



2024-2025 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM SUBRECIPIENT AGREEMENT

CDBG-PS-2024-07

THIS AGREEMENT made and entered into this 1st of April 2024, by and between the City of Sheboygan, Wisconsin, a Wisconsin municipal corporation hereinafter referred to as "City" and for Shoreline Metro a public transit operator with its principal office at 608 S Commerce Street, Sheboygan, Wisconsin, 53081 hereinafter referred to as "Subrecipient."

WITNESSETH;

WHEREAS, the City has available certain funds received from the U.S. Department of Housing and Urban Development for the 2024 Community Development Block Grant (CDBG) Program; and

WHEREAS, the Subrecipient desires to offer a continuum of services available to residents in the City of Sheboygan; and

WHEREAS, one of the objectives of the Community Development Block Grant Program is to provide services to low- and moderate-income persons; and

WHEREAS, the Subrecipient is a nonprofit organization duly organized to promote and undertake community services to serve low- and moderate-income households; and

WHEREAS, the City is willing to make available up to **\$42,493.00** of 2024 Community Development Block Grant funds for the purpose of providing public transit services additional support for the Low-Moderate Area of Census Tract 114 with increased frequency of bus options and more availability (greater bus stops) due to higher access to this service.; and

WHEREAS, prior to advancing funds to the Subrecipient, the U.S. Department of Housing and Urban Development and the City of Sheboygan desire certain assurances as more fully set forth herein.

NOW, THEREFORE, IT IS AGREED THAT:

1. Statements of Work, National Objective, Uses of Funds, Levels of Accomplishment, Timetable

A. Statement of Work

The City will grant to the Subrecipient a sum up to **\$42,493.00** from 2024 Community Development Block Grant funds for support of the Low-Moderate Area of Census Tract 114. The Metro bus station pickup locations are closer together than any other locations within the city. Often the bus pick-up points are within a two to three block area. This Low-Moderate Area also has an increased frequency of bus options, and more availability because of the higher access to this service. While the metro does not track riders by income level, they do track overall ridership. This census track area has one of the highest ridership uses across the city.

B. National Objectives

All activities funded with CDBG funds must meet one of the CDBG program’s National Objectives: The Subrecipient certifies that the activities carried out under this Agreement will meet Low- or Moderate-Income Eligibility - 24 CFR 570.208(a)(2)(i)(A). As the Sub-recipient hereby certifies that its activities solely benefit persons identified in a low-to-moderate income census tract.

C. Uses of Funds

The CDBG funds shall be used according to the budget submitted in the grant application Neighborly.

Funding Uses	CDBG	Local	State	Federal
Salaries and Benefits	\$42,493.00			
TOTAL	\$42,493.00	\$	\$	\$

D. Performance Goals

The Subrecipient agrees to provide the following levels of service;

- 870 persons provided transportation services with CDBG funds.

E. Timetable

The subrecipient agrees to provide the stated services within the specified grant term:

Beginning: April 1, 2024

Ending: March 31, 2025

2. Payments

Drawdowns for the payment of eligible expenses shall be made against the budget categories specified below and in accordance with performance. Payments will be only made quarterly; the deadlines are as follows:

QUARTER	PERIOD	DEADLINE TO SUBMIT DRAW
1 st	April 1 – June 30	July 15, 2024
2 nd	July 1 – September 30	October 15, 2024
3 rd	October 1 – December 31	January 15, 2025
4 th	January 1 – March 31	April 21, 2025

The Sub-recipient shall submit its drawdown requests via **Neighborly** and keep all evidence of the nature and propriety of the charge on file. The sub-recipient should only expend funds budgeted for in its grant application. The sub-recipient shall submit evidence to the City of Sheboygan properly executed payrolls, time records, invoices, vouchers or other official documentation for each drawdown request via **Neighborly**. The sub-recipient must also maintain a financial management system in accordance with the standards specified in 24 CFR 84.21.

The City of Sheboygan shall reimburse the Subrecipient upon submission of a drawdown request and a performance report. Allowable payments are those necessary and proper costs identified by the Subrecipient's application and approved by the City Council, unless any or all costs are disallowed by the City of Sheboygan or HUD. All costs must be incurred within the above timetable.

