

RESOLUTION NO. 2019-47

RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA TO APPROVE AN INFRASTRUCTURE AGREEMENT FOR PAYNE & DOLAN RACINE QUARRY PROJECT -- CHARLES STREET RELOCATION

The Village Board for the Village of Caledonia resolves as follows:

WHEREAS, the Village approved on September 4, 2018, subject to conditions, a conditional use permit, nonmetallic mining permit and explosives use permit to allow for the further development of an existing limestone quarry on the Property including earthmoving, blasting, crushing, sorting and sizing, stockpiling, transportation and reclamation per Resolution No. 2018-78. In order to conduct the uses associated with the approval, Developer is required to relocate Charles Street, including infrastructure for the District and storm water improvements (the "Charles Street Relocation").

WHEREAS, The Village Utility District Commission and the Village's Public Works Committee have approved plans and specifications for the Charles Street Relocation, upon compliance with the ordinances of the Village, which require that the Developer enter into a suitable contract with the Village relative to the construction of roads and other improvements on the Property.

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the Infrastructure Agreement between the Village of Caledonia, the Village of Caledonia Water Utility District, and Payne & Dolan, Inc. as set forth in **Exhibit A** attached hereto and incorporated herein (the "Agreement"), is hereby authorized and approved, and the Village President and Village Clerk are authorized to execute said Agreement and Village staff are authorized to take all such actions necessary in furtherance of the Agreement.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 6th day of May, 2019.

VILLAGE OF CALEDONIA

By: James R. Dobbs
James R. Dobbs
Village President

Attest: Karie Pope
Karie Pope
Village Clerk

INFRASTRUCTURE AGREEMENT
PAYNE & DOLAN RACINE QUARRY PROJECT
CHARLES STREET RELOCATION

THIS AGREEMENT, (the “Agreement”), effective as of the date last executed by any Party hereto, is made and entered into by and between **PAYNE & DOLAN, INC.**, a Wisconsin Corporation, (the “Developer”), its successors and assigns, the **VILLAGE OF CALEDONIA**, a municipal corporation located in Racine County, Wisconsin, its successors and assigns (the “Village”), and **THE VILLAGE OF CALEDONIA WATER UTILITY DISTRICT**, being a separate utility district established by the Village of Caledonia under the laws of the State of Wisconsin (the “District”), (Developer, Village, and District are collectively referred to as “the Parties”);

INTRODUCTION

A. The Village is located in Racine County, Wisconsin. The District owns and operates the District System.

B. Developer is the sole record-title owner of the parcels of real property to be developed (hereinafter referred to as the "Property") located in the Village of Caledonia, Racine County, Wisconsin, and which is legally described on the attached **Exhibit A**.

C. The Village approved on September 4, 2018, subject to conditions, a conditional use permit, nonmetallic mining permit and explosives use permit to allow for the further development of an existing limestone quarry on the Property including earthmoving, blasting, crushing, sorting and sizing, stockpiling, transportation and reclamation per Resolution No. 2018-78. In order to conduct the uses associated with the approval, Developer is required to

relocate Charles Street, including infrastructure for the District and storm water improvements (the "Charles Street Relocation") (Resolution No. 2018-78 is attached hereto as **Exhibit B** and incorporated herein by reference). The Village Utility District Commission and the Village's Public Works Committee have approved plans and specifications for the Charles Street Relocation, upon compliance with the ordinances of the Village, which require that the Developer enter into a suitable contract with the Village relative to the construction of roads and other improvements on the Property.

D. As a part of the Charles Street Relocation, the Developer wishes to subcontract portions of the Charles Street Relocation, Water System and Public Improvements.

E. Once constructed and upon acceptance by the Village and the District, the ownership of the Water System will then be transferred and conveyed by formal action to the Village and the District which may be by Resolution or motion, and become a part of the municipal District System.

F. After approval of this Agreement, the Village will initiate proceedings to vacate the existing Charles Street right-of-way. Once the road improvements are constructed and accepted by the Village, the Developer shall dedicate the area necessary for the Charles Street Relocation, which is legally described on the attached **Exhibit E**, as directed by the Director of Public Works and the Village shall vacate the existing Charles Street right-of-way, which is legally described on the attached **Exhibit D**.

G. The ordinances of the Village allow and permit the Developer to do the work or directly contract with an approved subcontractor to build and construct the road, the Water System and the storm water utilities (hereinafter collectively referred to as the "Construction Project"), provided that the Construction Project is undertaken and done pursuant to the terms

and provisions of this Agreement and the requirements of the Village's ordinances. The above-named parties are entering into this Agreement for such purposes, and for such other purposes as set forth in this Agreement.

H. Any and all applications, the pre-development agreement, and accompanying plans, schedules, exhibits, and other documents filed with the Village are incorporated by reference herein, as modified by any written or formal approvals of the Village and District.

I. The Developer desires to complete improvements located in the Village in a manner as described herein, and for that purpose cause the installation of certain Public Improvements, hereinafter defined.

J. Applicable Village Ordinances provide that as a condition for final approval, the Developer shall provide an irrevocable letter of credit approved by the Village guaranteeing that the Developer will make and install or have made and installed those improvements as set forth in this Agreement.

K. As a part of the Three Mile Road Construction, the Developer will consent to waive hearing requirements for the imposition of the special assessment as the sole property owner to be assessed costs by the Village for the reconstruction of the Three Mile Road.

NOW THEREFORE, in consideration of the granting of approval by the Village of the Charles Street Relocation, and the covenants herein contained, and other good and valuable consideration, the adequacy and sufficiency which is acknowledged by all parties, it is mutually agreed as follows:

1. **Introduction is Correct.** The Parties agree that the foregoing "Introduction" is true and correct and is hereby incorporated into this Agreement by reference.

2. **Definitions.**

District System shall mean the Village's municipal water system operated by the District.

Public Improvements shall mean all public improvements to be constructed under this Agreement, including grading, erosion control, drainage and all requisite public improvements, Public Roads, including any required curb and gutter, Storm Water Utilities and the Water System.

Public Roads shall mean all public rights-of-way, including any required curb and gutter.

Storm Water Utilities shall mean the storm sewer utilities.

Water System shall mean the watermain system.

3. **Consent of the Village and District.** The Village and District hereby grant permission to the Developer and an approved subcontractor to undertake and do the Construction Project as a private project on private property (as opposed to a Village/District project requiring compliance with the public bidding statutes).

4. **Construction Project.** The Construction Project shall be undertaken and done by Developer and Developer shall be solely responsible for the payment of all costs and expenses for the Construction Project. The Developer shall be solely responsible for the payment of all costs and expenses for the materials, construction and installation of the segment of watermain pipe of approximately eighty (80) feet in length between the new watermain connection point in Three Mile Road to the planned meter vault as set forth in the attached **Exhibit F** to be incorporated into the approved Plans (the "Pipe Segment"). The parties will mutually agree on whether Developer, Utility District or the Racine Water and Wastewater Utility undertakes and completes the work for the

Pipe Segment. The timing of the installation of the Pipe Segment shall be prior to Three Mile Road being reconstructed by the City of Racine. The Developer expressly understands and agrees that the Village and the District will not be liable or responsible in any manner for any of the said costs and expenses of the Construction Project.

5. **Code of Ordinances Incorporated.** The Code of Ordinances of the Village, as amended from time-to-time, is hereby incorporated into this Agreement, and Developer and an approved subcontractor agree to perform all of the obligations imposed upon Developer and/or any approved subcontractor by the terms and provisions of such ordinances, as applicable. Without limitation, Developer specifically acknowledges that it must pay all applicable fees, which include, but are not limited to, applicable impact fees, land division fees, and others.

6. **Public Improvements; Dedication, Construction, Guaranty Period.**

(a) **Generally.** Developer shall prepare, at its expense and per applicable Village ordinances and the requirements of this Agreement, complete plans for construction of the Public Improvements necessary for the Construction Project, including for the public roads, the Water System as further described under Sections 6(b), 6(c) and 7 of this Agreement, and Storm Water Utilities as shown on the approved plans prepared by Payne & Dolan, Inc. and dated February 21, 2019 and professional engineered stamped February 21, 2019 for the Public Improvements which are incorporated herein by reference herein per the letter of the Public Works Director dated March 5, 2019 (the "Plans"). All improvements for the Construction Project's design and plans shall conform to the Village's minimum standards for public utilities and public roads then in effect unless otherwise agreed to in writing by the Developer and the Village, and such plans and specifications shall be submitted to and approved by the Village. In the event of any conflict between the minimum design standards in the Village's Code of Ordinances and the

requirements of this Agreement, the more restrictive shall control except as expressly provided for in this Agreement. The Developer acknowledges and agrees that it is solely responsible for all costs of construction and installation of Construction Project and Public Improvements.

(b) **Storm Water Utilities and Water System Construction.** Developer's design engineer shall stake all the Storm Water Utilities and Water System prior to construction. Developer shall be responsible for constructing the Storm Water Utilities and Water System at Developer's expense and per approved Plans. Developer's construction work shall be subject to inspection by the Village, or the Village's designee. Developer shall construct the Storm Water Utilities and the Water System utilizing granular backfill, as set forth in the approved Plans and as required by Village ordinances.

After the Storm Water Utilities and Water System have passed final inspection and testing, and after all lien waivers for the work completed on the Water System and the Storm Water Utilities have been provided to the Village, the Village shall accept ownership of the Water System and easements for access to the Storm Water Utilities.

(c) **Public Roads Construction.** The Developer shall thereafter construct, at Developer's expense, the Public Roads, including concrete, [to match the existing Charles St. cross section as an in-kind replacement. Charles St. was Federally funded and deviates from Village Ordinance.](#)

When such construction has been completed by the Developer, inspected, tested and approved by the Village Public Works Director, and after all lien waivers respecting the Public Roads have been provided to the Village, the Village shall accept such construction, subject to maintenance guarantees then provided in the Village ordinances, this Agreement and such other guarantees as the Village Board may deem necessary to protect the Village in the event that there is an identified deficiency in the construction that warrants a longer guarantee period of time. It

is anticipated that the Public Roads construction as described herein shall be done in 2019. If construction is delayed, the Village shall not vacate the existing Charles Street right-of-way until such construction is complete and accepted by the Village. Developer and any approved subcontractor shall also abide by the provisions of Resolution 2000-26, relating to street barricades, which is incorporated herein by reference.

