



VILLAGE COUNCIL PACKET

Special Meeting

Monday, April 3, 2023

Prepared by:

Crystal Budde, Village Clerk

Brady Selner, Village Administrator

MEETING AGENDA

Village Council of the Village of Shelby
Special Meeting

Monday, April 3, 2023, 6:30 P.M.

641 N. State Street (Shelby High School Library)
Shelby, MI 49455



Agenda Topics:

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Additions to Agenda
5. Public Participation:
6. Special Meeting Business:
 - a) Wholesale Water Agreement **AR**
 - b) Shelby Ridge Development Agreement **D**
7. Public Participation:
8. Adjournment:

AR-Action Requested
D-Discussion Item

NEXT MEETING: **April 10, 2023**
NEXT RESOLUTION: 14-23
NEXT PROCLAMATION: 01-23
NEXT ORDINANCE: 01-23



Village Council
Item Cover Page

Meeting Date: April 3, 2023
Agenda Item: Wholesale Water Agreement
Budget Impact: \$24,600 increase in Water Fund (591)
Recommendation: Approve Wholesale Water Agreement
Staff Contact: Brady Selner, Village Administrator

Background:

After several years of discussion and consideration, the proposed water main extension to Oceana Acres has received the necessary funding to proceed, contingent on approval of a Wholesale Water Agreement between the Village of Shelby and Shelby Township. Direction received from the July 12, 2021, Village Council meeting was used as the guide to develop the draft agreement. The Water & Sanitation Committee met to discuss the agreement on three different occasions and Village Council discussed the Agreement on March 13, 2023. The Village Council wanted to seek public input from the community before acting.

In summary, the agreement provides the parameters for the Village of Shelby to supply water to Shelby Township on a wholesale basis. Shelby Township will be responsible for construction, operation, maintenance, and future replacement of the water main. The Township has indicated they would look to contract with the Village of Shelby DPW to operate and maintain the water main on a contractual basis. The parameters of that relationship would need to be spelled out in an additional agreement. Alternatively, Shelby Township would hire a different third-party to meet the necessary operating requirements for a municipal water system.

Supporting Documents:

FAQ Document
Draft Wholesale Water Agreement
Resolution No. 13-23

Motion _____ by seconded by _____ to adopt Resolution No. 13-23.

Wholesale Water Agreement FAQs

Which municipality will own the new water main?

Shelby Township will own the new water main and be completely responsible for the construction, operation, maintenance, future replacement, and billing of end user customers. Shelby Township will be responsible to ensure all EGLE requirements are met for operating a water system.

Will the addition of Oceana Acres reduce the water capacity for Village residents?

Although the technical answer is yes, it will virtually have no impact on the capacity of water for Village residents. Under the draft agreement, the maximum amount of water Shelby Township could purchase is 1,111,040 gallons per month. If they purchased up to the maximum, it would increase the Village's firm capacity by 1.80%. Moving the existing firm capacity of 13.02% to 14.82%. Additional infrastructure would be needed once we approach 80% of our firm capacity.

Is there a risk of contamination due to the extension of water main?

There is no additional risk of contamination with the addition of water main. A backflow preventer will be installed at the connection point. If pressure reaches a certain PSI in the Township owned water main the backflow preventer would automatically close. The backflow preventer could also be closed for any other reason deemed necessary to prevent contamination with the Village of Shelby water supply.

How much will Shelby Township residents pay for water?

Under the draft agreement, the Village will charge the Township 1.25x the commodity rate for water charged to Village residents. It is up to Shelby Township to determine how much it will charge its customers.

Will others be allowed to connect to the water main after construction?

Under the draft Wholesale Water Agreement, others are permitted to connect to the water main, but only after Village Council approval. No matter the additional users, the Township is subject to the 1,111,040 gallons per month maximum.

How will this affect me as a Village resident?

As a Village resident, you will not notice a difference in the water supply or the service provided. Under the draft Wholesale Water Agreement, Shelby Township is responsible for the operation. If an agreement is considered to contract with the Village of Shelby DPW to provide this operational service to the Township water system, special attention be needed to ensure customer service for Village residents is not diminished.

How is the water main being paid for?

The water main is being funded through a Michigan Economic Development Corporation (MEDC) grant, a Michigan Department of Agriculture and Rural Development (MDARD) grant, and a financial contribution from EGLE. The project is 100% funded through state and federal dollars.

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF SHELBY
AND THE TOWNSHIP OF SHELBY TO PROVIDE WHOLESALE WATER**

This Intergovernmental Agreement (“Agreement” is made between the VILLAGE OF SHELBY, a Michigan general law village, whose address is 218 North Michigan Avenue, Shelby, Michigan (“Village”), and the TOWNSHIP OF SHELBY, a Michigan general law township, whose address is 204 North Michigan Avenue, Shelby, Michigan (“Shelby Township”). In this Agreement, either the Village and/or Shelby Township may also be referred to individually as a “Party” or jointly as “Parties”.

RECITALS

WHEREAS, the Parties enter into this Agreement pursuant to Article 7, Section 28, of the Michigan Constitution of 1963; the Intergovernmental Contracts Between Municipal Corporations Act, Public Act 35 of 1951, MCL 124.31 *et seq.*; the Natural Resources and Environmental Protection Act, Public Act 451 of 1994, Part 43, MCL 324.4301 *et seq.*; the Urban Cooperation Act of 1967, Public Act 7 of 1967, MCL 124.501 *et seq.*; and the Water Furnished Outside Territorial Limits Act, Public Act 34 of 1917, MCL 123.141 *et seq.*;

WHEREAS, Article 7, Section 28, of the Michigan Constitution of 1963, authorizes the Village and Shelby Township to enter into contractual undertakings or agreements with one another for the joint administration of any of the functions or powers which each would have the power to perform separately; and

WHEREAS, MCL 124.501 *et seq.*, authorizes a public agency to exercise jointly with another public agency any power, privilege, or authority that the agencies share in common and that each might exercise separately; and

WHEREAS, both the Village and Shelby Township meet the statutory definition of a local governmental unit and public agency as defined by MCL 124.501 *et seq.*,

WHEREAS, both the Village and Shelby Township are authorized to operate water systems and provide water to their constituents and therefore each possess the power to provide these functions or powers separately; and

WHEREAS, MCL 123.141 *et seq.*, provides that the Village is authorized by law to sell water outside of its territorial limits and may contract for the sale of water with Shelby Township; and

WHEREAS, the Village is surrounded by Shelby Township, and Shelby Township does not provide water service to its inhabitants;

WHEREAS, Shelby Township has requested the Village to provide potable water to Shelby Township for certain properties North of the Village limits located along South Oceana Drive and West Baseline Road as depicted and described in the Preliminary Engineering Report, which is

attached hereto as Exhibit A, as authorized by this Agreement and any future amendments thereto, and Shelby Township has the authority to enter into this Agreement pursuant to Resolution No. _____, duly passed by its governing body on _____, 2022;

WHEREAS, the Village is willing to provide water to Shelby Township and is authorized to enter into this Agreement pursuant to Resolution No. _____, duly passed by its governing body on _____, 2022;

ARTICLE I
INTRODUCTORY PROVISIONS

- 1.1 Adoption of Preamble and Recitals. All of the matters stated in the recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein, provided that in cases of conflict, provisions of this Agreement shall control over matters stated in the recitals.
- 1.2 No Effect on Current Contracts. The Parties agree that any prior contracts involving the Village and Shelby Township where the Village is providing water directly to Shelby Township residents shall continue and shall not be affected by the execution of this Agreement, unless expressly set forth herein.
- 1.3 Legal Authority. This Agreement is entered into by the parties pursuant to State law, including, but not limited to:
 - a. Article 7, Section 28, of the Michigan Constitution of 1963.
 - b. Urban Cooperation Act of 1967, Public Act 7 of 1967, MCL 124.501 *et seq.*
 - c. Water Furnished Outside Territorial Limits Act, Public Act 34 of 1917, MCL 123.141 *et seq.*
 - d. Public Act 178 of 1939, MCL 123.161 *et seq.*

ARTICLE II
DEFINITIONS

In addition to the words and terms defined elsewhere herein, the following words and phrases as used in this Agreement shall have the following meanings unless the context or use indicated another or different meaning or intent:

- 2.1 “EGLE” shall mean the Environment, Great Lakes & Energy Department of the State of Michigan and any successor department(s) or agency(s) of the State.
- 2.2 “Force Majeure” shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning,

earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of treated water supply, or on account of any other causes not reasonably within the control of the party claiming such inability.

- 2.3 “Shelby Township” shall mean the Township of Shelby, Oceana County, Michigan.
- 2.4 “Village” shall mean the Village of Shelby, Oceana County, Michigan.

ARTICLE III
SUPPLY OF WATER

- 3.1 Supply of Water. In accordance with the terms and conditions of this Agreement, the Village shall sell, supply, and deliver to Shelby Township on a wholesale basis potable water treated in compliance with standards approved by EGLE for all uses and for all customers now or hereafter located in the Water Service Area. The water sold to Shelby Township in accordance with this Agreement shall be provided on a continuous basis subject to a maximum monthly flow of 1,111,000 gallons of water. Any month in excess of the maximum will incur a 25% surcharge on the gallons of water over the allowable maximum. Water usage under the maximum monthly flow cannot be carried over to future months.
- 3.2 Water Service Area. The Water Service Area shall be along South Oceana Drive from the Village limit proceeding Northerly to West Baseline Road then proceeding to the East to 94th Avenue. Such Water Service Area is described and depicted in Exhibit A. Shelby Township, at its sole cost and expense, shall construct, maintain, and repair, including emergency repairs the water main on South Oceana Drive and West Baseline Road, the proposed Booster Station, and the water lines to nine buildings on West Baseline Road.
- 3.3 Master Water Meter Connection Points. Shelby Township may connect to the Village water main on South Oceana Drive at the Village/Township border. The connection point will be located at 1318 S. Oceana Dr., Shelby, MI 49455 and depicted on as Exhibit A.(-). The point of connection shall be referred to as the “Master Water Meter Connection Point” and draw water therefrom on a continuous basis provided that the proposed volume and pressure of water to be withdrawn and point of connection are (1) in accordance with generally accepted municipal engineering practices, (2) consistent with the Village’s most recent water system reliability study, and (3) without adverse effect to existing, or reasonably expected future, customers of the Village Water System.

At the Master Meter Connection Point, Shelby Township shall provide all necessary equipment to prevent any backflow from the Shelby Township water main to the Village water main.

The Township may sell or provide water to Building 7 through 9 in Shelby Township, into Hart Township for Buildings 1 through 6 and to a to be determined location for two additional residential buildings of similar construction, but to no other municipality and no

other property, without the prior written authority of the Village.

Shelby Township shall install a Master Water Meter at the Master Water Meter Connection Point prior to drawing Village water. The Village shall operate, maintain, repair, and replace the Master Water Meter at Shelby Township's expense. All invoices related to the repair and maintenance of the Master Meter will be paid for by Shelby Township. If requested by Shelby Township or at the discretion of the Village, the Village will conduct accuracy tests regarding monthly water usage at Shelby Township's expense. In the event of inaccurate metering by a Master Water Meter, the Master Water Meter shall be calibrated by the Village and corrected invoices, based on the actual flow of water supplied to Shelby Township, shall be issued to Shelby Township by the Village.

- 3.4 Village Water Mains. All water mains located under a Village road or street located in the Village shall be operated and maintained as an expense of the Village Water System.
- 3.5 Township Water Mains. All water mains and future water main(s) located outside of the Village shall be Shelby Township owned water mains.
- 3.6 Village Charge for Water Sold to Shelby Township.
 - a. Determination of Water Supplied to Shelby Township. The water supplied by the Village to Shelby Township shall be computed by determining the volume of water measured by the Master Water Meters.
 - b. Wholesale Water Rate. The water supplied to Shelby Township shall be paid for by Shelby Township at a rate of 1.25 times the rate charged by the Village to its customers within its corporate limits. The charges for water supply shall be determined using the metered volume of water supplied to Shelby Township.
 - c. Billing Cycle. Except as provided by an addendum to this Agreement, the Village in accordance with its billing cycle for Village customers shall bill Shelby Township monthly in arrears for water supplied to Shelby Township. Should the Village change its billing cycle for its customers to a quarterly basis, then, subject to the approval of Shelby Township in its discretion, Shelby Township will at such time be converted to a quarterly billing basis. Any invoice unpaid after 30 days shall incur a 10% penalty. If the invoice is unpaid after 45 days, the water will be shut off at the Master Meter Connection Point. Shelby Township will be required to pay a \$50 fee to resume service.
- 3.7 Construction and Improvements to Shelby Township Water System. Plans and specifications for all construction of and improvements to the Township Water System, or components thereof, shall be provided to the Village for review prior to the award of any contract or ninety (90) days prior to the commencement of construction, whichever is earlier. Within sixty (60) days from receipt of such plans and specifications, the Village may provide specific written objections to the plans and specifications. Such objections shall be based on (1) generally accepted municipal engineering practices, (2) the Village's

most recent water system reliability study, which is updated every five years, and (3) the effect on existing, or reasonably expected future, customers of the Village Water System. In the event of an objection, the parties' representatives including their respective engineers/consultants shall meet promptly to consider the objection and may agree to modify the plans and specifications to address an adverse impact to the Village Water System resulting from the proposed improvements. In the event the parties are unable to agree on the resolution of the objection(s), the parties shall retain a mutually agreed upon independent engineer/consultant to review and determine the objection, whose decision shall be a recommendation to both parties. Shelby Township shall pay the cost of the independent engineer/consultant for such services and expenses.

This subparagraph shall not apply (1) to any necessary emergency work performed by Shelby Township on the Township Water System or (2) to any change orders that may be sought and/or approved during the course of the work on the improvement, unless the change order would materially change water flows or water pressure for the improvement or would alter plans and specifications of a Master Water Meter Connection Point. However, Shelby Township shall provide the Village with information, plans or drawings of any emergency work that was done and with final as-built drawings of any improvement project which contain the work performed under the approved change orders.

Shelby Township shall be solely responsible for administering its distribution system and collecting payments from its customer(s). Failure to collect from customer(s) is not a basis for failing to pay the Village.

- 3.8 Responsibility for Quality of Water Downstream from Master Water Meter Connection Point. It shall be the responsibility of Shelby Township to maintain the water quality and purity in the Township Water System downstream of the Master Water Meter Connection Point. Shelby Township assumes all liability for any and all damages of any kind, including, but not limited to, injury to property or persons which occur directly or indirectly as a result of impurities being introduced to the water in the Township Water System downstream from a Master Water Meter Connection Point or impure or substandard water being introduced into the Township Water System downstream of the Master Water Meter Connection Point.
- 3.9 Temporary Restriction on Use of Water. If, due to Force Majeure or circumstances beyond the control of the Village, e.g., prolonged dry spells, the capacity of the Village Water System becomes temporarily inadequate for short periods of time to meet the peak demands of all users of water supplied by the Village Water System and if the Village is compelled to impose temporary restrictions on Village residents, e.g., a ban or limit on lawn sprinkling, then Shelby Township shall immediately impose and enforce like restrictions on Township Water System customers located within the Water Service Area.
- 3.10 Emergency Discontinuance. The Village reserves the right to temporarily discontinue the supply of water to any of the Village Water Mains or Village Transmission Mains or other water mains or pipelines within the Village Water System, without notice in times of emergency or whenever the Village shall, upon its determination and after not less than

forty-eight (48) hours' notice to Shelby Township, find it necessary for purposes of testing, repairing, or replacing water mains, including Village Water Mains and Village Water Transmission Mains, meters, including Master Water Meters, or any other component of the Village Water System. No claim for damages for such discontinuance shall be made by Shelby Township.

- 3.11 Operating Liability. The Village will use reasonable diligence to provide and maintain regular and uninterrupted water service to Shelby Township under this Agreement, but does not guarantee uninterrupted service and shall not be liable for any injuries or damages caused by such interruption to Shelby Township, the water customers located in Shelby Township, or any other party caused by defects in original construction, cave-ins, accidents, repairs, contamination, interruptions, water main breaks, water damage, loss of supply or pressure, or any other cause, nor shall the Village be liable to Shelby Township or any water customer located in Shelby Township or other person, firm, or corporation for injuries or damages, of any nature caused by the use of the Village Water System or the Township Water System or by interruptions therein. The Village and Shelby Township agree that the water facilities and service provided under this Agreement are a governmental function, as defined in Public Act No. 170 of 1964, as amended. Neither Shelby Township nor the Village, by entering into this Agreement, waive its governmental immunity or any of its rights and duties imposed by law. Shelby Township and the Village each reserve the right to make decisions hereunder in the exercise of discretion afforded townships and villages under State law.
- 3.12 Adoption of Ordinances. Shelby Township shall promptly enact and thereafter enforce all ordinances and ordinance provisions necessary to facilitate Shelby Township's obligations under this Agreement.
- 3.13 Term of Agreement. This Agreement shall take effect as of the Effective Date and shall continue until terminated by either party upon 1 year's notice, which may not occur prior to January 1, 2038.

ARTICLE IV
GENERAL AND MISCELLANEOUS PROVISIONS

- 4.1 No Third-Party Beneficiary. There shall be no other beneficiary or third-party beneficiary to this Agreement. No remedy is provided or intended by this Agreement to the customers of the parties.
- 4.2 Assignment. This Agreement may not be assigned to another entity by either party without prior written consent of the other party.
- 4.3 Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to its subject matter. This Agreement supersedes and/or replaces all prior oral or written Agreements between the parties.
- 4.4 Severability. In the event any provision of this Agreement is determined to be invalid by

any court or tribunal having jurisdiction, the balance of the Agreement shall remain in full force and effect.

- 4.5 Applicable Law. This Agreement shall be interpreted under the laws of the State of Michigan.
- 4.6 Venue. All amounts due under this Agreement, including, but not limited to, payments under this Agreement or damages for the breach of this Agreement, shall be paid and be due at the location of the principal administrative offices of the Village. It is specifically agreed among the parties to this Agreement that Oceana County, State of Michigan, is the place of performance of this Agreement. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in the Oceana County Circuit Court.
- 4.7 Applicability of Act 436. This Agreement is subject to the local financial stability and choice act and may therefore be terminated by an emergency manager pursuant to Act 436.
- 4.8 Interpretation. For purposes of interpretation of this Agreement, neither the Village nor Shelby Township shall be deemed to have been the drafter of this Agreement.
- 4.9 Construction. This Agreement has been prepared and negotiations occurred in connection with said preparation pursuant to the joint efforts of the parties. This Agreement therefore shall not be construed against any party to this Agreement.
- 4.10 Notices. Unless otherwise provided herein, notice, including any notice, communication, request, reply, or advice herein provided or permitted to be given, made, or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the Village, to:

Village of Shelby
Attn: Village Administrator
218 North Michigan Avenue
Shelby, Michigan 49455

If to Shelby Township, to:

Shelby Township

Attn: Supervisor
204 North Michigan Avenue
Shelby, Michigan 49455

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other party hereto.

IN WITNESS WHEREOF, the parties acting under the authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Effective Date of this Agreement.

VILLAGE OF SHELBY:

Date: _____, 2022

By: _____
Brady Selner
Its: Village Administrator

Date: _____, 2022

By: _____
Paul Inglis
Its: Village President

TOWNSHIP OF SHELBY:

Date: _____, 2022

By: _____
Richard Raffaelli
Its: Township Supervisor

Date: _____, 2022

By: _____
Marilyn Glover
Its: Township Clerk



April 3, 2023

RESOLUTION

No. 13-23

RESOLVED BY THE COUNCIL OF THE VILLAGE OF SHELBY to authorize the Village Administrator, Brady Selner, and the Village President Paul Inglis to sign the Wholesale Water Agreement by and between the Village of Shelby and Shelby Township for the purpose of selling water to Shelby Township on a wholesale basis.

or

RESOLVED BY THE COUNCIL OF THE VILLAGE OF SHELBY to postpone a decision on the Wholesale Water Agreement until the April ____, 2023, Village Council meeting.

Moved: _____

Seconded: _____

Yes: _____

No: _____

ABSENT: _____

RESOLUTION No. 13-23 Declared ADOPTED.

ADOPTED ON: April 3, 2023



Village Council
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Meeting Date:	April 3, 2023
Agenda Item:	Shelby Acres Development Agreement
Budget Impact:	N/A
Recommendation:	N/A - Discussion Item
Staff Contact:	Brady Selner, Village Administrator

Background:

The Village of Shelby has been working with Richard Raffaelli, who is working on behalf of Shelby Acres Development, LLC, on a development agreement for an 82-unit residential development. The Memorandum of Understanding presents both parties with expectations of how the process will proceed. This document was approved by Village Council at their March 13, 2023, meeting. In addition to the 82-unit development, the Village would annex, and provide Village services to the property with the two, recently built, Peterson Farms apartment buildings.

The Village continues to work with Shelby Acres Development, LLC to get a complete PUD application for consideration by the Planning Commission. Following Planning Commission consideration, it will be forwarded to the Village Council for a final decision. If the PUD is approved, Village Council would then approve the annexation of the 59 acres followed by approving the development agreement.

Supporting Documents:

Shelby Acres MOU
Shelby Acres Development Agreement

MEMORANDUM OF UNDERSTANDING – SHELBY RIDGE DEVELOPMENT

This Memorandum of Understanding (“Memo”) effective on March 13, 2023 by and between the Village of Shelby (“Village”) and Shelby Acres Development, LLC (“Developer”) outlines a proposed real estate development agreement.

BACKGROUND

- A. Developer has received preliminary approval for an 82-unit residential development (“Project”) in the Township of Shelby (“Township”).
- B. Developer has sought to have the Project serviced by Village water and sewer services, and the Village and Township have prepared the resolutions necessary to annex the real estate comprising the Project into the Village subject to Oceana County’s final approval.
- C. It is anticipated Developer will seek site condo approval for the Project and the Village shall require the Project to obtain Final PUD approval under the Village’s zoning ordinance requirements.
- D. Upon the real estate comprising the Project being annexed into the Village and the Project’s Final PUD approval, the parties intend to memorialize certain obligations including the construction of roads and sewers, specific site plan requirements, the Project being serviced by Village water and sewer, and the financial obligations thereof in a Development Agreement.

AGREEMENT

The Parties agree as follows:

- 1) The Village shall take reasonable efforts to complete the annexation of the real estate comprising the Project.
- 2) The Developer shall take reasonable efforts to obtain site condo approval for the Project.
- 3) The Developer shall take reasonable efforts to obtain Final PUD approval from the Village.
- 4) That in the event Developer obtains site condo approval, the annexation is approved by Oceana County, and the Final PUD approval is obtained, the


Parties shall enter into a Development Agreement memorializing certain financial and other obligations related to the Project.

- 5) That pursuant to Village Zoning Ordinance Section 10.05(4), the Zoning Administrator determines that the requirements of Section 10.05(B) have been met or are otherwise not reasonably necessary and Developer may present the Project to the Village in the form of a Final PUD application pursuant to Zoning Ordinance Section 10.05(C). If the new Village of Shelby Zoning Ordinance is effective at the time the Final PUD application is considered, the relevant sections and requirements of the new Zoning Ordinance will apply.
- 6) That in the event both the site condo approval and the Final PUD application require a public hearing and Planning Commission review, the Parties will take reasonable steps to schedule said hearings simultaneously.
- 7) This Memorandum of Understanding shall expire on May 31, 2023, unless the aforementioned annexation is obtained by Village, the site condo approval and Final PUD approval is obtained by Developer, and the parties enter into the aforementioned Development Agreement. The parties may extend this deadline by written agreement.

Village of Shelby

By: Budy Behner
Its: Village Administrator
Date: 3/14/23

Shelby Acres Development, LLC

By: 
Its: Board Member
Date: 3-15-2023

DEVELOPMENT AGREEMENT

This Agreement, dated for reference purposes as of _____, 2023, is by and between the Village of Shelby, a Michigan municipal corporation whose address is 218 North Michigan Avenue, Shelby, Michigan 49455 (the "Village"), and Oceana County Development Corporation a Michigan nonprofit corporation of 2999 South Timber Dunes Road, Shelby, Michigan 49455 (the "Developer"), with reference to the following facts:

Background

A. Developer owns the real property commonly known as _____ in the Township of Shelby, State of Michigan, more particularly described on the attached **Exhibit A** (the "Subject Property").

B. Pursuant to an agreement between the Township of Shelby (the "Township") and the Village, and pending the approval of Oceana County, the Village intends to annex the Subject Property into the Village.

C. Developer received preliminary approval from the Township and intends to construct a site condominium development of eighty-two (82) single family residential units in several phases to be located on the Subject Property (the "Project"). There will be two multi-family residential units constructed adjacent to the Project. Said multi-family residential units are excluded from this Agreement.

