until all outstanding charges to be paid by the Developer under the Ordinances have been paid in full and affidavits and lien waivers are received by the City indicating that all contractors (and subcontractors, laborers, materialmen, etc.) providing work, services or materials in connection with the Public Improvements have been paid in full for such work, services and materials.

B. If at any time:

1. The Developer is in default of any aspect of this Agreement following its right to cure as set forth below, or
2. The Developer does not complete the installation of improvements in a phase within one year after the commencement of the construction of the improvements (except for the final lift of asphalt as provided in Section I), unless extended by agreement or action of the Common Council, or
3. The Developer fails to maintain an adequate Letter of Credit with the City to pay the cost of uncompleted improvements in the subdivision phase, or
4. The Letter of Credit on file with the City is dated to expire within sixty (60) days and in the reasonable judgment of the City Engineer, the improvements will not be accepted by the City within such sixty (60) day period and the same has not been extended, renewed or replaced upon the City's request.

The Developer shall be deemed to be in default and the City shall have the authority to draw upon the Letter of Credit only after the City shall first have provided to Developer notice of such default and Developer shall fail to cure such default within thirty (30) days after receipt of such notice.

The lending institution providing the Letter of Credit shall pay to the City any draw upon demand, 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 special assessments in the amount of said completion, or satisfaction cost, upon each and every lot in the applicable subdivision phase payable in the next succeeding tax roll.



C. The amount of the Letter of Credit will be reduced by resolution of the Common Council in an amount reasonably proportionate to the cost of the improvements that are paid for by the Developer, provided that the remaining Letter of Credit is sufficient to secure payment for any remaining improvements required for a phase. The Developer agrees to provide the City Engineer with Statement of Costs of all improvements for all costs associated with the completion of the phase, which costs shall be approved by the City Engineer prior to the City agreeing to reduce the Letter of Credit. The City acknowledges that the Developer will not pay bills for any Improvement work without the approval of such work by the City. The City agrees to use its best efforts to inspect such work on a timely basis.

### SECTION III. Miscellaneous Requirements.

A. Survey Monuments. The Developer hereby agrees to properly place and install all survey or other monuments required by statute or ordinance, prior to final plat approval. Interior piping shall be installed after the improvements are completed.

B. Park Land Dedication. Every developer shall be required to dedicate land to the city for public sites, parks and/or open spaces, or make payments in lieu of such land. If the master plan, master neighborhood plan, or official map indicates that public lands are required for the land within the proposed land division, the developer shall dedicate such land to the city. Lands dedicated for the purposes of streets, greenbelts, or other stormwater management facilities shall not be considered part of, or replace the requirement to dedicate lands for public sites, parks, and open spaces. The city shall not compensate the developer for any land so dedicated.

If such dedications for public sites, parks, and open spaces is less than 5% of the total land within the proposed land division, the developer shall pay to the city a sum equal to 3% of the equalized value of all land within the total proposed land division area less any land so dedicated. The value shall be reasonably established by the City Assessor as the average per square-foot of equalized value of all residential land within the city at the time of the land division (\$1.32 in 2021). The city may accept, in lieu of such sum, land within the proposed land division of equal value.

The payment in lieu of parkland dedication for this subdivision would be \$8,521.38. As part of the final plat approval, the developer shall indicate which, if any area, will be dedicated as parkland which could affect the final amount owed under this subsection.

C. Grade. The Developer hereby agrees to furnish to the City Engineer a copy of the plan showing the street grades in front of each lot and the recommended top of foundation wall and finished yard grade. This information shall be provided prior to the issuance of building permits.

D. Reimbursement of Engineering, Inspection, Administrative and Miscellaneous Costs.

- 1 The **DEVELOPER** agrees to reimburse the **CITY** for the following:
- a. Any reasonable and necessary costs and expenses for engineering and related inspections performed by outside consultants, or in the event the City Engineer shall provide said engineering and inspections, the **DEVELOPER** shall reimburse the **CITY** for the City Engineer's time at the rate of \$85.00/hour. For purposes of this Agreement and except for the hourly rate of the City Engineer, engineering and inspection fees shall not include any salaries or wages for **CITY** employees or any administration expenses of the **CITY**.
  - b. Inspection and payout estimates shall be performed and prepared by the **CITY**. The final cost shall be based on the actual and reasonable cost of the **CITY** when all improvements are installed and accepted by the **CITY**.
  - c. Legal costs shall be based on the statements of the City Attorney with no overhead added by the City.
- E. Removal of Topsoil. The Developer agrees to submit a plan for the maintenance and disposition of on site topsoil. The Developer agrees that topsoil can be only removed from the site without City permission once all lots have been restored to provide for the establishment of a residential lawn.
- F. Digital File of Final Plat. Developer agrees to furnish the City with a digital file of the drawing of the final plat, and that the City may make any use it believes is appropriate of this file, including, but not limited to, furnishing this file to Rock County to update the digital parcel map of the City
- G. Statement of Costs. Developer agrees to furnish the City with a statement of the total costs of public improvements and dedicated land in the subdivision in each of the following categories:
1. Streets, sidewalks and bicycle/pedestrian paths,
  2. Sanitary sewers,
  3. Water distribution system,
  4. Surface water drainage system.