When submitting a drawdown request, a **Performance Report** shall be submitted through **Neighborly** or Subrecipient will not receive payment.

3. Records and Reports

- A. Subrecipient is expected to have met the performance goals stated in Section 1d by the end of the agreement. Accordingly, a final “Performance Report” should be submitted no later than 15 days after the grant period.

The Performance Reports will provide all information necessary to determine that projected activities are being accomplished. Performance reports also should include justification for lack of progress or delays in accomplishing the scope of work.

- B. **Low Mod Income Benefit:** The Subrecipient certifies that the activities carried out under this Agreement will meet Low- or Moderate-Income Limited Clientele Eligibility (24 CFR 570.208(a)(2)(i)(B) and 24 CFR 570.506(b)(3)(iii). Subrecipient will maintain program participant’s file documenting at least 51% of the beneficiaries are members of a low-and moderate-income family. (See Exhibit A for Sample Self-Certification).

- C. **Financial Reporting**– The sub-recipient shall:

- i. Maintain an effective system of internal fiscal control and accountability for all CDBG funds and property acquired or improved with CDBG funds, and make sure the same are used solely for authorized purposes.
- ii. Ensure that all costs shall be supported by properly executed payrolls, time records, invoices, vouchers or other official documentation, as evidence of the nature and propriety of the charges. All accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- iii. The Subrecipient shall also keep a continuing record of all disbursements by date, check number, amount, vendor, description of items purchased and line item from which the money was expended, as reflected in the Subrecipient’s accounting records.
- iv. Inform the City concerning any funds allocated to the Subrecipient, that the Subrecipient anticipates will not be expended during the term of this Agreement, and permit the reassignment of the same by the City to other Subrecipients.

D. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, demographic information and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Uniform Administrative Requirements

The Subrecipient will, to the maximum possible extent, ensure compliance with regulations regarding:

A. Office of Management and Budget (OMB) Uniform Guidance, "Cost Principles, Audit and Administrative Requirements for Federal Awards" (2 CFR Part 200), which establishes principles for determining costs of grants, contracts, and other agreements with nonprofit organizations. These regulations are applicable for determining acceptable/allowable costs of work performed by nonprofit organizations. For example, to be allowed under an award, costs must meet general criteria such as:

- i. Be reasonable for the performance of the award,
- ii. Be accorded consistent treatment,
- iii. Be determined in accordance with generally accepted accounting principles, and
- iv. Be adequately documented.

B. Office of Management and Budget (OMB) Uniform Guidance, in part, provide that financial management systems operated by recipients of federal assistance will provide for accurate, current, reliable, and complete disclosure of financial and accounting records relating to the use of federal dollars.

All records will identify the source and application of funds for activities, and accounting records are to be made available for audit(s) at the City's direction to determine the fiscal integrity of financial transactions and performances. All future procurement transactions for supplies, equipment, construction, and other services, regardless of whether negotiated or advertised, will be conducted in a manner so as to provide maximum open and free competition.

The Subrecipient will give the U.S. Department of Housing and Urban Development, the Comptroller General, the City of Sheboygan, or any authorized representatives access to the right to examine all records and documents related to the grant. Such records will be maintained for a period of at least five (5) years after receipt of federal funds.

5. Personnel and Participant Conditions

The Subrecipient will, to the maximum possible extent, ensure compliance with regulations regarding:

A. Civil Rights

1. General Compliance

Title VI and Title IX of the Civil Rights Act of 1964 (Public Law 88-352) (42 U.S.C. 2003d et seq.); and implementing regulations issued at 24 CFR Part 1; as amended by Executive Order 11375 and 12086, and implementing regulations at 41 CFR Chapter 60, which prohibits discrimination in any activity receiving federal financial assistance.

2. Nondiscrimination

Title VIII of the Civil Rights Act of 1968, (Public Law 90-284) (42 U.S.C. 3601 et seq.); as amended, which prohibits discrimination in housing on the grounds of race, color, religion, national origin, sex, disability, or familial status.

Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301 et seq.) which requires that no person will on the grounds of race, color, national origin or sex, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity funded in whole or in part with Community Development Block Grant funds.

Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.

