

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: R.O. No. 44-19-20 Submitting the Financial Trend Monitoring Analysis report for the years 2014 through 2018.

REPORT PREPARED BY: Darrell Hofland, City Administrator

REPORT DATE: July 15, 2019

MEETING DATE: July 22, 2019

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

The International City/County Management Association (ICMA) has developed the Financial Trend Monitoring System (FTMS) as a method for monitoring the financial conditions of local government. The purpose of the city's report is to comprehensively examine the financial trends of the city and make any financial policy adjustment to improve its overall financial condition.

The report contains data from audited Comprehensive Annual Financial Reports (CAFR) from 2014-2018.

STAFF COMMENTS:

The attached report includes 12 revenue, expenditure, operating position, and debt position indicators. The report's analyses are favorable for all 12 indicator trends during the 5 year period.

ACTION REQUESTED:

Motion to recommend the Common Council receive R.O. No. 44-19-20 and adopt the recommendation.

ATTACHMENTS:

- I. R.O. No. 44-19-20

II

R. O. No. 44 - 19 - 20. By CITY ADMINISTRATOR. July 15, 2019.

Submitting the Financial Trend Monitoring Analysis report for the City of Sheboygan for the years 2014 through 2018.

*Frances
Personnel*

CITY ADMINISTRATOR



Financial Trend Monitoring Analysis

July 15, 2019

Introduction

The Financial Trend Monitoring System (FTMS) was developed by the International City/County Management Association (ICMA) as a method for monitoring the financial condition of local government. The purpose of this report is to comprehensively examine the financial trends of the City of Sheboygan and make any financial policy adjustments to improve its overall financial condition. In accordance to the FTMS, generally accepted accounting standards were followed for the data presented in this report.

The report for this financial analysis is derived from the indicators described in the ICMA publication, "Evaluating Financial Condition". The ICMA model examines four types of financial conditions:

1. *Cash Solvency* – the ability to pay bills over the next 60-90 days
2. *Budgetary Solvency* – the ability to cover expenditures with revenues and other resources over the normal budget period.
3. *Long-term Solvency* – the ability to pay not only the costs of doing business in the current year, but also those that will come due in future years.
4. *Service-Level Solvency* – the ability to provide services at the level and quality that are required for the health, safety, and welfare of the community and that citizen's desire.

There are significant variations on how local governments manage their finances. This variation makes it challenging identify the standards and benchmark the indicators for local government. Therefore, it is almost certain that these standards and indicators are set up in accordance to local government goals, mission, and vision. For each indicator, they are characterized by an outcome described below:

Favorable – this trend is positive and meets policy or performance measures set by the city.

Caution – the trend is uncertain and should be watched carefully because it may move in a direction that could have negative impact on the city's financial condition.

Negative – the trend is a warning and does not meet policy or performance measures set by the city. More information should be gathered and corrective actions should be taken as soon as possible.

Methodology

This report contains data from audited Comprehensive Annual Financial Reports (CAFR) from 2014 through 2018. The data includes revenue and expenditure information for general fund, special revenue funds, debt service funds, and other subsidiary funds.

When required for analysis, adjusting for inflation converts current dollars into constant dollars. The conversion from actual dollars to constant dollars allows for analyst to take in account the appearance growth due to inflation. For this report, the Consumer Price Index (CPI) tracks the prices of goods and services used by average wage earners in 2014.

	2014	2015	2016	2017	2018
Consumer Price Index	236.736	237.017	240.008	245.12	251.107
2014 Conversion Table	1.000	0.999	0.986	0.966	0.943
Percent Change		0.119	1.363	3.420	5.723

The following formula and example reveals how to calculate to constant dollars:

Conversion Factor = (2014 CPI / 2018 CPI) or $(236.736 / 251.107) = 0.943$

Constant Dollar = (Actual Dollar X Conversion Factor) or $(\$1000 \times .943) = \943 .

This means that \$1000 would have been worth \$943 in 2014.

Indicators

For the analysis of the City of Sheboygan's fiscal condition, 12 indicators were identified for this report:

Description		Trend
Revenue Indicators	Property Tax Revenue	Favorable
	General Government Revenue (Actual vs. Budgeted)	Favorable
	Intergovernmental Revenue	Favorable
Expenditure Indicators	Expenditure per Capita	Favorable
	Expenditure per Function	Favorable
	Employees per Capita	Favorable
	Personnel Cost As a Percent of Expenditures	Favorable
	Fringe Benefits as a Percent of Personal Services	Favorable
Operating Position	General Fund Operating Surplus / Deficit	Favorable
	Fund Balance as a Percentage of Revenue	Favorable
Debt Position	Debt Service-related Property Tax Levy	Favorable
	Net Direct Debt to Debt Limit	Favorable

Revenue

Revenue determines the city's capability to bring funds necessary to providing services. Under the right conditions, revenue should grow at an equal rate of expenditures. The City of the Sheboygan is known to have fiscally conservative policies.