The City must collect this information for its accounting records and information it must report to State agencies such as the Public Service Commission.

- I. Further, Developer agrees that the minimum elevation of the lowest window opening in the foundation for any structure built on any lots shall be at the height indicated for each such lot on the final plat:

#### SECTION IV. Roads, Sanitary Sewer, Water, and Storm Water Correction.

The Developer shall correct defects due to faulty materials, or workmanship in any public improvement which appear within a period of six (6) months from the date of final completion of improvements, and shall pay for any damages resulting therefrom to City property. The City may refuse to accept the improvements unless and until they conform to generally accepted industry standards. All guarantees or warranties for materials or workmanship which extend beyond the aforementioned guarantee period shall be assigned by the Developer to the City as beneficiary.

#### SECTION V. Method of Improvement.

The Developer hereby agrees to engage contractors for all work included in this Agreement who are qualified to perform the work and who shall sign Exhibit B and file same with the City Clerk. The Developer further agrees to use materials and make the various installations in accordance with the approved plans and specifications made a part of this Agreement by reference and including those standard specifications as the City may have adopted at the time of construction.

#### SECTION VI. Issuance of Permits.

The following permits will not be issued for a phase until the items addressed by each permit necessary to serve that phase are completed and accepted by the City.

- A. No building permit shall be issued until the public sanitary sewer and water systems are completed and accepted by the City.
- B. No building permits shall be issued until surface and storm water drainage systems are completed and accepted by the City.
- C. No building permits shall be issued until the rough grading plan has been submitted and accepted by the City.
- D. No building permit for a lot shall be issued until payment of the park Development fee, if applicable.
- E. No building permit shall be issued until the road base, curbs and gutters on the streets have been installed and preliminarily accepted by the City.
- F. No building permits shall be issued until the sanitary sewer system is televised and all repairs to the defects to the same are made, and the City is supplied a digital copy of the sanitary sewer system and all sewer lines are cleaned.
- G. Final acceptance of the improvements permitted shall not be given until all as-built plans have been submitted and approved by the City.

- H. No occupancy permits be issued until all private utilities have been installed and accepted by the City.
- I. No building permits shall be issued until removal of unwanted items, including buildings, have been completed.
- J. No occupancy permit shall be issued by the City for any lot until the first lift of asphalt has been installed on the street adjoining said lot.

SECTION VII. Plat Approval.

The City shall, upon receipt of the Letter of Credit, approve the final plat of the Subdivision and cause the same to be signed, acknowledged, and delivered to Developer.

SECTION VIII. City Responsibility.

The City will perform no repairs, maintenance or snow removal on the improvements and easements until accepted by the City. The City agrees to maintain any easements once they have been accepted by the City. Trash and garbage removal service will be provided by the City upon the issuance of the first occupancy permit.

SECTION X. General Indemnity.

In addition to, and not to the exclusion or prejudice of, any provisions of this Agreement, or documents incorporated herein by reference, the Developer shall indemnify and save harmless the City, its trustees, officers, agent, independent contractors, and employees, and shall defend the same from and against any and all liability, claims, losses, damages, interests, action, suites, judgment, costs, expenses, attorney fees and the like to whomever owned and by whomever and whenever brought or maintained which may in any manner result from or arise in the cause of, out of, or as a result of the following acts or omissions of the Developer:

- A. Negligent performance of this Agreement.
- B. Negligent construction or operation of improvements covered under this Agreement.
- C. Violation of any law or ordinance.
- D. The infringement of any patent trademark, trade name or copyright.
- E. Use of road improvements prior to their formal dedication to their dedication to the City.
- F. In any case where judgment is recovered against the City for any one or more of the foregoing acts or omissions of Developer, if notice and opportunity to defend has

been delivered to the Developer of the pendency of the suit, within ten (10) days after the City has been served with the same, the judgment shall be conclusive of the Developer and not only as to the amount of damages, but also as its liability to the City, provided such judgment has become final and all rights of appeal have been exhausted, or if no appeal has been filed, all appeal periods have expired.

- G. During any period of construction of the public improvements required herein, the Developer shall name as additional insured on its general liability insurance, the City, its trustees, officers, agents, employees and independent contractors hired by the City (including without limitation the City Engineer) to perform services with respect to this Subdivision and give the City evidence of the same upon request by the City.

The Developer shall furnish a completed Exhibit B from all contractors prior to start of construction.

#### SECTION XI. Reservation of Rights.

Subject to any right to cure by the Developer set forth herein, the City reserves the right to withhold issuance of any and all building permits, if Developer are in violation of this Agreement.