7. **Water System Construction Project.**

(a) **Approval of Construction Project Plans.** Prior to any work being done on the Construction Project, (i) the Developer shall first obtain the written approval from the District's engineers of all of the specifications, drawings, blueprints, diagrams and plans for the Construction Project (hereinafter collectively referred to as the "Plans"), and (ii) any approved subcontractor shall first have a Pre-construction meeting with the District's engineers regarding the Construction Project. The Plans shall be of a type and format, and have such content, as the District's engineers may require. Additionally, the Plans shall also be submitted to the District's engineers in an electronic format approved by the District's engineers. Developer and any approved subcontractor expressly understand and agree that, in the event the Developer does elect to undertake and do the Construction Project, then the Water System shall then be constructed and done in strict compliance with the Plans approved by the District's engineers

(b) **Full Inspections.** The Construction Project shall be inspected by the District's engineers, and all costs of such inspections shall be paid for by Developer. Developer and any approved subcontractor shall provide to the District its work schedule (the "Work Schedule") for the Construction Project prior to any work on the Construction Project being undertaken, such Work Schedule (i) to specify the times, dates and type of work to be performed, and (ii) have a format and content satisfactory to the District's engineers.

The Work Schedule shall not be increased or expanded in time or scope of work without first providing to the District's engineers at least 48 hours prior written notice of such changes to the Work Schedule. Developer and any approved subcontractor understand that it is the intent of the Village and District to have one or more inspectors at the construction site at all times for the work on the Water System and as needed at other times while the work on the Construction Project is being performed. The District Engineers and/or their inspector(s) at the construction site shall have the full right and authority to stop work on the Construction Project whenever they believe that any such work or materials are not in compliance with the approved Plans for the Construction Project, and in such event the Developer and any approved subcontractor shall then immediately cure any such failure of compliance before proceeding with any other work on the Construction Project. Notwithstanding the foregoing right and authority granted to the District's engineers (to stop the Construction Project in the event of a failure of compliance with the approved Plans), the parties to this Agreement expressly understand and agree that, as between the parties to this Agreement, any approved subcontractor and/or Developer shall be the sole parties responsible for (i) all safety measures required for the Construction Project, and (ii) the direction of all laborers and personnel doing the work on the Construction Project (except for the inspector(s) hired by the District's engineers), and (iii) all means and methods required to do the Construction Project.

(c) **One-Year Guarantee.** Developer and any approved subcontractor shall, and hereby do, jointly and severally guarantee to the Village and the District that all work and materials furnished and performed on and for construction of the Water System shall be free from defects for a period of One (1) Year from the date on which the Village and District in writing accept ownership of the Water System as described in subsection (d) below. This one-

year guarantee, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding the Developer's and/or any approved subcontractor's duties under this Agreement to construct the Water System in strict compliance with the approved Plans for the same. In the event any defect(s) is discovered during such One-year time period, the District and/or Village shall notify the Developer and any approved subcontractor in writing, and the Developer and any approved subcontractor shall cause such defect(s) to be corrected within Sixty (60) calendar days (or within such shorter period designated by the Village or District if the public health and safety so require). If the Developer and/or any approved subcontractor shall fail to do so within such 60-day time period (or if the public safety sooner requires the remedied work to be done and the Developer and any approved subcontractor are not able to timely do so), then the District and/or Village may cause such defect(s) to be corrected, and the Developer and any approved subcontractor shall be liable to the District and/or Village for any costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said remedial work.

(d) **Transfer of Ownership.** Upon the full completion of the Water System and upon the Village and the District then accepting the same in writing, the ownership of the Water System shall, effective as of the date of the said written acceptance by the Village and District, be transferred and conveyed to the Village and the District by Resolution or Motion. With respect to such transfer/conveyance of ownership to the Village and District:

1) The said transfer/conveyance shall be deemed to occur and become effective immediately and automatically at the time of the written acceptance of each completed

Water System by both the Village and the District, without any further documents being required;

2) The said transfer/conveyance shall include transfer of ownership of the Water System located in the dedicated Village rights-of-way, and if necessary, easements in private land located on the Property as determined by the Village and the District of a sufficient depth and width to allow the Village and the District to access, maintain and/or replace such Water System, if for some reason it is located outside of Village rights-of-way; and

3) The said transfer/conveyance of ownership, however, shall not include any portion of water laterals that are located outside of the public right-of-way and/or outside of any Village/District easement area(s).

(e) **Reimbursement for Costs.** The Developer shall, within Thirty (30) Days after receiving a written itemized invoice(s) from the District for the same, reimburse and pay to the Village and/or District all engineering, inspection, administrative and legal costs incurred by the Village and/or District with respect to the Construction Project. This shall expressly include, but not be limited to, (i) all engineering costs incurred in the review of the Plans for the Construction Project, and (ii) all inspection costs for the Construction Project, and (iii) all legal costs of the District's attorney pertaining to the Construction Project and/or this Agreement.

(f) **Right of Village/District To Complete The Project.** If the Developer commences the Construction Project (by having the approved subcontractor commence actual excavation work and/or construction work on site) but then fails for any reason to complete or finish the Construction Project, then, in addition to any and all other remedies available to the Village and/or the District under the law:

1) The Village and/or District may, at its option, complete and finish the said Construction Project by doing such remaining work (the "Completion Work") as a publicly-bid Village project; and

2) The Developer shall pay to the Village and/or District all costs incurred by the Village/District in doing the Completion Work; and

3) Without in any manner limiting its available remedies under the law, the Village and/or District may obtain payment of all such costs for the Completion Work through a levy of special assessments and/or special charges (collectively referred to as the "Special Assessment") on the Property pursuant to the terms and provisions of Section 66.0703 of the Wisconsin Statutes and/or any other applicable statutes. Developer hereby waives all procedural rights that Developer may have under the laws of the State of Wisconsin with respect to such an imposition of the Special Assessment on the Property for items required of Developer herein. This waiver includes, but is not limited to, the requirement of a written notice and a public hearing as required under Section 66.0703 of the Wisconsin Statutes and/or any other special assessment statutes.

4) Additionally, the "Completion Work" described above may also consist of the following other types of work should the Village and/or District so elect:

(i) Undertaking whatever work may be necessary to protect and maintain the Water System at its then-existing stage of completion; and/or

(ii) Removal of part or all of the Water System and restoration of the disturbed areas of the Water Property.

(g) **Grant of Easements.** The Developer will grant to the Village and the District an easement (the "Easement") for the purpose of installing, operating, using, maintaining, repairing, and/or replacing the Water System, if for some reason any portion of the Water System is constructed outside of the Village rights-of-way, ultimately being transferred to the District under the provisions of above Section 7 of this Agreement. If determined to be necessary, Developer will execute and deliver to the District a separate written easement agreement (the "Easement Agreement") that memorializes and confirms the easement rights of the Village and District to install, operate, use, maintain, modify, improve, repair, and/or replace (i) any presently-existing sanitary sewer and watermain facilities already located on the Property, and (ii) the new Water System that will be constructed on the Property under the terms and provisions of this Agreement. The Easement Agreement shall identify and describe the location of all such water facilities. When the Construction Project is completed, however, and the final as-built drawings of the new Water System are completed, the said as-built drawings shall be inserted into and used in the Easement Agreement to identify and describe that portion of the Easement Agreement pertaining to the Water System. (In this fashion, the final as-built easement areas will replace any possible initial easement areas that were originally based on the Plans, but ended up being at a variance with the final, as-built location of the Water System.)

8. **Drainage Facilities.**

(a) **Construction.** Developer and any approved subcontractor agree to design, construct, and install, at its expense, all the Storm Water Utilities as specified and set forth in the Village-approved plans and specifications described in Section 6 hereof. In the event the Storm

Water Utilities are not completed within two (2) years from the date hereof, the Village Board shall have the right to review the plans in light of conditions then existing or expected in the area and to modify the plans to meet any such conditions. The Developer and any approved subcontractor shall construct and complete the Storm Water Utilities pursuant to any such revised plans. All such work shall be subject to approval and acceptance by the Village Board and the Village's Utility Commission. Any damage occurring to the Public Improvements or to any other drainage structures or appurtenances, including drainage tiles, shall be repaired, restored or rerouted by Developer in accordance with this Agreement.

(b) **Maintenance**. Further, Developer shall be liable and responsible for the proper maintenance of the storm water easements, including any detention or retention basins if applicable. Such maintenance shall include the control of weed and algae growth. Such liability and responsibility shall continue with Developer until such time as the ownership of the improvements are transferred to the Village. Such maintenance shall be carried out in conformity with applicable Village ordinances and any written directive for corrections or maintenance from the Village.

(c) **Grant of Easements**. The Developer shall grant to the Village an easement, if applicable, for the purpose of maintaining and repairing the Storm Water Utilities located on the Property. Developer will execute and deliver to the Village a separate written easement agreement that memorializes and confirms the easement rights of the Village to maintain and repair the Storm Water Utilities in a form of a maintenance and easement agreement approved by the Village Utility Director which shall be recorded with the Racine County Register of Deeds.

(d) **Default.** In the event of any default in the obligations to properly repair damage caused during construction or to maintain the drainage easements, including any retention or detention basins, the Village may cause said maintenance to be provided and may charge the Developer or subsequent owner. In addition, the Village, at its option, may cause all such costs including any engineering, legal, and administrative costs with respect to the same, to be assessed against the Property that is assigned responsibility for such drainage facility, all as provided in Sections 66.0627 and 66.0703, Wis. Stats., and applicable Village ordinance.

9. **Public Improvements Cost, Security, Guaranty Period.**

(a) **Public Improvements Costs and Security.** In order to secure Developer's satisfactory completion of the Public Improvements including but not limited to the Storm Water Utilities, Public Roads and Water System, Developer shall post with the Village either a letter of credit, in a form and amount satisfactory to the Village Public Works Director or a cash bond, or a combination thereof, (the "Security"), which amount shall equate to 120% of the Public Improvements' estimated total cost. The required amounts for Security are as set forth on **Exhibit C** which is incorporated herein by reference. Developer shall post the Security prior to beginning the Construction Project. After completion satisfactory to the Village as set forth in this Agreement of each of (1) the Storm Water Utilities and Water System, and (2) the Public Road's stone course, the Village shall release that portion of the Security that is attributable to the estimated cost of the completed work upon receipt by the Village of lien waivers, as shown on **Exhibit C** hereto. The release of Security shall be accomplished incrementally as portions of the work are completed and accepted by the Village. After invoices have been paid, lien waivers have been filed and the work has been accepted by the Village, 10% of the original Security total, shall be retained by the Village as security to secure the Developer's obligations during the

Guaranty Periods. The Village may draw on and utilize the remaining 10% of the original Security for repair and maintenance of the Public Roads if the Developer does not perform, after notice, its repair, maintenance and/or reconstruction responsibilities during the Guaranty Period. In the event any such fund is inadequate to pay for such work, the Developer, upon written demand by the Village, shall pay to the Village any such deficiency. In addition to any other remedies the Village may have, the Village shall be entitled to impose a special assessment against the Property for any deficiencies not paid in accordance with Section 31 of this Agreement.

If Developer fails to complete the Public Improvements and Construction Project within twelve months of initial staking, the Village may draw on the Security without further notice to Developer to complete the remaining Public Improvements.

(b) **Guaranty**. Developer shall warrant and guarantee the Public Improvements (except for the Water System which has a separate guaranty period under Section 7(c) of this Agreement) in good condition and in compliance with the Village's standards and specifications for a minimum period of two (2) years after acceptance of the road construction (the "Guaranty Period"). The Developer shall also be responsible for the costs of any repairs or maintenance for the roads, shoulders and any curb and gutter during the Guaranty Period. The Village Board may require a longer guaranty period based upon the site conditions, time when construction is to be carried on, and any other factors affecting the road or its stability. In the event any defect(s) is discovered during the Guaranty Period, the District and/or Village shall notify the Developer and Any approved subcontractor in writing, and the Developer and any approved subcontractor shall cause such defect(s) to be corrected within Sixty (60) calendar days (or within such shorter period designated by the Village or District if the public health and

safety so require). If the Developer and/or any approved subcontractor shall fail to do so within such 60-day time period (or if the public safety sooner requires the remedied work to be done and the Developer and any approved subcontractor are not able to timely do so), then the District and/or Village may cause such defect(s) to be corrected, and the Developer and any approved subcontractor shall be liable to the District and/or Village for any costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said remedial work.

If the Guaranty Period is extended beyond the length of the letter of credit, another letter of credit shall be tendered (or the existing one renewed upon the mutual agreement of the Developer and the Village) to the Village as a replacement for the length of the Guaranty Period. The Guaranty Period, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding the Public Improvements. The Village shall utilize any or all retained Security and/or Cash Bonds during the Guaranty Period toward the costs of any necessary repairs of the Public Improvements if Developer does not directly or adequately perform, after notice, its repair and maintenance responsibilities under this Agreement. The Parties recognize that if the Developer does not directly or adequately perform, after notice, its repair and maintenance responsibilities under this Agreement and the Village takes action to perform the repair and maintenance, the Developer shall reimburse the Village for costs incurred in doing so within thirty (30) days of written notice of such costs. If Developer fails to reimburse the Village for such costs, including but not limited to actual attorney's fees and costs, engineering fees and costs, and administrative costs, in addition to any other remedies the Village may have, the Village shall be entitled to specially assess its costs against the Property in accordance with Section 34 of this Agreement.

(c) **General Inspections.** The Public Improvements shall be inspected by the Village's Director of Public Works, or his designee or the Village's consulting engineers, and all costs of such inspections shall be paid for by Developer. The Developer and approved subcontractor shall provide to the Village its work schedule for Public Improvements prior to any work being undertaken, such schedule shall (i) specify the times, dates and type of work to be performed, and (ii) have a format and content satisfactory to the Village's Director of Public Works. Developer and approved subcontractor understand that it is the intent of the Village to have one or more inspectors presents as needed while the work on the Public Improvements is being performed. The designated inspectors at the construction site shall have the full right and authority to stop work on the Construction Project whenever they believe that any such work or materials are not in compliance with the approved Plans and Specification, and in such event the approved subcontractor shall then immediately cure any such failure of compliance before proceeding with any other work. Notwithstanding the foregoing right and authority granted to the Village's inspectors (to stop the work in the event of a failure of compliance with the approved Plans and Specifications), the parties to this Agreement expressly understand and agree that, as between the parties to this Agreement, the approved subcontractor and/or Developer shall be the sole parties responsible for (i) all safety measures required for the work, and (ii) the direction of all laborers and personnel doing the work (except for the inspector(s) hired by Village), and (iii) all means and methods required to do the work.

10. **Restrictive Covenant.** Developer agrees to restrict the use of the Property to prohibit future mining-related activity, business park uses or industrial uses east of the relocated Charles Street per Condition No. 27 of the Conditional Use Permit approval per Resolution No.

2018-78 attached hereto as **Exhibit B** and incorporated herein by reference. The form of the restrictive covenant shall be reviewed and approved by the Village Public Works Director, Zoning Administrator and Village Attorney prior to execution and recorded with the Racine County Register of Deeds.

11. **Street Lights.** The Developer shall be liable for the costs of purchasing and installing street lights in areas deemed necessary in the judgment of the Village's Director of Public Works. Said lights must be approved by the Village and WE Energies. The street lighting plan, including the type of street light to be permitted, shall be submitted to the Village's Director of Public Works for approval, is incorporated herein by reference. The installation, maintenance, and repair costs for street lights shall be the sole responsibility of the Developer, until the streets are accepted by the Village Board. The Developer shall also be responsible for payment of the applicable street light fee of **\$550.00** per light for each standard light and **\$900.00** per light for each ornamental street light, which fee represents the cost of operating each light for the three year period following the execution of this Agreement per Village of Caledonia Resolution 2007-21.

12. **Street Markings and Signage.** The Developer shall be responsible for the costs of procuring and installing all pavement markings and street signage. Pavement markings, if any, may include stop lines at intersections, striping for right turn lanes, and any other pavement markings required by the Village's Director of Public Works. Signage shall include all stop signs, street signs and other signs required by the Village's Director of Public Works. The street sign and pavement marking plan, which shall be submitted to the Village Director of Public Works for approval, is incorporated by reference. The Developer authorizes the Village to have

the necessary Public Roads markings and signs installed and shall reimburse the Village on a time and material basis.

13. **Water.** The Water System shall be designed, constructed, and installed at the sole expense of the Developer pursuant to plans submitted to and approved by the Village and the District. All fees applicable to the connection and service to the municipal water systems shall be borne by Developer, and any use of such system shall be subject to all applicable use restrictions. All such work shall be pursuant to plans and specifications approved by the District and the Village.

14. **Reimbursement of Costs.** The Developer acknowledges and agrees that it is solely responsible for all costs related to the Construction Project and installation of Public Improvements. In addition, the Developer agrees to reimburse the Village for its costs related to the Construction Project and Public Improvements, including costs incurred by the Village to review conceptual, preliminary and final plans, inspections, and to review, revise and/or draft any agreements, easements, deed restrictions or other documents. Such costs shall also include the costs of Village's retained engineers, attorneys, inspectors, agents, and approved subcontractors. Developer understands that legal, engineering, and all other consultants retained by the Village are acting exclusively on behalf of the Village and not Developer.

15. **Utilities and Utility Laterals.** Developer is responsible for all costs associated with all private utilities servicing the Property, including, without limitation, the cost of underground installation of cables, wires, pipes, laterals, etc. for electric, gas, telephone, and cable television services, if any. Developer shall fully restore, at its expense, any Village right-of-way that has been disturbed due to its installation of utilities, lighting or landscaping. The Village shall not take ownership of any utility laterals.

16. **As-Built Plans.** Upon written acceptance of all improvements by the Village, the Developer, at its expense, shall provide to the Village one complete set of as-built plans and profile sheets on reproducible mylar or similar material as agreed by the Village Public Works Director, two sets of prints indicating actual constructed locations and elevations, and one set of electronic drawings (PDF) and associated files compatible with a computer-aided design (CAD) system maintained by the Village. The as-built plans shall be prepared by modification of the construction drawings to reflect as-built data for streets, water mains, storm and wastewater collection systems, site grading, and all other relevant public improvements. Changes to base and other maps and official drawings not provided by the Developer's as-built drawings, but necessitated by actions of the Developer, shall be reimbursed to the Village by the Developer whether or not such items are enumerated in this Agreement. Developer shall submit one set of electronic drawings (pdf) and associated files compatible with a computer-aided design (CAD) system.

17. **Laws To Be Observed.** The Developer and the approved subcontractor shall at all times observe and comply with all federal, state and local laws, regulations and ordinances (collectively, the "Laws") which are in effect or which may be placed in effect and impact the conduct of the work to be accomplished under this Agreement to construct the Public Improvements and Private Improvements, inclusive of repairs, replacements and alterations (**the "Work"**). The Developer and any approved subcontractor shall indemnify and hold harmless the Village, the District and their agents, officers and employees, against any claims or liability directly arising from or based on the violation of any such Laws by the Developer or its principals, agents, employees or any approved subcontractors, except to the extent that such claims or liability arise by virtue of the negligence or willful misconduct of the Village or

District and any of their agents, any approved subcontractors, officers or employees. The Developer and any approved subcontractor shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to the lawful prosecution of the Work to be completed under this Agreement.

18. **Public Protection and Safety.** The Village and District shall not be responsible for any damage, bodily injury or death arising out of the Work whether from maintaining an “attractive nuisance” or otherwise, except as caused by the negligence or willful misconduct of the Village, District or any of their agents, any approved subcontractors, officers or employees. Where apparent or potential hazards actually known by the Developer and any approved subcontractor that occur incident to the conduct of the Work, the Developer and any approved subcontractor shall provide reasonable safeguards. Developer shall, however, still be solely responsible for the means and the methods used for the construction of the Work. The Village, District, Developer and any approved subcontractor do not waive, and shall retain, all defenses to third party claims pursuant to applicable law.

19. **Survey Monuments.** The Developer and any approved subcontractor shall exercise all reasonable efforts to assure that all survey or other monuments required by statute or ordinance will be properly placed and installed. Any monuments disturbed during construction of improvements shall be restored by Developer and any approved subcontractor.

20. **Drain Tile.** Any drain tile or other drainage structure or appurtenance damaged during construction shall be repaired and restored to its condition prior to such construction, or rerouted or replaced, if necessary, by Developer and any approved subcontractor in the reasonable opinion of the Village Utility Director or Director of Public Works, and provide a permanent record of such work to the Village.

21. **Erosion Control.** The Developer shall be responsible to ensure that reasonable steps are taken to prevent erosion from lands within the Property and the siltation therefrom being carried into streets rights-of-way, street-side ditches, drainage ditches, easements, culverts, drains, waterways, lakes and streams. To prevent such erosion and siltation the Developer shall conform to the practices as set forth in the erosion control plan located in the Construction Plans and all Construction Site Storm Water Permits issued by the Department of Natural Resources. In the event of any such erosion or siltation, the Developer and any approved subcontractor shall be responsible for removing all such siltation from and restoring all such rights-of-way, ditches, easements, culverts, drains, waterways, lakes and streams. All such compliance and work hereunder shall be done without cost to the Village. The Developer shall be responsible for ensuring that its approved subcontractors utilize construction means and methods that minimize, to the extent possible, nuisance-type impacts to the surrounding landowners. Prior to the start of construction, the Developer shall obtain a land disturbance permit from the Village.

22. **Use-Value Penalty.** The Developer agrees that any previously agricultural land shall be deemed by the Developer, Village, and Racine County to no longer be used for agricultural purposes, and the Developer shall be responsible for payment of any land-use penalty required by state law.

23. **Personal Liability of Public Officials.** In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the Village officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the Village.

24. **Indemnification/Hold Harmless Agreement.** The Developer hereby does, jointly and severally, expressly agree to indemnify and hold the Village, District, and their

respective elected and appointed officers, employees, engineers and agents harmless from and against all claims, judgments, damages, costs, expenses and liability of every kind and nature, including but not limited to any reasonable actual fees for attorneys and experts retained by the Village and/or District in conjunction with this Agreement, for any injury or damage received or sustained by any person or entity in connection with, on account of, or in any way relating to the Construction Project and Water System including Developer's performance of work relating thereto, or this Agreement and any other liability of any nature whatsoever, that may arise, directly or indirectly as a result of:

- a) The Village and District entering into this Agreement; and/or
- b) The Developer and any approved subcontractor undertaking and doing the Construction Project(s);
and/or
- c) The Developer and/or any approved subcontractor failing to comply with the terms and provisions of this Agreement.

Such indemnification, however, shall not apply to any intentional torts and/or acts of negligence on the part of the Village, District or any of their agents, any approved engineers or subcontractors, officers or employees and shall not apply to injury or damage arising, in whole or in part, due to negligence or willful misconduct of the Village, District, or any of their agents, any approved engineers or subcontractors, officers or employees. The Developer further agrees to aid and defend the Village or its agents (at no cost to the Village or its agents) in the event they are named as a defendant in an action concerning or relating in any way to this Agreement, except where such suit is brought by the Developer. The Developer and any approved subcontractor are not agents or employees of the Village. All work or obligations to be performed by the Developer and any approved subcontractor pursuant to the terms of this

Agreement shall be done in accordance with (i) all applicable state, federal and local laws, rules, ordinances and regulations; and (ii) the terms and provision of this Agreement.

25. **Indemnification for Environmental Contamination.** The Developer and any approved subcontractor, as applicable, shall indemnify, defend, and hold the Village, District, and their respective elected and appointed officers, employees, and agents harmless from any claims, judgments, damages, penalties, fines, costs, or loss (including actual fees for attorneys and consultants) that arise as a result of the presence in or on property owned by the Village or District or any Village right-of-way (“Village Parcels”) of any toxic or hazardous substances in excess of the minimum levels allowed by applicable law (collectively, the “Substance”) but only to the extent caused by any activity conducted by the Developer or any approved subcontractor, or any third parties, or by the Developer’s or any approved subcontractor’s respective employees, agents or any approved subcontractors, except as to injury or damage arising, in whole or in part, due to negligence or willful misconduct of the Village, District or any of their agents, any approved subcontractors, officers or employees. Without limiting the generality of the foregoing, this indemnification shall specifically include any costs incurred by the Village in connection with any remedial, removal, or restoration work required by any local, state, or federal agencies because of the presence of the Substances on or in the Village Parcels, whether in the soil, groundwater or air.

The Village and District agree that they will immediately deliver written notice to the Developer and/or any approved subcontractor of the Village’s or District’s discovery of the Substances in or on the Village Parcels. Following delivery to the Developer and/or any approved subcontractor of written notice of the Village’s or District’s claim as required under this Section, the Village and District shall make all reasonable accommodations to allow the

Developer and/or any approved subcontractor n to examine the Village Parcels and conduct such clean-up operations as may be required by appropriate local, state, or federal agencies to comply with applicable laws.

In the event the Developer and any approved subcontractor are obligated to indemnify the Village and District against claims arising under this Section, Developer and any approved subcontractor shall take all necessary steps to ensure that the Village and District receive written confirmation from the appropriate governmental authority of the satisfactory completion of the required remediation, removal or restoration work including, without limitation, a no further action letter, final case closure letter or confirmation that the presence of such toxic or hazardous substances affecting the Village Parcels migrated from an offsite source (the “Closure Documents”). The Closure Documents may be predicated upon any contingency or restriction approved by the appropriate governmental authority for groundwater or any use or as a deed restriction or registration in any registry including, without limitation, the GIS Registry. Developer and any approved subcontractor shall be responsible for any continuing obligation imposed by any appropriate governmental authority as a continuing indemnity for the Village and the Utility District.

26. **Insurance Requirements.**

(a) **General:** The Developer and any approved subcontractor shall obtain insurance reasonably acceptable to the Village as required under this section and such insurance which shall, by specific endorsement to said policy, name the Village and District, on a primary and non-contributory basis, as an additional insured or loss payee as the Village shall direct. The Developer and any approved subcontractor shall maintain all required insurance under this section until the Village and District have accepted dedication of all Public Improvements and

for the duration of the Guaranty Period. Insurance required under this Agreement shall be carried with an insurer authorized to do business in Wisconsin by the Wisconsin State Insurance Department. The Village reserves the right to reasonably disapprove any insurance company.

(b) **Certificates of Insurance:** Where the Village does not specify other limits for liability insurance, the minimum limits of liability shall be as follows:

Employer’s Liability	\$100,000.00 per occurrence
Comprehensive Motor Vehicle Liability,	\$1,500,000.00 per Bodily Injury Accident & Property Damage Combined
Comprehensive General Liability Bodily Injury	\$1,500,000.00 per accident; \$2,000,000 per project General Aggregate
Property Damage Combined	\$1,000,000.00 aggregate; \$2,000,000 per project General Aggregate
Worker’s Compensation	Statutory Limits
Builder’s Risk including Installation Floater (as deemed applicable by Village)	
All Risk Type; Total Value of Project	
Umbrella	\$2,000,000 aggregate

The Developer and any approved subcontractor may furnish coverage for bodily injury and property damage for Comprehensive Motor Vehicle Liability and Comprehensive General Liability through the use of primary liability policies or in a combination with an umbrella excess third party liability.

(c) **Owner’s Protective Liability (Independent any approved subcontractor Insurance).**

The liability limits shall be the same as those of the Comprehensive General Liability Policy.

27. **Special Assessments.** The Developer agrees that it will satisfy any outstanding special assessments levied against the Property. Developer further agrees, for itself and its successors in interest in the Property, that the Property is specially benefitted by this Agreement and by the Public Improvements provided for by this Agreement. If Developer defaults on any obligations under this Agreement, including but not limited to any financial obligation, Developer agrees, for itself and its successors in interest in the Property, that, in addition to any other remedy at law or in equity that the Village may pursue, the Village shall be entitled to specially assess all its costs relating to such default against the Property, pro rata based on acreage, without need of any procedures that are otherwise required by state statute or village ordinance before a special assessment may be imposed. Developer, for itself and its successors in interest in the Property, hereby waives any and all right to any hearings and to challenge any such special assessment.

28. **Miscellaneous Provisions.**

a. **Incorporation of Attachments.** All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

b. **Non-waiver of Approvals.** Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of the Developer to obtain all necessary approvals, licenses, and permits from the Village in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the Village to approve or disapprove any plans and specifications, or any part thereof, or to impose reasonable limitations, restrictions, construction, and use of the Property as a condition of any such approval, license, or permit, including without limitation, requiring any and all other and further development and

similar agreements. The Village will act diligently to review all necessary approvals, licenses, and permits duly requested by the Developer.

c. **Compliance with Laws.** The Construction Project shall be undertaken and done in full compliance with:

- i. The terms and provisions of this Agreement;
- ii. All applicable governmental laws, rules, regulations, statutes and ordinances; and
- iii. All directives, rules and regulations of the Village and District, and its officers, employees and agents (including, but not limited to, the engineers of the District); and
- iv. All drawings, plans, specifications, or diagrams required by and approved by the Village and/or District.

d. **Time of the Essence.** Time is deemed to be of the essence with regard to all dates and time periods set forth herein and incorporated herein.

e. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

f. **Entire Agreement.** This Agreement and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer, the Village and the District with respect to the matters set forth herein. This Agreement may be modified only in writing signed by all Parties.

g. **Venue and Law Applicable.** This Agreement shall be governed, controlled, interpreted and construed in accordance with the internal laws of the State of Wisconsin. The

venue of any legal action arising under and/or pertaining to this Agreement shall solely and exclusively be Racine County Circuit Court in Racine, Wisconsin.

h. **Originals and Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

i. **Amendments to Agreement.** This Agreement shall not be amended orally but only by the written agreement of the Parties signed by the appropriate representatives of each Party and with the actual authority of each Party.

j. **Agreement Runs with the Land.** This Agreement shall be binding upon the Developer, and its successors in title or assigns, and the provisions hereof shall be covenants running with the land and shall be binding upon the present owners and all subsequent owners of the Property or any portion thereof. This Agreement shall be recorded with the Racine County Register of Deeds. Wherever an obligation herein is designated as that of the Developer or others, the obligation shall be joint and several hereunder.

k. **Notices.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended or a successor designated by a party to this Agreement, or upon facsimile transmission to the fax numbers set forth herein or a successor number or numbers designated by the party, or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows, or a successor party or address, or both:

To Developer:

Clint Weninger
Land Resources Manager
P. O. Box 781
N3W23650 Badinger Road

Waukesha, WI 53187
Fax:(262) 534-1845

To the Village and Utility District:

Village Clerk
Village of Caledonia
5043 Chester Lane
Racine, WI 53402
Fax: (262) 835-2388

and to,

Director of Public Works
Village of Caledonia
5043 Chester Lane
Racine, WI 53402
Fax: (262) 835-2388

l. **Successors and Assignment.** This Agreement is binding upon and enforceable against the Parties' respective successors and permitted assigns. The Village and District may assign its interest in this Agreement to any successor entity or entities, including any municipality or municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the Village. The Developer and Any approved subcontractor may not assign its interest in this Agreement without the express written approval of the Village and District.

m. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be binding on all parties.

n. **Subordination.** If the Developer grants any mortgage or other security interest in the Property, the Developer shall be required to obtain a subordination agreement indicating that the mortgager or security holder agrees to subordinate its interest in the Property to the rights

of the Village and District under this Agreement and that this Agreement shall survive such foreclosure and the lands in the Property shall remain subject to this Agreement.

o. **Force Majeure.** For purposes of this Agreement, the term “Force Majeure” means events or circumstances beyond a Party’s reasonable control, including, without limitation, “acts of God,” fire, flood, other natural calamities, accidents, unusual delays in deliveries, unavoidable casualties, labor disputes, strikes, lockouts or picketing (legal or illegal), wars, riots, acts of terrorism, changes in or unexpected interpretations of applicable statutes, laws, ordinances or regulations, adverse weather conditions, condemnation or other actions of governmental authorities or utility companies or shortages of labor, fuel, power or materials.

p. **Use of Further approved subcontractor.** In the event Developer elects to use a further subcontractor subcontractor(s) to do part and/or all of the construction of the Construction Project and/or Water System, then:

- i. Such further subcontractor must be pre-approved and pre-qualified by the Village, which approval shall not be unreasonably withheld, conditioned, or delayed; and
- ii. Such further subcontractor shall agree in written agreement approved by the Village Attorney to perform all of the duties and obligations imposed upon any contractor or subcontractor in this Agreement; and
- iii. The Developer shall still remain a party to this Agreement, and still be responsible for fully performing all of the duties and obligations imposed upon it under this Agreement.

q. **Legal Action.** In addition to the provisions set forth in this Agreement, the Village and District may take any and all other appropriate action at law or equity to enforce

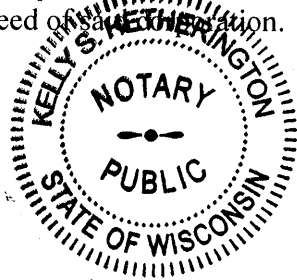
PAYNE AND DOLAN INC.

By: [Signature]
Brian Endres
Vice President

Attest: [Signature]
Clint Weringer
Land Resources Manager

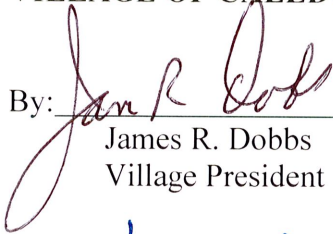
STATE OF WISCONSIN)
) SS:
COUNTY OF Waukesha

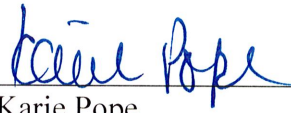
Personally came before me this 9th day of May 2019, Brian Endres ~~and~~ ~~[Signature]~~ the Vice President and Clint Weringer of Payne and Dolan Inc., to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said corporation.



[Signature]
Notary Public, Waukesha County, WI
Print Name: Kelly S. Hetherington
My commission: 1.19.20

VILLAGE OF CALEDONIA

By: 
James R. Dobbs
Village President

Attest: 
Karie Pope
Village Clerk

Personally came before me this 6th day of May, 2019, James R. Dobbs and Karie Pope, Village President and Village Clerk of the Village of Caledonia, to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said Village.


Notary Public, Racine County, WI

Name: Anthony A. Bunkelman

My Commission: July 26, 2019

VILLAGE OF CALEDONIA WATER UTILITY DISTRICT

By: Howard Stacey
Howard Stacey
President

Attest: Michael Pirk
Michael Pirk
Secretary

Personally came before me this 8th day of May, 2019, Howard Stacey and Michael Pirk President and Secretary of the Village of Caledonia Water Utility District, to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said Districts.

Anthony A. Bunkelman
Notary Public, Racine County, WI

Name: Anthony A. Bunkelman

My Commission: July 26, 2019

Exhibit A: Legal Description of Property

- Exhibit B: Village Board Resolution No. 2018-78
- Exhibit C: Public Improvements Cost Estimate
- Exhibit D: Charles Street Vacation Description
- Exhibit E: Charles Street Relocation Description
- Exhibit F: Pipe Segment connecting to Racine Water Utility

770272.001(594)

EXHIBIT C

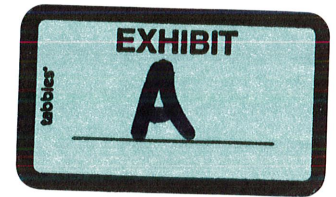
**EXHIBIT C- PUBLIC IMPROVEMENTS COST ESTIMATE AND
SECURITY REQUIREMENTS**

The estimated total cost for the Charles Street Relocation project is \$1,775,000 + \$50,000 in inspection fees for a total of \$1,825,000.

The road is going to be concrete which is estimated at \$443,000 for the pavement plus \$85,000 for the curb and gutter.

Security shall be posted in amounts required pursuant to Sec. 9(a) of the Agreement.

Conditional Use Permit Description
Payne & Dolan: Racine Quarry Project

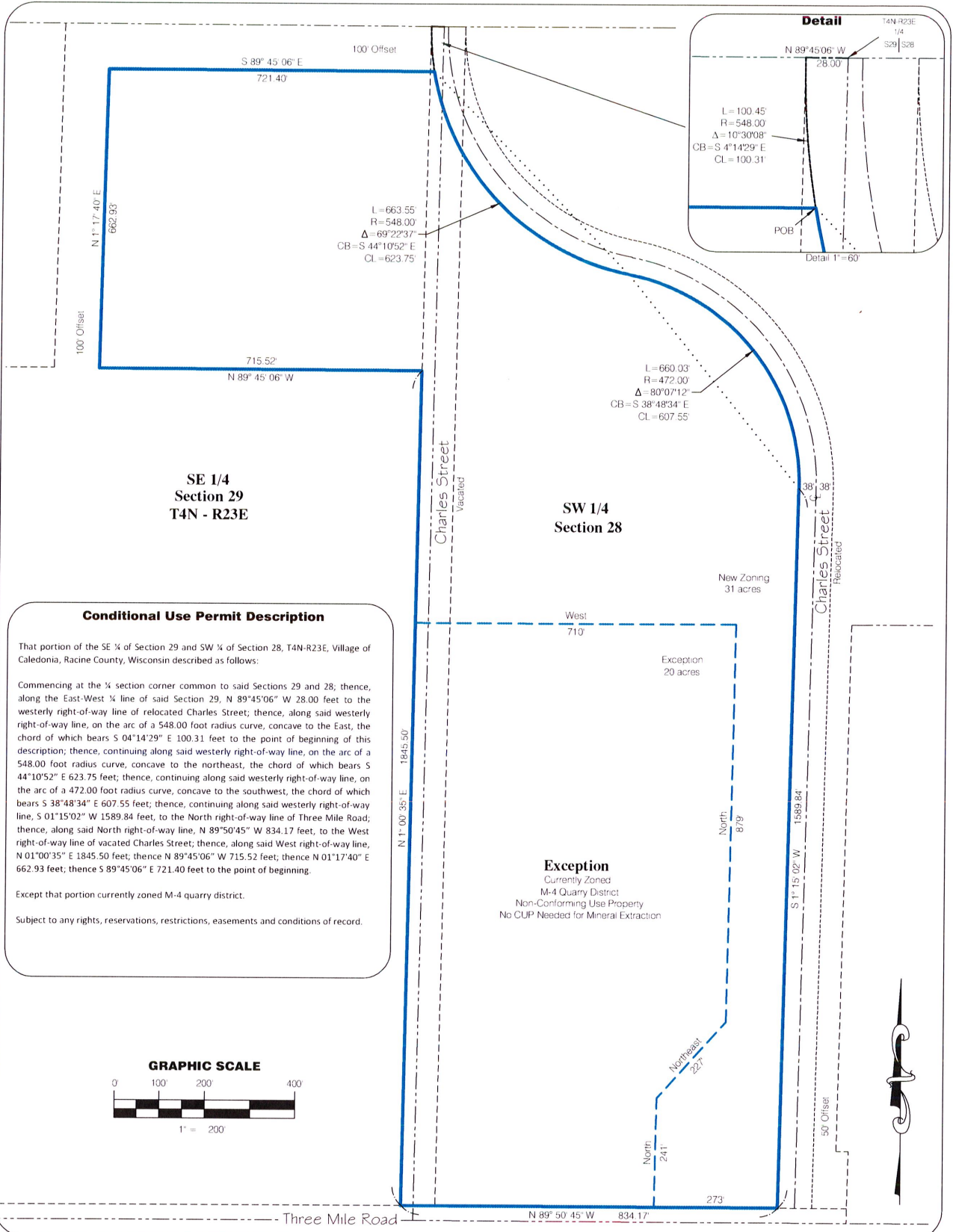


That portion of the SE $\frac{1}{4}$ of Section 29 and SW $\frac{1}{4}$ of Section 28, T4N-R23E, Village of Caledonia, Racine County, Wisconsin described as follows:

Commencing at the $\frac{1}{4}$ section corner common to said Sections 29 and 28; thence, along the East-West $\frac{1}{4}$ line of said Section 29, N 89°45'06" W 28.00 feet to the westerly right-of-way line of relocated Charles Street; thence, along said westerly right-of-way line, on the arc of a 548.00 foot radius curve, concave to the East, the chord of which bears S 04°14'29" E 100.31 feet to the point of beginning of this description; thence, continuing along said westerly right-of-way line, on the arc of a 548.00 foot radius curve, concave to the northeast, the chord of which bears S 44°10'52" E 623.75 feet; thence, continuing along said westerly right-of-way line, on the arc of a 472.00 foot radius curve, concave to the southwest, the chord of which bears S 38°48'34" E 607.55 feet; thence, continuing along said westerly right-of-way line, S 01°15'02" W 1589.84 feet, to the North right-of-way line of Three Mile Road; thence, along said North right-of-way line, N 89°50'45" W 834.17 feet, to the West right-of-way line of vacated Charles Street; thence, along said West right-of-way line, N 01°00'35" E 1845.50 feet; thence N 89°45'06" W 715.52 feet; thence N 01°17'40" E 662.93 feet; thence S 89°45'06" E 721.40 feet to the point of beginning.

Except the portion currently zoned M-4 quarry district.

Subject to any rights, reservations, restrictions, easements and conditions of record.



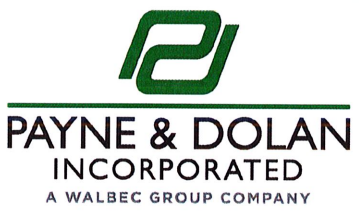
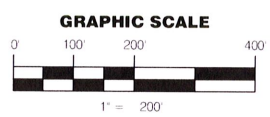
Conditional Use Permit Description

That portion of the SE ¼ of Section 29 and SW ¼ of Section 28, T4N-R23E, Village of Caledonia, Racine County, Wisconsin described as follows:

Commencing at the ¼ section corner common to said Sections 29 and 28; thence, along the East-West ¼ line of said Section 29, N 89°45'06\"/>

Except that portion currently zoned M-4 quarry district.

Subject to any rights, reservations, restrictions, easements and conditions of record.



Conditional Use Permit Description

THIS PRINT IS THE PROPERTY OF PAYNE AND DOLAN, INC. AND THE CONTENTS CONTAINED HEREIN ARE CONSIDERED CONFIDENTIAL AND SHOULD NOT BE USED OUTSIDE OF THE COMPANY WITHOUT PERMISSION.

Racine Quarry Project
 SE 1/4 of Section 29, SW 1/4 of Section 28
 T4N-R23E, Village of Caledonia
 Racine County, Wisconsin
 Prepared by Jacob Spees PLS 2925
 Date: May 7, 2018 Site #: 80360 Drawn By: JS

1
 SHEET 1 OF 1



RESOLUTION NO. 2018-78

A RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT, NONMETALLIC MINING PERMIT AND EXPLOSIVES USE PERMIT TO ALLOW FOR THE FURTHER DEVELOPMENT OF AN EXISTING LIMESTONE QUARRY INCLUDING EARTHMOVING, BLASTING, CRUSHING, SORTING AND SIZING, STOCKPILING, TRANSPORTATION AND RECLAMATION, AS WELL AS THOSE ACTIVITIES PERMITTED IN THE VILLAGE'S ORDINANCES ENTITLED "REGULATION OF NONMETALLIC MINING" AND "EXPLOSIVES AND BLASTING"; THIS PROPERTY IS LOCATED NORTH AND EAST OF THE EXISTING QUARRY AT 1501 3 MILE ROAD, SEC. 28 AND 29, T4N, R23E, VILLAGE OF CALEDONIA, RACINE COUNTY, WI; PAYNE & DOLAN, INC. OWNER/APPLICANT

The Village Board for the Village of Caledonia resolves as follows:

WHEREAS, Owner/Applicant requested a Conditional Use Permit, Nonmetallic Mining Permit and Explosives Use Permit to allow for the further development of an existing limestone quarry including earthmoving, blasting, crushing, sorting and sizing, stockpiling, transportation and reclamation, as well as those activities permitted in the Village's ordinances entitled "Regulation of Nonmetallic Mining" (Title 7, Chapter 11) and "Explosives and Blasting" (Title 7, Chapter 10) for property located North and East of the existing quarry at 1501 3 Mile Road, Sec. 28 and 29, T4N, R23E, Village of Caledonia, Racine County, WI; Parcel Nos: 104042328075000, 104042328074000, 104042328071000 and 104042329193000; and

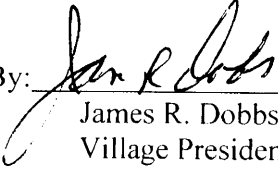
WHEREAS, the Village of Caledonia Plan Commission recommended approval of the request, subject to the conditions attached hereto as **Exhibit A**, for the following reasons as set for the in staff memorandum:

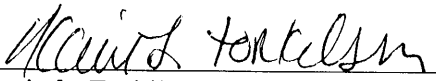
1. The proposed use is allowed by underlying zoning through the conditional use process;
2. The proposed use, with conditions, meets the standards set forth under Sec. 20-1182, adopted under Title 16 of the Village's Code of Ordinances;
3. The applicant agreed to meet all of the requirements and conditions to be imposed by the Village; and
4. For the same reasons set forth in Plan Commission Resolution No. 2018-75, and the motion related to the resolution, which are incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, by the Village Board of the Village of Caledonia that the requested Conditional Use Permit, Nonmetallic Mining Permit and Explosives Use Permit set forth above, are hereby approved for the same reasons set forth above and subject to the same conditions and contingencies imposed by the Village Plan Commission.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 4th day of September, 2018.

VILLAGE OF CALEDONIA

By: 
James R. Dobbs
Village President

Attest: 
Karie L. Torkilsen
Village Clerk

770272.001 (594)

EXHIBIT A - CONDITIONS
Payne and Dolan - Quarry

1. **Zoning Permit.** The applicant must obtain a zoning permit card from the Office of the Village Zoning Administrator after paying a zoning permit fee of \$3620.00. (\$3000, plus \$20 per acre for the 31 active acres worked). Payment of the zoning permit fee shall be made within thirty (30) days of your receipt of this letter. This card must be displayed in a prominent location at the project site, and a copy of these conditions must be kept at the project site at all times until the project has been completed.
2. **Conditions Made Applicable to 20 Acre Grandfathered Parcel.** Pursuant to Section 7-11-6 of the Village's Nonmetallic Mining Ordinance, the conditions governing the issuance of a conditional use permit shall also be made applicable to the 20 acre "grandfathered" parcel referenced above which is to be made part of the applicant's proposed quarry expansion.
3. **Compliance.** Failure to comply with the terms and conditions stated herein could result in the issuance of citation(s) and/or revocation of this permit.
4. **Binding Effect.** These conditions bind and are applicable to the Property Owner, Agent, and any other users of the Property Owner with respect to the uses on the Property.
5. **Plans.** The proposed operation to allow for the further development of an existing limestone quarry including earthmoving, blasting, crushing, sorting and sizing, stockpiling, transportation and reclamation, as well as those activities permitted in the Village's ordinances entitled "Regulation of Nonmetallic Mining" (Title 7, chapter 11) and "Explosives and Blasting" (Title 7, Chapter 10) shall be located, constructed, and utilized in accordance with the plans and documents received by the Racine County Development Service Office on May 30, 2018.
6. **Permit Duration.** This permit is granted for a two-year period, after which a two-year extension may be granted by the Village of Caledonia Plan Commission and Village Board upon request of the applicant. However, no such extension or permit renewal will be granted unless this project is in reasonable compliance with the conditions of this approval. An on-site evaluation by this office will determine compliance. In two years, the applicant must re-apply for an extension of the conditional use permit and site plan review permit or completely restore the quarry in compliance with the submitted restoration plans. The applicant must continue applying for a renewal of its nonmetallic mining permit on a biennial basis and explosives use permit on an annual basis.
7. **Restoration Bond.** The restoration bond (financial assurance) required by Chapter 12.5 Nonmetallic Mining Reclamation and also by the Village of Caledonia Ordinance for this operation must continue to be maintained in effect. The amount of the restoration bond shall be increased to adequately cover the costs of the applicant's updated reclamation plan. The amount of the bond shall be determined by the Zoning Administrator, after

consultation with the applicant and Village Public Works Director. This new bond shall be submitted prior to issuance of the zoning permit. The amount for the bond proposed by the applicant to meet the requirements under this condition and Chapter 12.5 of the Racine County Code of Ordinances shall be reviewed for sufficiency by an engineering consultant and financial consultant retained by Racine County and the Village and the cost of services for the consultants shall be paid for by the applicant within thirty (30) days upon request by Racine County and/or the Village. Such bond shall be reviewed periodically (at a minimum every four (4) years) by Racine County and the Village to assure it complies with this condition and Chapter 12.5 of the Racine County Code of Ordinances. The bond amount shall include amounts for maintenance of water quality that is safe for fishing, swimming and recreational uses as determined by the City of Racine Health Department testing standards or a similar public health agency acceptable to the Village and Racine County. Payne and Dolan shall be financially responsible for maintaining safe water quality as determined by the City of Racine Health Department or similar public health agency until there is a transfer of ownership to an unrelated entity or unrelated third-party, and then such requirements shall transfer to such unrelated entity or unrelated third-party so long as these conditions still apply.

8. **Hours of Operation.** The permitted hours of operation for Plant Operations are 6:00 a.m. to 10:00 p.m. Monday through Friday, 6:00 a.m. to 6:00 p.m. on Saturday and none on Sunday. The permitted hours of operation for Quarry Operations (except stripping and drilling) are 7:00 a.m. to 10:00 p.m. Monday through Friday, 7:00 a.m. to 3:00 p.m. on Saturday and none on Sunday. The permitted hours of operation for Overburden Stripping are 7:00 a.m. to 5:00 p.m. Monday through Friday, 7:00 a.m. to 1:00 p.m. on Saturday and none on Sunday. The permitted hours of operation for Drilling are 7:00 a.m. to 6:00 p.m. Monday through Friday, 7:00 a.m. to 1:00 p.m. on Saturday and none on Sunday. The permitted hours of operation for Blasting are 9:00 a.m. to 4:00 p.m. Monday through Friday, 9:00 a.m. to 12:00 p.m. on Saturday and none on Sunday. The permitted hours of operation for Loadout are 6:00 a.m. to 6:00 p.m. Monday through Friday, 6:00 a.m. to 6:00 p.m. on Saturday and none on Sunday. The permitted hours of operation for Quarry Maintenance are 6:00 a.m. to 10:00 p.m. Monday through Friday, 6:00 a.m. to 10:00 p.m. on Saturday and 6:00 a.m. to 10:00 p.m. on Sunday. There are no hours of operation restrictions for Shop and Plant Maintenance.
9. **Reclamation Plan.** This approval recognizes that the reclamation plan for the subject site is being amended to incorporate the further development area as outlined in the submitted plans. Implementation of this reclamation plan must occur within three (3) years after the cessation of extraction operations.
10. **Stormwater.** The property owner or designated agent must contact the Village of Caledonia Stormwater Utility District Commission and the Village Utility Director regarding Stormwater regulations for this site. Compliance with all regulations and requirements, as determined by the Village of Caledonia Stormwater Utility District Commission and the Village Utility Director is required. Stormwater management plans shall be submitted for approval and be in compliance with all Village requirements, as

determined by the Stormwater Utility District Commission and the Village Utility Director before permits are issued.

11. **Caledonia Utility District.** The property owner or designated agent must contact the Caledonia Sewer and Water Utility District regarding Utility District regulations for this site. Specifically, the relocation of any Utility District infrastructure associated with the relocation of Charles Street. Compliance with all regulations and requirements, as determined by the Caledonia Sewer and Water Utility District Commission and the Village Utility Director is required.
12. **Engineering Department.** The property owner or designated agent must contact the Village of Caledonia Engineering Department and must comply with all regulations and requirements of the Village of Caledonia Engineering Department. Specifically, any Engineering Department requirements associated with the relocation of Charles Street and the location and construction of the proposed bike path. All costs associated with the relocation of Charles Street, including the costs of vacating a portion of Charles Street in its present location, dedication of easements and right-of-way necessary to accommodate the relocation of Charles Street, and the relocation and installation of utilities, shall be borne by the applicant.
13. **Landscaping.** Landscaping at the site must be in compliance with the submitted Landscaping Plan. The Village may require a letter of credit or bond to be posted to ensure implementation and maintenance. Landscaping shall comply with Title 16. The landscaping plan shall follow the Village of Caledonia planting requirements.
14. **Stockpiles and Berms.** Overburden and topsoil shall be stockpiled for creating the landscape berms and later final restoration. Any future stockpiles shall have side slopes of 2:1 or flatter and be seeded to prevent soil erosion. All stockpiles must have a minimum of four inches of topsoil on the surface to allow grasses to grow to prevent soil erosion. The temporary seeding of the stockpiles must be a mixture of grasses at a rate of five pounds of perennial ryegrass, 10 pounds of smooth brome and 10 pounds of tall fescue per 1,000 square feet. These stockpiles must remain until used to restore the land being mined. See the prior "WI-CPA-123" for seeding recommendations for final restoration. All landscape berms must have a minimum of six inches of topsoil on the surface prior to seeding or placing of shrubs and trees.
15. **No Accumulation of Refuse and Debris.** Any fence, wall, hedge, yard, space or landscaped area must be kept free of any accumulation of refuse or debris. Plant materials must be kept in a healthy growing condition and structures must be maintained in a sound manner.
16. **Property Maintenance Required.** A complete and thorough maintenance program must be established to insure attractiveness. The continued positive appearance of buildings and property is dependent upon proper maintenance attitudes and procedures. Maintenance programs must be established that include watering, maintaining and pruning all landscape planting areas including removal and replacement of dead or

diseased landscaping; cleaning up litter; sweeping, cleaning and repairing paved surfaces; and cleaning, painting, and repairing windows and building façade. All drives and parking areas shall be maintained in a dust free condition.

17. **Performance Standards.** The applicant must comply with the provisions of Article VII, Division 4, Performance Standards of Chapter 20, Zoning, Racine County Code of Ordinances (a copy is attached), as adopted by the Village of Caledonia.
18. **Compliance with Law.** The applicant is responsible for obtaining all necessary federal, state, and local permits, approvals, and licenses. The applicant is required to comply with all applicable local, state, and federal regulations, including Titles 9, 14, 16 and 18 of the Village of Caledonia Code of Ordinances.
19. **Reimburse Village Costs.** Applicant shall reimburse the Village all costs incurred by the Village for review of this conditional use including but not limited to engineering, legal and planning review that occurred prior to permit issuance and during the implementation of the plans and construction of the improvements.
20. **Amendments to Conditional Use Permit.** No additions, deletions, or changes may be made to the project, site plan, or these conditions without the Village of Caledonia's prior approval. All addition, deletion, and/or change requests must be submitted to the Village of Caledonia in writing. A minor change to the conditions of this permit, as deemed by the Zoning Administrator, may be made at a staff level, if authorized by the Zoning Administrator.
21. **Access.** The applicant must allow any Village or Racine County employee full and unlimited access to the project site at a reasonable time to investigate the project's construction, operation, or maintenance. Any inspectors or visitors must follow all local, state and federal safety guidelines and shall check in at Payne & Dolan's office.
22. **Fill Material.** Only clean fill may be used for the berms on these parcels. Fill material may not contain sod, brush, roots or other perishable material. No re-bar, asphalt, scrap wood, or other types of construction debris will be permitted as fill material. Rock particles larger than three-fourths of the layer thickness must be removed from the material prior to compaction with the fill.
23. **Traffic Compliance.** The applicant is responsible for using best efforts for ensuring that truck drivers obey all posted speed limits and applicable traffic laws with the Quarry operation. Applicant shall ensure that a "STOP" sign is in place for all truck drivers entering the public road from the Quarry. Applicant shall require its drivers and the drivers of its customers to not travel on streets East of Charles Street, unless transporting materials directly to a project site. This includes coming to a full stop before entering the public roadway. The quarry driveways shall have a speed limit of no more than 15 miles per hour. Should this office receive substantial complaints that such laws are being broken, the Village of Caledonia reserves the right to seek revocation of this permit for noncompliance.

24. **Blasting.** Blasting may be conducted as a part of this operation. Such blasting shall be in accordance with the standards contained in the Caledonia blasting permit. Preblasting notifications and preblast surveys shall be offered to all residents or owners of dwellings or other structures located within the area defined by ordinance.
25. **Air Regulations.** Mineral extraction operations shall be conducted in accordance with the Federal Environmental Protection Agency and the State of Wisconsin Department of Natural Resources air pollution control regulations. Dust shall be controlled so that there are no visible emissions (0% opacity) at the boundaries of the property. The Fugitive Dust Control Plan, submitted on May 30, 2018, must be followed.
26. **Spill Prevention.** The Spill Prevention Control and Countermeasure Plan, submitted on May 30, 2018, must be followed.
27. **Deed Restriction.** As outlined in the submitted documents a deed restriction in a form approved by the Village Attorney must be recorded with the Racine County Register of Deeds office that indicates that no future mining-related activity, business park uses or industrial uses will take place east of the relocated Charles Street. The intent of this deed restriction is to ensure that future uses after implementation of the reclamation plan are compatible with residential and recreational uses. Any amendments to this deed restriction shall require approval by a vote of six of the seven members of the Village Board to be effective. A copy of this deed restriction and proof of recording must be submitted to the Racine County Development Services office prior to zoning permit issuance.
28. **Vegetated Buffer.** As illustrated on the submitted plans a vegetated buffer must be installed east of the relocated Charles Street. Also, as indicated on the submitted plans the existing tree line will be improved.
29. **Berming and Landscaping.** As illustrated on the submitted plans landscape berms must be installed west, north, east and south of the proposed further development of the limestone quarry. Also, a landscape berm must be installed east of the relocated Charles Street and south of Ellis Avenue as illustrated on the submitted plans. The berms and landscaping shall be professionally designed and installed prior to the commencement of non-metallic mining operations in the expanded area, and shall be professionally and perpetually maintained.
30. **Haul Roads.** All haul roads must be maintained in a dust-controlled condition and any dust palliatives must be Wisconsin Department of Natural Resources (WDNR) approved prior to usage. All haul roads throughout the entire quarry operation must be maintained in an all-weather, dust-free condition. When applying treatment to any access road surface, the operator must make every effort to avoid the spread of this treatment material onto the public roadway. Should such material and/or soil material be spread, carried, and/or spilled onto the public roadway, the pit operator must act immediately to mitigate

the problem. The haul roads must be provided with gates that can be locked whenever the quarry is not operation.

31. **Boundary Staking.** All excavation boundaries, phase boundaries, and wetland boundaries, if any, must be staked or otherwise marked and may be inspected by the Village or the Racine County Development Services Department prior to commencing operations under this approval. Stakes must be made of steel, fiberglass, or other suitable material as determined by this office. Signs warning of the quarry operation must be placed around the property boundaries spaced 200 feet apart. Security fencing must be placed around the entire operation. Said fencing must be installed prior to the removal of any materials from the site.
32. **Sediment.** During construction and operations this site must have roads, access drives and/or parking areas of sufficient width and length to prevent sediment from being tracked onto public roadways. Any sediment reaching a public road must be removed by street cleaning (not flushing) before the end of each workday or as determined by the jurisdictional highway authority.
33. **Contact Information.** The operator of the quarry shall provide property owners within 1,000 feet of the site with contact information, including the direct number to the manager of the quarry site during workday and non-working hours, so that concerns may be promptly addressed.
34. **Elevations.** Racine County and the Village of Caledonia reserve the right to require, with 60 days notice, a complete set of elevations including bottom of pit grades. The elevations must be taken by a registered land surveyor or a professional engineer.
35. **Reclamation Notification.** The operator must notify this office and the Village of Caledonia in writing at least 30 working days prior to final completion of site reclamation.
36. **Signage.** Any sign on this property must conform to the ordinance standards and will require a separate zoning permit.
37. **Site Restoration.** Final site restoration and the restoration bond are subject to compliance with Chapter 12.5 Non-Metallic Mining Reclamation, Racine County Code of Ordinances.
38. **Noise.** Noise levels measured at the property lines must never exceed 68 decibels, when the crushing activity is occurring.
39. **Crushing.** The crushing activity must comply with the State of Wisconsin air pollution regulations. All dust control equipment/devices on the crusher must be kept operational and must be maintained as required by State/Federal regulations.

40. **Vibrations.** The crushing activity must not emit vibrations, which are discernable without instruments, outside its premises.
41. **Jake-braking.** No “jake-braking” by haul trucks is allowed except under emergency circumstances.
42. **Compliance with Law.** The applicant must obtain all necessary federal, state, and local permits, approvals, and licenses. The applicant must comply with all applicable codes and regulations.
43. **Agreement.** Your accepting the conditional use approval/zoning permit and beginning the project means that you have read, understand, and agree to follow all conditions of this approval. Therefore, Payne & Dolan Inc. and its heirs, successors, and assigns are responsible for full compliance with the above conditions.
44. **Subsequent Owners.** It is the property owner's responsibility to inform any subsequent owner or operator of these conditions.

EXHIBIT E
Relocated Charles Street Property Description

A strip of land dedicated for road purposes 76 feet wide, located in the SE $\frac{1}{4}$ of Section 29 and SW $\frac{1}{4}$ of Section 28, T4N-R23E, Town of Caledonia, Racine County, Wisconsin, the centerline of which is described as follows:

Commencing at the $\frac{1}{4}$ section corner common to said Sections 29 and 28; thence, along the East-West $\frac{1}{4}$ line of said Section 28, S 89°57'14" E 10.00 feet to the centerline of vacated Charles Street and the point of beginning of this centerline description; thence S 01°00'35" W 0.54 feet; thence, on the arc of a 510.00 foot radius curve, concave to the northeast, the chord of which bears S 38°55'47" E 654.82 feet; thence, on the arc of a 510.00 foot radius curve, concave to the southwest, the chord of which bears S 38°48'34" E 656.46 feet; thence S 01°15'02" W 1589.11 feet, to the North right-of-way line of Three Mile Road and the terminus of this centerline description.

The sidelines thereof being shortened or elongated to conform to said North right-of-way line of Three Mile Road and said East-West $\frac{1}{4}$ line of said Section 28.

Subject to any rights, reservations, restrictions, easements and conditions of record.

EXHIBIT D

Charles Street Vacation Description

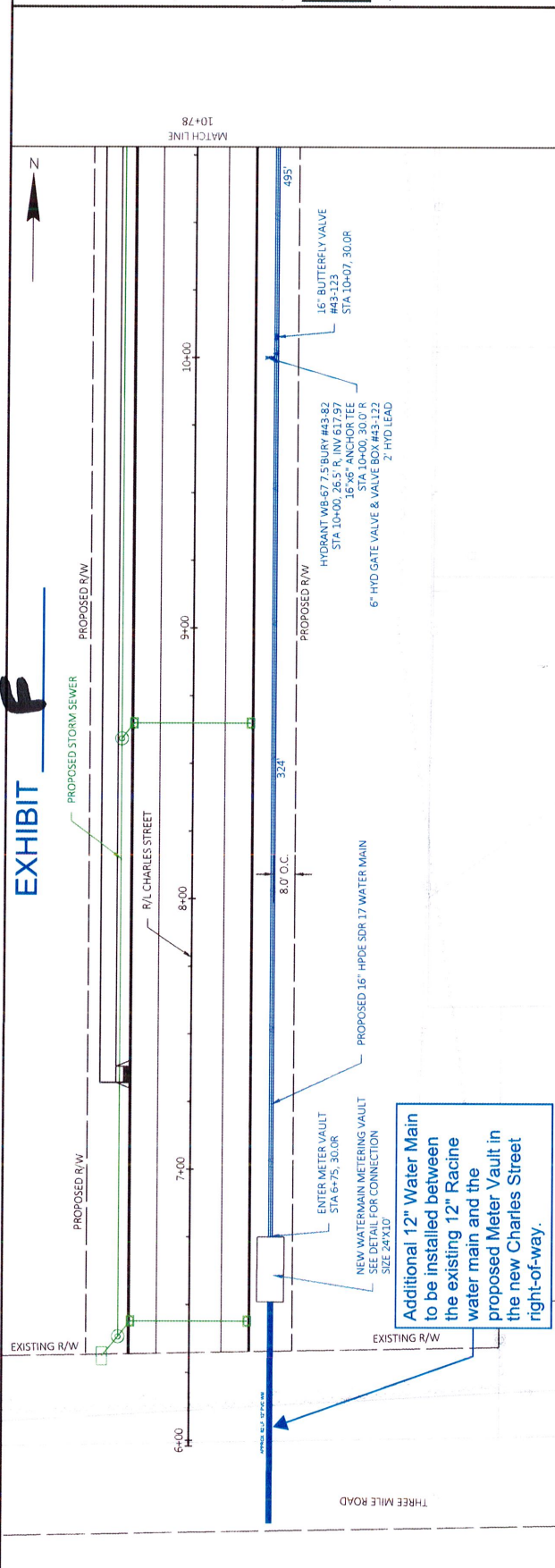
A strip of land for the vacation of Charles Street 76 feet wide, located in the SE $\frac{1}{4}$ of Section 29 and SW $\frac{1}{4}$ of Section 28, T4N-R23E, Town of Caledonia, Racine County, Wisconsin, the centerline of which is described as follows:

Commencing at the $\frac{1}{4}$ section corner common to said Sections 29 and 28; thence, along the East-West $\frac{1}{4}$ line of said Section 28, S 89°57'14" E 10.00 feet to the centerline of Charles Street and the point of beginning of this centerline description; thence, along said centerline, S 01°00'35" W 2608.30 feet, to the North right-of-way line of Three Mile Road and the terminus of this centerline description.

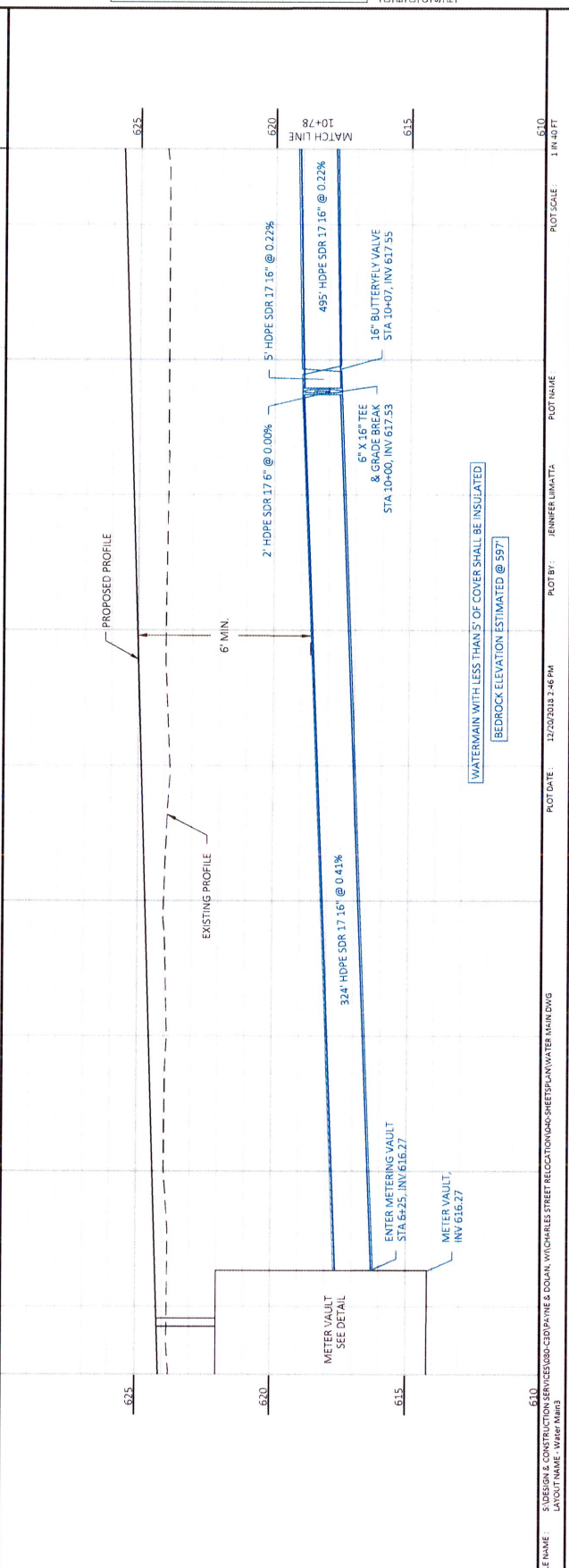
The sidelines thereof being shortened or elongated to conform to said North right-of-way line of Three Mile Road and said East-West $\frac{1}{4}$ line of said Section 28.

Subject to any rights, reservations, restrictions, easements and conditions of record.

EXHIBIT F



Additional 12" Water Main
to be installed between
the existing 12" Racine
water main and the
proposed Meter Vault in
the new Charles Street
right-of-way.



REVISION SCHEDULE	
NO.	DATE

DATE: 12/26/2018
 ENGINEER:
 DRAWN BY:
 CHECKED BY:
 SCALE: 1 IN = 40 FT
 PROJECT NUMBER: 48017

VILLAGE OF CALEDONIA
 3 MILE ROAD TO ELLIS AVENUE
 CHARLES STREET
 RELOCATION

RACINE COUNTY WISCONSIN

PRELIMINARY NOT FOR CONSTRUCTION

VILLAGE OF CALEDONIA

WATER MAIN

10.1



Village of
CALEDONIA

Office of the Public Works Director

Tom Lazcano, P.E.
5043 Chester Lane
Racine, WI 53402
www.caledonia-wi.gov

office: 262-835-6475
fax: 262-835-2388
email: tlazcano@Caledonia-wi.gov

March 5, 2019

Payne & Dolan Inc.
Attn: Jennifer Liimatta PE
W6380 Design Drive
Greenville, WI 54942

RE: Approval of Final Plans

Dear Ms. Liimatta:

This Village of Caledonia has received, reviewed and approved the road construction plans for the Charles Street Relocation Project. The Charles Street Relocation Project is located in the Southwest $\frac{1}{4}$ of Section 28 and the Southeast $\frac{1}{4}$ of Section 29, both in Range 23 East, Town 4 North in the Village of Caledonia.

The project will relocate a section of Charles Street east, between 3 Mile Road and Ellis Avenue. The project is being completed to expand the existing Quarry.

The Charles Street Relocation plans dated 2/21/2019 have been approved for Road Construction. Please submit these plans and this letter to the Wisconsin Department of Natural Resources for their approval to proceed with construction.

If you have any questions or need any additional information about this approval contact me at 262-835-6475 or tlazcano@caledonia-wi.gov

Thank you.

A handwritten signature in black ink that reads "Tom Lazcano".

Tom Lazcano, PE
Public Works Director