

NOTICE OF MEETING

EXECUTIVE COMMITTEE

September 12, 2019 3:30 P.M.

Administration Building – Room 306
508 New York Ave
Sheboygan WI 53081

AGENDA

Call to Order

Certification of Compliance with Open Meeting Law

Approval of Minutes – September 3, 2019 Executive Committee Meeting

Public Input and Comments on Agenda Items/Non-Agenda Items

Consideration of Committee Appointments

Consideration of Funding Agreement for the Sheboygan County Memorial Airport Customs Facility

Next Meeting Date: September 30, 2019 at 3:15pm

Adjournment

Prepared by:
Alayne Bosman
Recording Secretary

Tom Wegner
Committee Chairperson

NOTE: Members of the public are invited to offer comments on topics which may or may not appear on the Agenda, and Committee members may discuss such matters, but no action may be taken by the Committee on non-Agenda topics. Individual speakers may be limited to no more than five minutes.

A majority of the members of the County Board of Supervisors or of any of its committees may be present at this meeting to listen, observe and participate. If a majority of any such body is present, their presence constitutes a "meeting" under the Open Meeting Law as interpreted in State ex rel. Badke v. Greendale Village Board, 173 Wis. 2d 553 (1993), even though the visiting body will take no action at this meeting.

If listed as an agenda item, the "Administrator's Report" is a summary of key activities for the previous month and planned for upcoming months including performance evaluations, liaison committee issues and County Board issues. No action will be taken by the Executive committee resulting from the report unless it is a specific item on the agenda.

Persons with disabilities needing assistance to attend or participate are asked to notify the County Board Chairman/County Administrator's Office at 920-459-3103 prior to the meeting so that accommodations may be arranged.

Posted on 9/11/2019 at 11:30am

SHEBOYGAN COUNTY EXECUTIVE COMMITTEE MINUTES

Administration Building
508 New York Ave
Sheboygan, WI 53081

September 3, 2019

Called to Order: 3:00 P.M.

Adjourned: 3:55 P.M.

MEMBERS PRESENT: Tom Wegner, Vern Koch, William Goehring, Ed Procek, Robert Ziegelbauer

MEMBERS ABSENT: None

ALSO PRESENT: Adam Payne, Alayne Bosman, Crystal Fieber, Jeremy Fetterer, Diane Liebenthal, Matt Strittmater, and Roger Te Stroete

Chairman Wegner called the meeting to order. Alayne Bosman verified that the meeting notice was posted on August 30, 2019 at 2:30 P.M. in compliance with the open meeting law.

Supervisor Procek made a motion to approve the minutes of the August 6, 2019 Executive Committee meeting. Motion seconded by Supervisor Ziegelbauer. Motion carried unanimously.

The Committee reviewed the proposal for the Rocky Knoll Renovation Project for RLF Closeout Grant Application. Supervisor Goehring made a motion to approve the renovation project. Motion seconded by Supervisor Ziegelbauer. Motion carried unanimously.

The Committee discussed the correspondence referred from County Board on fair maps. Supervisor Procek made a motion to receive the correspondence for information. Motion seconded by Supervisor Ziegelbauer. Motion carried unanimously.

The Committee discussed Resolution No. 8 – 2020 Five-Year Capital Plan. Supervisor Goehring made a motion to recommend the resolution be adopted. Motion seconded by Supervisor Ziegelbauer. Motion carried unanimously.

The Committee discussed Resolution No. 9 – Requesting the Wisconsin Legislature to End Use of Personal Conviction Waivers for School and Day Care Center Immunizations. Matt Strittmater and Diane Liebenthal gave an overview of the resolution and discussion ensued. Supervisor Goehring made a motion to recommend the resolution be adopted. Motion seconded by Supervisor Koch. Motion carried unanimously.

The Committee discussed Resolution No. ___ – Affirming the Right of all Wisconsin Citizens to Fair and Equal Representation and Requesting the Adoption of a Nonpartisan Process for the Preparation of Legislative and Congressional Redistricting Plans. Discussion ensued. Supervisor Ziegelbauer made a motion to recommend the resolution be introduced. Motion seconded by Supervisor Procek. Motion carried unanimously.

The Committee reviewed the 2020 County Board Budget. Supervisor Goehring made a motion to approve the proposed budget. Motion seconded by Supervisor Koch. Motion carried unanimously.

The Committee reviewed the 2020 County Administrator Budget. Supervisor Goehring made a motion to approve the proposed budget. Motion seconded by Supervisor Ziegelbauer. Motion carried unanimously.

County Administrator Adam Payne reported on the status of the 2020 budget and gave an update on the US Customs Facility discussions.

Supervisor Goehring made a motion to approve Supervisor Ziegelbauer's attendance at the Finance Committee meeting on August 21st. Motion seconded by Supervisor Koch. Motion carried unanimously.

Vouchers were reviewed. Supervisor Ziegelbauer made a motion to approve the vouchers. Motion seconded by Supervisor Koch. Motion carried unanimously.

The next Executive Committee meetings will be Thursday, September 12 at 3:30pm and Monday, September 30 at 3:15pm.

Supervisor Ziegelbauer made a motion to adjourn. Motion seconded by Supervisor Koch. Motion carried unanimously.

William Goehring, Secretary

Alayne Bosman, Recording Secretary



SHEBOYGAN COUNTY

Thomas G. Wegner
County Board Chairman

TO THE HONORABLE MEMBERS OF THE SHEBOYGAN COUNTY BOARD:

We, the Executive Committee, do hereby submit for your confirmation the following appointments as a result of the resignation of Richard Bemis effective September 15th, 2019:

Transportation Committee

Jacqueline Veldman, W7282 County Road F, Cascade, WI 53011

Health Care Center Committee

Jacqueline Veldman, W7282 County Road F, Cascade, WI 53011

Respectfully submitted this 17th day of September, 2019.

EXECUTIVE COMMITTEE

Thomas Wegner, Chairman

Vern Koch, Vice-Chairman

William Goehring, Secretary

Ed Procek, Member

Robert Ziegelbauer, Member

FUNDING AGREEMENT FOR THE SHEBOYGAN COUNTY MEMORIAL AIRPORT CUSTOMS FACILITY

THIS AGREEMENT is entered into by and between **SHEBOYGAN COUNTY**, a Wisconsin governmental body corporate, organized pursuant to Wis. Stat. § 59.01, maintaining its principal office at 508 New York Avenue, Sheboygan, Wisconsin 53081, hereinafter referred to as "County," and **KOHLER CO.**, a Wisconsin corporation, maintaining its principal office at 444 Highland Drive, Kohler, Wisconsin 53044, hereinafter referred to as "Kohler."

RECITALS

WHEREAS, the Sheboygan County Memorial Airport is a County-owned public use airport located in the Town of Sheboygan Falls, Sheboygan County, Wisconsin (the "Airport"), and

WHEREAS, Kohler has requested the installation of a U.S. Customs and Border Protection ("CBP") officer at the Airport, and

WHEREAS, County has engaged in discussions with CBP to allow for a customs facility at the Airport under the User Fee Airport ("UFA") Program, pursuant to Title 19, United States Code, Section 58b, which allows for a small airport to receive, for a fee, the services of a CBP officer for processing of aircraft, passengers and cargo entering the United States, and

WHEREAS, County is willing to construct the necessary facilities at the Airport to allow for CBP processing ("the Facility") conditioned on Kohler's agreement to fund the officer position and related costs pursuant to the terms of this Agreement, and

WHEREAS, the parties contemplate that the Facility will spur economic development and use of the Airport, thereby benefiting local businesses, Sheboygan County residents, and the community at large.

AGREEMENT

NOW, THEREFORE, in consideration of the terms contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Kohler do hereby agree as follows:

1. **RECITALS INCORPORATED.** The Recitals set forth above are incorporated herein and made an enforceable part of this Agreement.

2. **OBLIGATIONS OF THE COUNTY.**

A. County shall be responsible for the construction of a CBP processing facility, at the Airport, ("the CBP Improvements") according to the terms of the necessary agreements with CBP, including the Agriculture Compliance Agreement, and Memorandum of Agreement, under such terms and conditions as required by CBP.

B. County shall obtain all federal, state, county, and local approvals and permits as may be required under federal regulations, the Wisconsin Statutes or administrative regulations, Sheboygan County Code of Ordinances or local ordinances to allow for the construction of the Facility and related improvements.

C. It is understood and agreed that County's commitment to undertake the CBP Improvements and to enter into the agreements required by CBP is conditioned on Kohler's

participation as set forth in Section 3, below.

3. FUNDING OBLIGATIONS OF KOHLER.

A. Kohler agrees to provide payment to County for the following:

(i) the CBP officer position at the Airport, including the payment of salary, automated data processing costs, overtime costs incurred by Kohler, subject to subsection B., below.

(ii) the cost of providing utilities (gas, water, electric, septic system maintenance), telephone, internet, and other costs associated with the operation of the Facility or provision of customs processing services at the Airport. The County agrees to install separate meters for utility services.

(iii) except as otherwise provided in this Agreement, any other costs that CBP requires of County for customs implementation, but specifically excluding the cost of build out of the Facility, or operations at the Facility as set forth in the Memorandum of Agreement between the U.S. Department of Homeland Security U.S. Customs and Border Protection and County.

B. Kohler will be solely responsible for the costs set forth in this Section 3 through December 31, 2023. During this time, the payments made under this Agreement shall be considered to satisfy the user fees that would otherwise be charged to Kohler for customs usage. Any delay, outside of County's control, by more than five (5) months from the anticipated July, 2020 opening date of the customs facility will result in a corresponding extension of Kohler's payment requirement under this subsection B.

C. Commencing January 1, 2024, or as extended under this Agreement, Kohler's payment obligations shall be decreased by the County's annual receipt of the amount of revenue received through the UFA program charges paid to County by Kohler and other users of the customs services ("User Fees"). Kohler shall remain responsible for the difference between the amounts due under subsection A above and the amounts collected by County as set forth in this paragraph.

D. In the event that through a change of law or regulation County can obtain Customs services through a program other than the UFA Program which would meet Kohler and the Airport's Customs services needs at a lower cost than through the UFA Program, Kohler and County shall work in good faith to amend this Agreement to amend Kohler's payment obligations to align with the new program.

4. TERM AND TERMINATION.

A. This Agreement shall remain in effect through December 31, 2050 ("Termination Date"), unless terminated sooner as outlined below. The parties each hereby expressly agree on behalf of themselves, and their successors and assigns, that any provision of law or equity to the contrary notwithstanding, that this Agreement shall continue in effect throughout its term, notwithstanding any default by any party hereto. This Agreement will automatically terminate upon any of the following:

1. CBP terminates its CBP processing agreement with County or otherwise stops providing the CBP processing services at the airport;
2. County terminates its processing agreement with CBP, except at the

- request of Kohler; or
3. County can obtain customs services at no cost through a program other than the UFA Program;
- B. At such time as the fuel surcharge fees and/or user fees exceed the amount of County's annual budgeted costs for the airport for three (3) consecutive years, the parties agree to reopen this Agreement and reevaluate whether Kohler's funding participation remains necessary.
 - C. In the event Kohler wishes to terminate this Agreement prior to the Termination Date, it shall provide at least six (6) months prior written notice to County. Upon receipt of Kohler's notice, County shall initiate termination of the UFA Program with CBP. Kohler's obligations under this Agreement shall continue until such time as CBP terminates County's obligations under its agreements with CBP for customs processing. Kohler shall pay to County a termination fee in an amount equal to the termination fees charged to County by CBP plus the balance owed on the amount County borrowed to fund the Facility or that portion of funding for a larger building attributable to the customs Facility, through a ten (10) year bonding, for the construction of the Facility and CBP Improvements. Notwithstanding the forgoing, if the Facility is reasonably able to be repurposed for other revenue or rent generating activities by the County, Kohler's bond repayment obligations shall be offset to the extent such revenues or rents cover the Facility bond payment obligations.

5. PAYMENT TERMS. County shall provide Kohler with invoices at such times as County receives an invoice from CBP. Commencing with Kohler's payment obligation for year 2024, County shall also provide to Kohler an accounting of all sums received for User Fees during the previous year, which will decrease the payment obligation of Kohler. Kohler shall provide payment to County within thirty (30) days of the receipt of the invoice for the annual payments or termination payment or at such time as required by CBP, whichever is shorter.

6. DEFAULT BY KOHLER. Any one or more of the following shall constitute Kohler's default under this Agreement:

- A. a petition for bankruptcy is filed by or against Kohler or Kohler is adjudicated insolvent;
- B. a trustee, receiver, or liquidator is appointed for all or part of the assets of Kohler or Kohler makes a general assignment for the benefit of its creditors;
- C. Kohler admits in writing its inability to or is in fact unable to pay its debts generally as they become due; or
- D. Kohler fails to timely and fully perform any one or more of its obligations under this Agreement within thirty (30) days following delivery of notice of such default from County. In the event Kohler defaults on any obligation required by this Agreement, the County shall, in addition to any other remedy at law or in equity, be authorized to terminate this Agreement and any obligations to continue CBP processing at the Airport. Further, Kohler shall be responsible for the costs of any unperformed obligations under this Agreement, including any obligations the County may owe to CBP as a result of termination of the CBP processing.

7. DEFAULT BY COUNTY. Any one or more of the following shall be considered a default by County:

- A. Failure to construct and maintain the Facility pursuant to this Agreement.

B. Failure to fulfill its obligations under any agreements with CBP.

8. OTHER TERMS.

A. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. This Agreement shall not be altered or amended, except by agreement in writing, executed by the parties hereto.

B. Severability. If any provisions, or portions thereof, of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected hereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

C. Binding Effect. This Agreement and each and all of the terms, covenants, and conditions hereof, shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and/or assigns, and no third party, other than such heirs, personal representatives, successors, and/or assigns, shall be entitled to enforce any term, covenant or condition of this Agreement or have any rights hereunder.

D. Non-Assignment. This Agreement and the interests hereunder, shall not be assigned except with the prior, written consent of the County.

E. Waiver. No delay or omission by any of the parties hereto, or their successors and/or assigns, to exercise any right or power accruing upon any non-compliance or failure of performance by another party under the provisions of this Agreement shall impair any such right to power or be construed to be a waiver thereof. A waiver by either of the parties hereto, or their heirs, successors, and/or assigns, of any of the covenants, conditions, or agreements hereof to be performed by another shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

F. Force Majeure. The obligations of any of the parties hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances, including strikes and lockouts, acts of God, fires, storms, accidents, or any cause whatsoever beyond the control of the parties.

G. Headings. The headings in this Agreement are for convenience and reference only and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

H. Notices. Any notice, demand, or statement and required or permitted to be given under this Agreement shall be in writing and be deemed to have been properly given or served with personally delivered to the other party, via overnight courier, facsimile, or upon deposit in the United States mail, postage prepaid, and addressed to the address set forth below:

If to County: Mr. Adam N. Payne
 County Administrator
 508 New York Avenue
 Sheboygan, WI 53081

With a copy to: Attorney Crystal H. Fieber
 Office of the Corporation Counsel

2124 Kohler Memorial Drive, Suite 310
Sheboygan, WI 53081

If to Kohler: Kohler Co.
Dan Dominguez
Director-Aviation and Business Travel
444 Highland Drive
Kohler, WI 53044

With a copy to: Kohler Co,
Attn: Legal Department, M/S 005
444 Highland Drive
Kohler, WI 53044

I. Change of Address. Any party hereto may change the address to which notices to such party shall be sent by written notice to the other parties given in accordance with this section. At such time as a party transfers its interest under this Agreement so as to create a new party in interest, the previous party in interest or such new party in interest shall send notice to the other parties of the name and address to which notice to the new party shall be sent or delivered. Until such time as such notice is given, the previous party in interest shall be deemed to be the agent for such new party in interest for purposes of receipt of service of notices.

J. Governing Law; Venue. This Agreement shall be governed by and constructed in accordance with the laws of the State of Wisconsin. Any action to enforce or concerning this Agreement shall be brought in the Circuit Court for Sheboygan County, Wisconsin.

K. Immunity. Nothing contained in this Agreement constitutes a waiver of the County's sovereign or governmental immunities under applicable law.

L. Authority. The persons executing this Agreement represent that they have the legal authority to bind the respective party for which such signature is made.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year as stated above.

SHEBOYGAN COUNTY

By _____
Adam N. Payne, County Administrator

KOHLER CO.

By  _____
Amy Meyer
Vice President – Technical Services