Heirs and Assigns. This Agreement is binding upon the Developer, owners, their respective heirs, successors and assigns, and any and all future owners of the subject lands.

#### SECTION XII. General Conditions and Regulations.

- A. All provisions of the City's ordinances are incorporated herein by reference, and all such provisions shall bind the parties hereto and be part of this Agreement as fully as if set forth at length herein. This Agreement and all work and improvements hereunder shall be performed and carried out in strict accordance with and subject to the provisions of said ordinances.
- B. Developer shall not assign this Agreement without the written consent of the City.

#### SECTION XIII. Phasing and Development.

The City agrees to allow the Developer to complete the installation of all improvements in the subdivision in phases as indicated below. Provided, however, that improvements which are not physically located within a specific phase which are necessary to serve the lots in that phase shall be installed as part of the improvements for that phase.

Phasing of the subdivision shall be as follows:

Phase 1: 12caj Lots

All surface water drainage improvements required by section I.D.

Subsequent phases of improvements will be addressed in amendments to this Agreement. No development of subsequent phases will be permitted without such amendments.

SECTION XIV. Amendments.

The City and Developer, by mutual consent, may amend the Developer's Agreement, at any regularly scheduled meeting of the City Common Council, if properly noticed pursuant to the open meeting law. The City shall not, however, consent to an amendment until after first having received a recommendation from the City Planning Commission.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals on the date and year first above written.

**DEVELOPER:  
JS CHISUM LAND, LLC**

By: \_\_\_\_\_  
Mark E. Robinson, Member

STATE OF WISCONSIN     )  
  ) SS  
COUNTY OF ROCK        )

Personally came before me this \_\_\_\_\_ day of August, 2022 the above-named \_\_\_\_\_ to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public, Rock County, WI  
My Commission: \_\_\_\_\_

The obligations of Developer as stated above in this Developer's Agreement are hereby personally guaranteed by the undersigned who state that they fully understand and accept the responsibilities of Developer

\_\_\_\_\_  
\_\_\_\_\_

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Accepted Pursuant to Resolution adopted by the Common Council of the City of Milton this  
\_\_\_ day of June, 2022.

**CITY OF MILTON**

By: \_\_\_\_\_  
Anissa Welch, Mayor

ATTEST:

By: \_\_\_\_\_  
Jenny Salvo, City Clerk

Approved as to form:

Attorney Mark A. Schroeder  
City Attorney, City of Milton.







**EXHIBIT B**

**AGREEMENT AS TO LIABILITY, INDEMNITY AND INSURANCE**

DATE: \_\_\_\_\_

1. FOR VALUABLE CONSIDERATION, \_\_\_\_\_ (CONTRACTOR), hereinafter referred to as "Contractor," acknowledges that the work to be performed for construction of the underground Utilities and/or Streets (the "Work") in \_\_\_\_\_ located in the City of Milton, hereinafter referred to as "City," will be conducted in accordance with the Standard Specifications for Sewer and Water Construction and/or Street Construction in Wisconsin, latest edition, City of Milton project plans and specifications as reviewed by the City's Engineers and as approved by the City and any other agencies having jurisdiction.

2. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and will provide protection from claims set forth below which may arise out of or result from CONTRACTOR'S performance furnishing of the Work and CONTRACTOR'S other obligations under the Contract Documents, for the Work whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.

- A. Claims under worker's compensation, disability benefits and other similar employee benefits acts;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR'S employee;
- C. Claims for damages because of bodily injury, sickness, or disease, or death of any person other than CONTRACTOR'S employees;
- D. Claims for damages insured by customary personal injury liability coverage which are sustained: (1) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (2) by any other person for any other reason;
- E. Claims for damages, other than the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle

The policies of insurance so required by this paragraph 2 above to be purchased and maintained shall:

With respect to insurance required by paragraph 2, inclusive, include as additional insured (subject to any customary exclusion in respect of professional liability) City and City's Engineers and include coverage for the respective officers and employees of all such additional insureds.

3. Indemnification. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless City and City's Engineers, and the officers, directors and employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including, but not limited to all fees and charges for engineers, architects, attorneys and other professionals and all court or arbitration or other dispute, resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claims, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable regardless of whether or not caused in part by any negligence or omission of a person or entity indemnification hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

4. In any and all claims against City or City's Engineers or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under worker's compensation acts, disability benefit acts or other employee benefit acts.

5. The indemnification obligations of CONTRACTOR under paragraph 3 shall not extend to that portion of liability of City's Engineers, and its officers, directors, employees or agents caused by the professional negligence, errors, or omissions of any of them.

6. CONTRACTOR further understands and agrees that the City, its officers, agents, employees and City's Engineers are not responsible for the CONTRACTOR'S means and methods of construction and that the CONTRACTOR has the sole responsibility and liability for project safety.

**Dated:**

\_\_\_\_\_

(Name)

By: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary