

DEVELOPER'S AGREEMENT
CONTRACT FOR UTILITY IMPROVEMENTS

THIS AGREEMENT, made this _____ day of _____, 2023, by and between BREG Pike River, LLC, hereinafter referred to as the "Developer" and the Racine Water Utility, a municipal public utility of the City of Racine, State of Wisconsin, hereinafter referred to as the "Utility", whose offices are located at 800 Center Street, Room 227, Racine, Wisconsin 53403.

WITNESSETH:

WHEREAS, in connection with the Developer's anticipated construction of the Pike River Crossing - Phase 1 development in the Village of Mount Pleasant, Wisconsin, the Developer is proposing to construct and install local or regional water facilities, as defined in the City Municipal Code and the Retail Water Service Agreement dated December 19, 2006, and in accordance with Wisconsin Public Service Commission PSC 185.53

NOW, THEREFORE, in consideration of said approval, the Developer agrees as follows:

ARTICLE I: GENERAL CONDITIONS

A. Engaging Qualified Contractors

The Developer agrees to engage contractors for all work included in this Agreement who are qualified to perform such work, and for local water facilities shall engage only those contractors and engineers approved for such work by the Utility (such approval not to be unreasonably withheld, conditioned or delayed).

B. Work According to Approved Plan and Specifications

The Developer agrees to use materials and make the various installations in accordance with the approved plans and specifications, made a part hereof and incorporated by reference, including those standard specifications for local water facilities in accordance with plans and specifications approved by the Utility (such approval not to be unreasonably withheld, conditioned or delayed).

C. Payment of Review and Inspection Fees

1. The Developer and Utility agree that there will be no charges assessed by Utility beyond the reasonable fees invoiced to Utility for professional inspection and construction review services, including preparation of as-built drawings and pressure testing of the water facilities.

2. Those costs and fees that originate from non-City of Racine employees, such as private engineering firms, shall be the actual costs as billed to the Utility by the private firm (The Utility's consultant) as shown on the invoice amount.
3. Said fees are estimated by the Utility to be \$72,500.00 in connection with this Agreement. Said fees shall be payable by the Developer within thirty (30) days after each invoice has been provided by the Utility to the Developer. Unless otherwise stated here, the Utility will invoice the Developer at monthly intervals.
4. The foregoing fee estimate represents Utility's best judgment, but the parties agree it is not a binding quotation. If the Utility becomes aware that the estimate is substantially in error, it shall immediately notify the Developer so that an addendum to the Agreement may be negotiated.

D. Watermain Oversizing

1. At the Utility's discretion, some, or all, segments of the proposed public water main extension may be designated as Regional in nature and their sizes increased (oversized) accordingly from the minimum-sized local main. Oversizing requests will typically be made during the design phase of the project.
2. Upon completion and dedication of the public water main extension, oversizing costs shall be calculated via the equivalent cost ratio listed in the Retail Water Service Agreement Section 9.a.(2) and shall be based upon final as-built quantities. For a Regional main, the Developer shall be responsible to pay the cost of the local main percent share, and the Utility shall be responsible to pay the cost of the oversized main percent share.
3. The Utility shall reimburse the Developer for any oversizing costs within thirty (30) days of Utility notice of acceptance of the public water main extension.

ARTICLE II: DEDICATION AND GUARANTEE

A. Dedication and Acceptance of Public Facilities

1. The Developer agrees that all dedications to the public of improvements covered by this Agreement are made without conditions, and shall provide evidence that such dedications are unencumbered, excepting for any encumbrances specifically permitted with respect to local water facilities by the Utility. Utility agrees not to unreasonably withhold, condition or delay its agreement to accept said public improvements.
2. The Developer further agrees that no improvements may be offered to the Utility for acceptance of the dedications unless all review and inspection fees identified under Article I - Paragraph C, are paid in full, and that all contractors who have performed work hereunder have received payment in full for their materials and services, certified in the

form of waivers, copies of which shall be presented to the Utility including as-built drawings of installed water facilities. The Utility requires AutoCAD electronic as-built drawings to incorporate into the Utility GIS.

B. Guarantee

The Developer hereby agrees to guarantee all work performed under this Agreement, for a period of one (1) year from the date of formal acceptance and transfer of ownership of the local water facilities contemplated hereunder, to the Utility. Such guarantee shall be against defects in materials or workmanship providing the Developer uses granular backfill for filling trenches and for infrastructure installation. If such a defect should appear, the Developer agrees to make the required replacement or acceptable repairs at its own expense (or to cause its contractor to make the required replacement or acceptable repairs). The expense includes, if applicable, permits and associated fees, total and complete restoration of any disturbed surface or component of the improvements to the standard provided in the plans and specifications, regardless of improvements on lands where the repair or replacement is required. If the Developer does not use granular backfill, the guarantee will be for a period of three (3) years from the date of final acceptance by the Utility. In the event that valve boxes and/or stop boxes are damaged by Developer's grading contractors, the Developer shall be responsible to restore damaged infrastructure to the same condition or better as existed at the time of commencement of any work anticipated hereunder. The Developer or its contractor shall provide the Utility with a letter of credit or other form of security satisfactory to the Utility in the amount of ten percent (10%) of the total water main construction cost. Utility must approve of the method of security prior to construction (which approval shall not be unreasonable withheld, conditioned, or delayed).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

BREG PIKE RIVER, LLC

CITY OF RACINE

By: _____

By: _____

Title: _____

Title: _____

By: _____

ATTEST:

By: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

Scott R. Letteney, City Attorney

(OTHER SIGNATURES)

Racine Water Utility
Mike Gitter, Director