Section 504 of the Rehabilitation Act of 1973, (Public Law 93-112) as amended, and implementing regulations when published for effect. Said regulation provides for nondiscrimination based on disability in federally-assisted programs and activities.

B. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

C. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include, but are not limited to the following:

1. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
2. No employee, officer or agent of the Subrecipient shall participate in the selection, the award or the administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
3. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

D. Anti-Lobbying. The Subrecipient certifies that to the best of its knowledge and belief:

No federal-appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of

Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement;

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

6. Grantee Recognition

The Subrecipient shall ensure recognition of the role of the City of Sheboygan and Housing and Urban Development's Community Development Block Grant in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to the funding source.

7. Suspension and Termination

The Subrecipient further agrees that this Agreement may be terminated or suspended in the event the Subrecipient fails to perform any of the conditions contained herein and that the City may take appropriate and corrective action in order to insure compliance with this Agreement, including withholding payments, re-allocating funds, an order to audit the Subrecipient's books and records pertaining to its activities and the utilization of federal funds.

In the event of default or violation by the Subrecipient or the necessity of corrective action, the City will provide the Subrecipient, by written notice, a demand to cure default explaining the nature and extent of the default or violation. The Subrecipient will cure or remedy said violation or default within ten (10) days after receipt of said notice, unless a longer time is agreed upon by the parties, in writing. In case default or violation is not cured, and corrective action is not completed within ten (10) days or a longer time as may be agreed upon, this Agreement may be terminated, and the City may have

whatever remedy is authorized pursuant to state, local, and federal laws, including return of any funds previously given to the Subrecipient.

8. Independent Status

Nothing contained herein, nor any act of the City, the Subrecipient, or any other party, will be deemed or construed by any party, or by any other third person, to create any relationship with third party beneficiary, principal or agent, limited or general partnership, or joint venture, or of any association or relationship involving the City. The Subrecipient is at all times considered an independent agency and not an agency or branch of the City.

IN WITNESS WHEREOF, the City of Sheboygan has caused this Agreement to be executed by Ryan Sorenson, Mayor this ____ day of _____, 2024

For the City of Sheboygan

Ryan Sorenson, Mayor

Shoreline Metro

Derek Muench, Director of Transit and Parking

Attachment A. City of Sheboygan Standard Contract Terms and Conditions

These are subject to modification at any time by the City of Sheboygan and the final agreement with the City will include other provisions not in this agreement. Successful applicant will agree to abide by the City’s Standard Contract Terms and Conditions.

1. DEFINITIONS. In this section “Contracting Party” shall mean any party that is entering into this Agreement with the City of Sheboygan. “Sheboygan” shall mean the City of Sheboygan. These definitions shall apply only to this document titled “Standard Terms and Conditions (Service

Contracts)” and shall not replace, modify or supersede any definitions used in other sections of this Agreement.

2. STANDARD OF PERFORMANCE. Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be in a manner at least equal to the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services.

3. FULLY QUALIFIED. Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and, if applicable, shall be authorized or permitted under all applicable state and local laws and any other applicable laws or regulations to perform the services.

4. SCOPE OF SERVICES. Contracting Party is required to perform, do and carryout in a timely and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement. The scope of services to be performed shall include, those services set forth in this Agreement. Sheboygan may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

5. CHANGE OF SCOPE. The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement. The scope of service may not be fully definable during initial phases, and as the project progresses, facts discovered may indicate that the scope must be redefined. If mutually agreed to in advance in writing, Contracting Party shall make changes, furnish necessary materials, and perform the work that Sheboygan may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the total cost of the project. Under no circumstances shall Contracting Party make any changes, either as additions or deductions, without the written consent of Sheboygan, and Sheboygan shall not pay any extra charges made by Contracting Party that have not been agreed upon in advance and documented in writing.

6. COMPENSATION. Contracting Party will be compensated by Sheboygan for the services provided under this Agreement and subject to the terms, conditions and contingences set forth herein.

Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to Sheboygan. These invoices, unless lump sum, must be itemized to identify labor costs and the Contracting Party's direct expenses, including subcontractor and supplier costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. If payment is by lump sum, then only the percent complete will be invoiced. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement. Without prejudice to any other right or remedy it may have, Sheboygan reserves the right to setoff at any time any amount owing to it by Contracting Party against any amount payable by Sheboygan to Contracting Party.

7. TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING. Personal

income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

8. TERMINATION FOR CAUSE. If, through its own fault, intentional misconduct, or the fault or intentional misconduct of its subcontractors, agents or volunteers, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, both as determined by Sheboygan in its sole discretion, Sheboygan shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other deliverables performed by the Contracting Party under this Agreement for which compensation has been made shall, at the option of Sheboygan, become the property of Sheboygan. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to Sheboygan for damages sustained by Sheboygan by virtue of the Contracting Party's intentional misconduct or negligent performance of this Agreement, and Sheboygan may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of

damages due to Sheboygan from the Contracting Party is determined. Use of incomplete or unfinished work is at the sole risk of Sheboygan.

9. TERMINATION FOR CONVENIENCE. Either Party may terminate this Agreement for convenience at any time and for any reason by giving sixty (60) days written notice to the other Party of such termination. If this Agreement is terminated by Sheboygan pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually performed and accepted by Sheboygan bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by Sheboygan.

10. SAFETY. Unless specifically included as a service to be provided under this Agreement, Sheboygan specifically disclaims any authority or responsibility for general job site safety, or the safety of other persons or property. Except as otherwise provided in this Agreement, Contracting Party disclaims any authority or responsibility for general job site safety, or the safety of third-parties or their property.

11. DELAYS. If performance of Contracting Party's obligations under this Agreement is delayed through no fault of Contracting Party, Contracting Party shall be entitled to a reasonable extension of time as proposed by Contracting Party and as accepted or amended by Sheboygan. If performance of Sheboygan's obligations is delayed through no fault of Sheboygan, Sheboygan shall be entitled to an extension of time equal to the delay.

12. USE OF SHEBOYGAN PROPERTY. Any property belonging to Sheboygan being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.

13. INSURANCE. Unless otherwise specified in this Agreement, Contracting Party shall, at its sole expense, maintain in effect at all times during the Agreement, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

a. Worker's Compensation and Employers Liability Insurance. Contracting Party shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in

accordance with the laws of the State of Wisconsin. Contracting Party shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employer's liability of one hundred thousand dollars (\$100,000.00) per each accident, one hundred thousand dollars (\$100,000.00) per each employee and five hundred thousand dollars (\$500,000.00) total policy limit.

b. Commercial General Liability and Automobile Liability Insurance. Contracting Party shall provide and maintain the following commercial general liability and automobile liability insurance:

i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:

1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).

ii. Contracting Party shall maintain limits no less than the following:

1. General Liability. One million dollars (\$1,000,000.00) per occurrence (\$1,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
2. Automobile Liability. One million dollars (\$1,000,000.00) for bodily injury and property damage per occurrence covering all vehicles to be used in relationship to the Agreement.
3. Umbrella Liability. Two million dollars (\$2,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.

c. Professional Liability Insurance. When Contracting Party renders professional services to Sheboygan under the Agreement, Contracting Party shall provide and maintain two million dollars (\$2,000,000.00) of professional liability insurance. If such policy is a "claims made" policy, all renewals thereof during the life of the Agreement shall include "prior acts coverage" covering at all times all claims made with respect to Contracting Party's work performed under the Agreement. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the Sheboygan.

d. Required Provisions. The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

i. Sheboygan, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of Contracting Party; products and completed operations of Contracting Party; premises occupied or used by Contracting Party; and vehicles owned, leased, hired or borrowed by Contracting Party. The coverage shall contain no special limitations on the scope of protection afforded to Sheboygan, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers' compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of Sheboygan.

ii. For any claims related to this Agreement, Contracting Party's insurance shall be primary insurance with respect to Sheboygan, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by Sheboygan, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.

iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Sheboygan, its elected and appointed officers, employees or authorized representatives or volunteers.

iv. Contracting Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

v. Coverage shall not be canceled by the insurance carrier or the Contracting Party, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to Sheboygan.

vi. Such liability insurance shall indemnify Sheboygan, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon,

or assumed under contract by, Contracting Party for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.

vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.

viii. All of the insurance shall be provided on policy forms and through companies satisfactory to Sheboygan, and shall have a minimum AM Best's rating of A- VIII.

e. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by Sheboygan.

f. Evidences of Insurance. Prior to execution of the Agreement, Contracting Party shall file with Sheboygan a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

g. Sub-Contractor. In the event that Contracting Party employ other contractors (sub-contractors) as part of this Agreement, it shall be the Contracting Party's responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified above.

h. Amendments. Sheboygan may amend its requirements for insurance upon sixty (60) days written notice. Contracting Party shall procure updated insurance to comply with the new requirements of Sheboygan if commercially available and at Sheboygan's expense. Contracting Party may appeal any requirement to amend the insurance coverage to Sheboygan's City Council who may, in its sole discretion, mutually agree to waive such changes.

14. INDEMNIFICATION. To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, Sheboygan, its elected and appointed officials, committee members, officers, employees, authorized representatives and volunteers ("Sheboygan Indemnitees") from and against third party tort suits, actions, legal or

administrative proceedings, claims, costs and expenses (including, without limitation, reasonable attorney and professional fees) to the extent caused by the negligent acts, errors or omissions of Contracting Party, its subcontractors or of anyone acting under its direction or control or on its behalf in the performance of this Agreement. Contracting Party's defense obligation shall not apply to professional liability claims. The aforesaid indemnity and hold harmless agreement shall not be applicable to any liability to the extent caused by Sheboygan, its elected and appointed officials, officers, employees or authorized representatives, consultants, contractors or volunteers in the performance of this Agreement. Contracting Party's obligation to indemnify, defend and hold harmless shall not be restricted to insurance proceeds, if any, received by Sheboygan, its elected and appointed officials, officers, employees, authorized representatives or volunteers. Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of Sheboygan or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80, or other applicable law. To the extent that indemnification is available and enforceable against Sheboygan, (a) Sheboygan or its insurer shall not be liable in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law; and (b) Sheboygan's obligations under this Agreement are further conditioned upon the following: (i) the indemnified party shall promptly notify Sheboygan in writing of any such claims, demands, liabilities, damages, costs and expenses within ten (10) days of discovery; (ii) Sheboygan shall have sole control of, and the indemnified party shall reasonably cooperate in all respects, in the defense of the claims, demands, liabilities, damages, costs and expenses and all related settlement negotiations; and (iii) the indemnified party shall not make any admission or disclosure or otherwise take any action prejudicial to Sheboygan except as required by law. Neither party shall be liable for indirect, special, exemplary, consequential or incidental damages, including, without limitation, any damages for lost profits, revenue or business interruption. The parties represent that, as of the effective date, neither party has any notice or knowledge of any claims, demands, liabilities, damages, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement. This indemnity provision shall survive the termination or expiration of this Agreement.

15. NO PERSONAL LIABILITY. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of either party have any personal liability arising out of this Agreement, unless an employee of the Contracting Party shall commit a criminal, fraudulent, malicious, or dishonest act which is excluded from Contracting Party's insurance coverage.

16. Intentionally omitted.

17. INDEPENDENT CONTRACTORS. The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint ventures, or partners.

18. GOVERNING LAW. This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in Sheboygan County, Wisconsin. Each party waives its right to challenge venue.

19. JURY TRIAL WAIVER. The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

20. NOTIFICATION. Parties shall:

(1) As soon as possible and in any event within a reasonable period of time after the occurrence of any event of default by either party, notify the other Party in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by defaulting party to cure or mitigate the default.

(2) Promptly notify the other Party of the commencement of any litigation or administrative proceeding that would cause any representation contained in this Agreement to be untrue.

(3) If related to the performance of services and work under this Agreement, notify the other Party, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by a Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of a Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against a Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

21. SEVERABILITY. The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

22. ASSIGNMENT, SUBLET, AND TRANSFER. A Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of the other Party. This Agreement shall be binding on the heirs, successors, and permitted assigns of each party hereto. A Party shall provide not less than forty-five (45) days advance written notice of request to assign, sublet or transfer any services provided under this Agreement. The decision to allow an assignment by Contracting Party rests solely with Sheboygan, in its discretion

23. NO WAIVER. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

24. SUBCONTRACTING. None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of Sheboygan. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to

Sheboygan for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

25. CONFLICTS OF INTEREST. Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to Sheboygan

26. NON-DISCRIMINATION. Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status. Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

27. POLITICAL ACTIVITIES. Contracting Party employees shall not engage in any political activities within the City of Sheboygan while in performance of any and all services and work under this Agreement. This does not apply to periods of time in which employee is not at work, or is billing other than Sheboygan for his/ her time.

28. GOVERNMENTAL APPROVALS. Contracting Party acknowledges that various of the specific undertakings of Sheboygan described in this Agreement may require approvals from the City of Sheboygan Council, City of Sheboygan bodies, and/or other public bodies, some of which may require

public hearings and other legal proceedings as conditions precedent thereto. Contracting Party further acknowledges that this Agreement is subject to appropriation by the Sheboygan Common Council. Sheboygan's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. Sheboygan cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

9. ENTIRE AND SUPERSEDING AGREEMENT. This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. To the extent that any terms and conditions contained in this Agreement, all Exhibits hereto, and the other documents and agreement referenced herein conflict with these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence.

30. AMENDMENT. This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

31. IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE. Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that modification or deviation from such schedules shall occur only upon approval of Sheboygan or reasons of Force Majeure. Any phase or schedule that is determined to be "time of the essence" shall be specifically identified as such within the scope of services. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days. If such delays cause additional cost, Contracting Party shall be reimbursed.

32. TIME COMPUTATION. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

33. NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows: To the City: Attn. City Clerk Copy to: Attn. City Attorney City of Sheboygan 828 Center Ave Sheboygan, WI 53081 Contracting Party shall identify in writing and provide to Sheboygan the contact person and address for notices under this Agreement.

34. Intentionally omitted.

35. ACCESS TO RECORDS. Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. Sheboygan, or any of its duly authorized representatives, shall have access, at no cost to Sheboygan, to such books, records, documents, papers or any records, including electronic, of Contracting Party which are pertinent to the hourly rates of pay and reimbursable costs under this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. Once deliverables are provided to Sheboygan, additional copies will be provided for a fee.

36. PUBLIC RECORDS LAW. Contracting Party understands and acknowledges that Sheboygan is subject to the Public Records Law of the State of Wisconsin. As such, Contracting Party agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Contracting Party agrees to assist Sheboygan in complying with any public records request that Sheboygan receives pertaining to this Agreement. If the requested record is not within that which is required to be produced by statute or other authority, then Contracting Party may object, and Sheboygan will reject the request. Contracting Party shall seek to intervene in any subsequent public records lawsuit, writ of mandamus, or other action against Sheboygan seeking to compel disclosure in order to dispute disclosure of the requested record. Contracting Party shall also cooperate and provide assistance to Sheboygan, at no cost, in the defense of such lawsuit, writ or other action. If the request is upheld by a court of law, then Contracting Party will produce the records or indemnify and hold harmless Sheboygan Indemnitees from any liability, including without limitation, attorney fees related to or in any way arising from

Contracting Party's actions or omissions which contribute to Sheboygan's inability to comply with the Public Records Law. In the event that Contracting Party decides not to retain its records for a period of seven (7) years, then it shall provide written notice to Sheboygan whereupon Sheboygan shall take custody of said records assuming such records are not already maintained by Sheboygan. This provision shall survive the termination of this Agreement.

37. CONSTRUCTION. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

38. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

39. COMPLIANCE WITH LAW. The parties shall comply in all material respects with applicable federal, state and local laws, regulations and ordinances.

40. FORCE MAJEURE. Neither Party shall be responsible for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industrywide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

41. GOOD STANDING. Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary

licenses, permits and franchises to own its assets and properties and to carry on its business.

Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

42. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

43. EXECUTION OF AGREEMENT. Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the Sheboygan Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the Sheboygan Common Council null and void unless otherwise authorized.

44. COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

45. SURVIVAL. All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination.

46. COMPLIANCE WITH LAW. Contracting Party agrees to abide by applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

47. RELIANCE. Contracting Party has the right to reasonably rely on information provided by or through the City of Sheboygan.

Revised: 06.21.19