D. Developer has applied to the Village for Planned Unit Development ("PUD") approval under the Village Zoning Ordinance for construction of the Project to be known as "Shelby Acres." The Project is specifically described in the Final PUD Application submitted by Developer. The Final PUD Application includes:

1. A final site plan as specified in Chapter 12 of the Zoning Ordinance for the entire Project with a site plan for each and every phase of the Project.
2. A development schedule indicating the date(s) for commencement of construction.
3. Agreements, provisions, or other covenants which will govern the use, maintenance, and continued protection of the Project.
4. A legal description of the Subject Property.

E. The Final PUD Application and Project was approved by Village Council on _____, _____, 202_, as a planned unit development subject to certain conditions, one of which was that Developer and Village enter into a contract in recordable form under which the Developer would agree to conform and comply with all conditions required by Village Council. The Village and Developer acknowledge that this Agreement will govern the use of the Subject Property and establish certain obligations for which the parties are contractually bound.

F. Developer and Village desire to set forth the terms and conditions of the Project as to enable Developer to begin the Project at the time the annexation of the Subject Property into the Village.

Therefore, for good and valuable consideration, the parties agree as follows:

1. **Background.** The parties agree that the background paragraphs are true and correct and are incorporated into the body of this Agreement.
2. **Conditions.** The Project shall be acquired, constructed, developed, completed, operated, and maintained in accordance with all of the following conditions:
 - a. Except as expressly modified or revised by these conditions, the Developer shall comply with all of the agreements, plans, representations and warranties included in the Final PUD Application as approved by Village Council. No change except as set forth below shall be made to the Final PUD Application or this Agreement unless amended by the Village Council following the procedures then provided by State law and the Zoning Ordinance for initial approval of a planned unit development project. Upon request of the Developer, the Village Zoning Administrator shall have the authority to approve changes with respect to interior unit layouts without need to amend this Agreement or Final PUD Application as approved.
 - b. Developer shall comply with all other Ordinances of the Village, state and federal laws, and Oceana County laws, rules, regulations, or requirements.
 - c. Except as expressly modified or revised by the conditions of terms of this Agreement or the Final PUD Application as approved, the requirements of the R-2 Residential District shall apply to the Subject Property generally.
 - d. No revision or change of these conditions shall be made except by the Village Council action after public hearing, with notice of such hearing to be given as then required by law for Village Council proceedings with respect to proposed Planned Unit Development projects.
 - e. No building permits shall be issued for the construction of a building or structure within the Project until the Village has approved, in writing, the drainage plan for the particular building phase, and a copy thereof shall be delivered to the Village. No occupancy permit shall be issued for a building or structure within the Project until the Village has received written certification from the Oceana County Drain Commissioner ("Drain Commissioner") that all drainage required for the project and the drainage required for the particular phase has been completed to the satisfaction of the Drain Commissioner.
 - f. Public water and sewer facilities shall be installed to serve the Project. The Developer shall obtain from the Village written approval of the water/sewer design for the Project prior to the commencement of any construction. Each of the 82 residential units shall have a separate water meter specified by the Village engineer. The water and sanitary sewer utilities to be located in the Project shall be designed, acquired, constructed, and completed in compliance with all Village Ordinances, rules, regulations, and requirements of the Village.
 - g. There shall be no exterior lighting except for that exterior lighting specifically identified and described in the Final Development Plan for the Project.

- h. All signage to be erected as part of the Project shall be set forth in the Final Development Plan. Any signage not included in the Final Development Plan shall be approved by the Village's Zoning Administrator or, in his discretion, referred to the Village Council for approval prior to the placement of said signs as part of the Project.
- i. Prior to beginning construction of the Project, the Developer shall secure all necessary permits from federal, state, and county agencies as may be required to construct the Project and shall provide copies of said permits to the Village.
- j. The Developer shall adopt and implement all recommendations of the Shelby-Benona Fire Department to ensure a sufficient number of fire hydrants are installed as part of the Project to provide adequate fire protection.
- k. The Developer shall at all times during construction of the Project require those persons using the premises to do so in a manner that their conduct is not a nuisance or bothersome to the surrounding areas.
- l. Except as expressly modified, revised, or altered by these conditions, the Project shall be acquired, developed, and completed in conformance with the Zoning Ordinance, as amended, and all other applicable zoning ordinances.
- m. In the event of any conflict between these Conditions and the documents included in the Final PUD Application as approved or the R-2 Residential District zoning ordinance requirements, these conditions shall control. In the event of any conflict between the Final PUD Application as approved and the R-2 Residential District zoning ordinance requirements, the Final PUD Application shall control. In the event of any conflict between documents or parts of the same documents included in the Final PUD Application as approved, the more rigorous requirements shall control.
- n. The Project shall be completed within six (6) years from the date of this Agreement. In the event construction commences in any one phase of the Project but is not completed within six (6) years from the date of this Agreement, Developer shall have an additional one (1) year to complete the unfinished phase then currently under construction subject to the terms and conditions of this Agreement. Developer shall not be obligated to commence construction on any subsequent phase not under construction at the expiration of the six (6) year period. Developer shall have the right to extend the completion date of the Project for an additional three (3) years upon notice to the Village so long as Developer is not otherwise in default of this Agreement or in violation of the Village's Zoning Ordinance and/or other Ordinances. Alternatively, Developer may withdraw that land which comprises any phase(s) of the Project to which construction has not begun within six (6) years from the date of this agreement from the PUD or within the term of any extension of this Agreement.
- o. Developer may seek to amend or change the PUD to include two-family or multiple family dwellings or as otherwise permitted by the Village's Zoning Ordinance provided that such an amendment complies with the Village's Zoning Ordinance and other Ordinances, as amended. Such an amendment shall be subject to the requirements and process set forth in Chapter 10 of the Village's Zoning Ordinance, as amended. Following any such amendments to

the PUD, this Agreement shall continue to be in full force and effect except as modified by the amendment.

- p. This Agreement, and any Planned Unit Development approval may be transferred or assigned by the Developer without prior consent of the Village. Developer shall notify the Village of any transfer or assignment of this Agreement within 5 days of such transfer or assignment.
- q. The Developer shall submit a timeline pursuant to which construction of the Project's phases is to be completed at the time of requesting a building permit.
- r. The right is reserved by the Village to impose additional conditions if reasonably necessary to achieve the purposes of the Zoning Ordinance.
- s. Any construction, building, or structure erected, improved, or built prior to the annexation of the Subject Property or execution of this agreement shall be subject to the terms and conditions of this Agreement unless specifically exempted in writing by the Village Zoning Administrator. Developer shall permit Village to inspect all building or structures built pursuant to the Project before the annexation of the Subject Property upon request.
- t. With the exception of negligent or intentional acts or omissions committed by the Village and/or its officers, officials, employees, and agents, the Developer agrees to defend, indemnify, and hold harmless the Village and its officers, Council, Planning Commission members, employees and agents from and against all claims, damages, demands, expenses, liabilities, and losses of any character or nature whatsoever arising out of or resulting from the construction, operation, maintenance, repair, reconstruction, inspection, and replacement of or in any way relating to the Project. This condition includes the payment of all reasonable attorney fees and other expenses of defense.
- u. Developer shall construct water mains, sewer mains, laterals from the mains to the residences in the Project, and the connections from the Village mains to the Project to Village standards and keep the Village's Zoning Administrator reasonable informed of the progress of the Project. The Village Engineer shall inspect the water mains, sewer mains, and laterals during and after construction, and, if acceptable to Village, take ownership of the water and sewer mains. Developer shall provide easements over the Subject Property, in a form acceptable to the Village, for the public water mains and public sewer mains.
- v. Developer shall construct the roads to Village standards and keep the Village's Zoning Administrator reasonable informed of the progress of the Project. The Village Engineer shall inspect the roads during and after construction, and, if acceptable to Village, take ownership of the roads as public streets.
- w. Developer agrees to execute a memorandum of the Planned Unit Development Agreement in the form of the attached **Exhibit B** to be executed between Developer and the Village contemporaneously with this Agreement acknowledging the conditions imposed by this Agreement and Final PUD Application as approved run with the land. Said memorandum will be recorded with the Oceana County Register of Deeds.

- x. Prior to the issuance of any permits or construction of the Project, Developer shall furnish to Village a deed evidencing fee title ownership to the Subject Property.
 - y. Any violation of these conditions shall constitute a violation of the Zoning Ordinance and, in addition to the remedies provided therein, shall be cause for the Village Council to suspend or revoke any zoning or building permit applicable to the Project or to deny occupancy permits. The Developer shall have a reasonable opportunity to cure an alleged breach of this Agreement to the extent such breach is curable. The Village shall provide notice of any breach under this Agreement, and the Developer shall thereafter have 30 days to cure such alleged breach. This condition shall be binding on the Developer and all successor owners or parties in interest in the Project.
3. **Injunction.** The Developer recognizes and agrees that any material violation of the terms and provisions of this Agreement would immediately and irreparably damage the Village in a way not capable of being fully compensated by monetary damages and, accordingly, the Village shall then be entitled to injunctive relief to prevent and prohibit such violation.
4. **Land Use and Contractual Obligations.** The Developer and the Village acknowledge that the terms of this Contract involve not only land use obligations but create other obligations, specifically including financial obligations. The Developer and Village agree to be bound by all terms of this Agreement and acknowledge that both parties may seek appropriate relief to enforce any provisions of this Agreement.
5. **Village of Shelby Obligations.** Village shall:
- a. Adopt Resolution, _____, and _____ attached as Exhibits ____ covering the annexation of the Subject Property. Upon execution of this Development Agreement, Village agrees to pursue Oceana County Board approval of the annexation.
 - b. Upon the annexation of the Subject Property and completion of each structure in the Project according to its phases and timeline, Village shall provide water and sewer service consistent with what is provided to other Village residences. The Developer shall be responsible for direct and actual costs of the water meter, radio read, and touch pad at each home. The Village of Shelby will purchase these components and invoice the Developer for reimbursement. The Shelby Village Council commits to adopting a resolution waiving all Right-of-Way Permit fees for Phase 1 of the Development and each subsequent phase if the development is constructed by a non-profit developer. In the event this Agreement is transferred or assigned to a for-profit developer, the for-profit developer will be subject to all right-of-way and connection fees the Village of Shelby has in place at the time of construction.
 - c. Village and its Planning Commission shall approve changes to the PUD requested by Developer so long as such proposed changes do not constitute a material change to the PUD, conflict with this Agreement, and/or violate the Village's Ordinances, as amended. The criteria enumerated in the Village Zoning Ordinance Section 10.05(D)(4) is incorporated by reference as factors to consider whether the requested change represents a "material change" under this section.

6. **Representations and Warranties of Village.** Village represents and warrants to Developer as follows:

- a. **Organization and Powers.** Village is a Michigan municipal corporation, duly organized, validly existing, and in good standing under the laws of the State of Michigan. Village has all requisite corporate power and authority to enter into this Agreement and to carry out and perform all of its covenants and agreements contained herein.
- b. **Authorization.** The execution, delivery, and performance of this Agreement by Village has been duly authorized by all necessary action, pursuant to resolution passed by the Village Council.
- c. **No Conflict.** The execution, delivery and performance by Village of this Agreement and consummation of the transactions contemplated hereby do not and will not: (i) violate any provisions of law applicable to it or its ordinances, or any order, judgment or decree of any court or other agency of government binding on it; or (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any of its contractual obligation, subject to the Encumbrances noted above.
- d. **Governmental Consents.** The execution, delivery and performance by Village of this Agreement and consummation of the transactions contemplated hereby may require any registration with consent or approval of or notice to, or other action to, with or by, federal, state or other governmental authority, judicial or regulatory body.
- e. **Binding Obligation.** This Agreement, when executed and delivered by the parties will be a legally valid and binding obligation of Village, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, by general principles of equity, and subject to the Conditions noted above.

7. **Notices.** All notices, approvals, consents and other communications required under this Agreement shall be in writing and shall be deemed given: (i) when delivered in person; (ii) when sent by fax or email; (iii) when sent by a nationally recognized receipted overnight delivery service with delivery fees prepaid; or (iv) when sent by united states first-class, registered, or certified mail, postage prepaid. The notice shall be effective immediately upon personal delivery or upon transmission of the fax or email; one day after depositing with a nationally recognized overnight delivery service; and five days after sending by first class, registered, or certified mail. Notices shall be sent to the parties as follows:

To Village: Village of Shelby
218 North Michigan Ave.
Shelby, MI
Attn: Village Administrator

w/ copy to: PARMENTER LAW
601 Terrace St.
Muskegon, MI 49440

Attn: Shelby Village Attorney

To Developer: Oceana County Development Corporation
2999 S. Timber Dunes Road
Shelby, MI 49455
Attn: Earl Peterson

w/ copy to: PRINCE & MONTON, PLC
127 State Street
Hart, MI 49420
Attn: Brian J. Monton

8. **General Provisions.**

- a. **Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws of the state of Michigan. The parties agree that for purposes of any dispute in connection with this Agreement, the Oceana County Circuit Court shall have exclusive personal and subject matter jurisdiction and that Oceana County is the exclusive venue.
- b. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties and supersedes any other agreements, written or oral, that may have been made by and between the parties with respect to the subject matter of this Agreement. All contemporaneous or prior negotiations and representations have been merged into this Agreement.
- c. **Injunction.** The Developer recognizes and agrees that any material violation of the terms and provisions of this Agreement would immediately and irreparably harm the Village in a way not capable of being fully compensated by monetary damages and, accordingly, the Village shall be entitled to injunctive relief to prevent and prohibit any such violation.
- d. **Binding Effect.** This Agreement shall be binding upon and enforceable by the parties and their respective legal representatives, permitted successors, and assigns.
- e. **Counterparts; Fax or Electronic Signatures.** This Agreement may be executed in counterparts, and each set of duly delivered identical counterparts which includes all signatories, shall be deemed to be one original document. Electronic or fax copies of the signed Agreement shall constitute a valid, enforceable agreement.
- f. **Full Execution.** This Agreement requires the signature of all parties. Until fully executed, on a single copy or in counterparts, this Agreement is of no binding force or effect and if not fully executed, this Agreement is void. This Agreement shall become effective on the date when signed by all of the parties as shown below ("Effective Date").
- g. **Non-Waiver.** No waiver by any party of any provision of this Agreement shall constitute a waiver by such party of any other provision of this Agreement.
- h. **Severability.** Should any one or more of the provisions of this Agreement be

determined to be invalid, unlawful, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be impaired or affected.

- i. **No Reliance.** Each party acknowledges that it has had full opportunity to consult with legal and financial advisors as it has been deemed necessary or advisable in connection with its decision to knowingly enter into this Agreement. Neither party has executed this Agreement in reliance on any representations, warranties, or statements made by the other party other than those expressly set forth in this Agreement.
- j. **Assignment or Delegation.** Neither party shall assign all or any portion of its rights and obligations contained in this Agreement without the prior written approval of the other party, in which approval may be withheld in the other party's sole discretion.

The parties have executed this Agreement on the date set forth below.

Oceana County Development Corporation

Village of Shelby

By: _____
Its: _____
Date: _____

Paul Inglis, Village President
Date: _____

Crystal Budde, Village Clerk
Date: _____