Intergovernmental revenue plays a significant role in the funding of service-based programming. While a vast majority of the intergovernmental revenue sources are state-derived, permanent in nature, and reasonably stable, a limited amount is not permanent. The city needs to monitor the development of Wisconsin State budgets and be prepared to deal with funding changes.

Expenditure

Expenditures are an approximate measure of the city's service output. Generally speaking, as city provides more services, the more the city spends. The quality of services and efficiency are not accounted for under this indicator. An ideal situation would be that the expenditure growth

rate does not exceed the revenue growth rate and will have maximum spending flexibility to adjust changing conditions.

There are several factors to considering when measuring the city's capability to deliver its services and goods. First, determining the expenditure growth rates should operate within its revenue. Expenditure costs have been able to remain at a stable rate despite changes in the budget. In addition, this balance may also have to incur with the changes in priorities for budgeting. For example, a small percentage decrease in public safety suggest lower crimes rates, therefore, the city will allocate more funds towards public works for funding its capital projects. Second, a level of flexibility is needed in which the city is able to adjust its service levels to changing economic and social conditions. Mandatory costs are likely to occur, such as debt service payments, pension benefits, mandates, etc. A growing number mandatory costs would likely decrease flexibility and may affect the Sheboygan's ability to provide services. The overall results in Sheboygan suggest there have been no significant changes in expenditure costs. However, minimal changes may affect the overall operating position.

Operating Position

Operating position refers to Sheboygan's ability to maintain reserves for emergencies, and maintain sufficient cash to pay short-term obligations and bills. A city will generate an operating surplus (revenue exceeds expenditures) or deficit (expenditures exceeds revenue). These surplus and deficits are created from policy decisions or unintentionally from imprecise forecasted revenues and expenditures. In Sheboygan, results would indicate there may have been some issues in maintaining an operational surplus, but that may be due to policy and/or priority shifts. Reserves are built through the accumulation of annual operational surpluses. These are maintained for a financial safety net in case of an event of loss of revenue source, natural disaster, economic downturn, etc. Having sufficient reserves allows for the city to be more flexible with its spending. Sheboygan has had an increase in uncommitted fund balances. Consequently, the city has used the balances as a funding source for one-time projects or purchases.

Debt Structure

Debt structure is important for examining its expenditure obligations that must be satisfied when due. Debt is an effective tool to finance capital improvements and smooth short-term revenue flows. Under the right circumstances, the city's debt should be proportionate to the size and growth of the city's tax base. Sheboygan has relatively been able to maintain its repayment obligations and related favorable bond rating. However, projections based on the report findings would suggest that the city needs to closely monitor its future capital list and related debt issues.

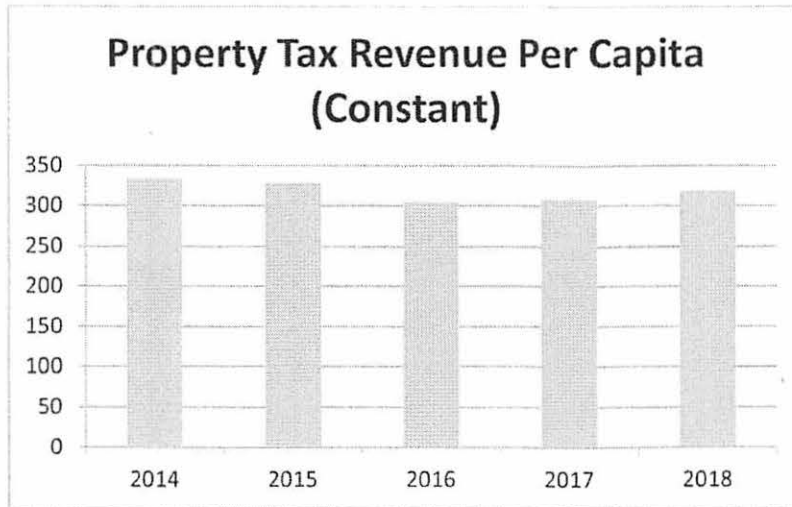
Property Tax Revenue Per Capita

Description

Property tax is one the major source of funding in the City of Sheboygan that makes up majority of the operating budget. Revenue per capita illustrates how revenue changes relative to the change in population over time. This reasoning argues that the cost of services is directly related to the population size. As the population size increases, it may be expected that the need for services would increase proportionately and remain constant during periods of decreasing size of population. If per capita revenue decreases, the city may unable to maintain existing services unless it finds new sources of revenue.

Analysis

Within the past five years, property tax per capita has decrease by approximately \$19 per capita. In 2014 through 2016, the city had seen a decrease in revenue but, which increased in 2017 and 2018.



Formula:

$$\frac{\text{Operating Revenue (Constant)}}{\text{Population}}$$

	2014	2015	2016	2017	2018
Property Tax	\$16,167,763	\$15,972,916	\$14,960,383	\$15,406,665	\$16,469,774
CPI Conversion	1	0.999	0.986	0.966	0.943
Property Tax (Constant)	\$16,167,763	\$15,956,943	\$14,750,938	\$14,882,838	\$15,530,997
Total Population	48,649	48,654	48,514	48,329	48,846
Property Tax Revenue Per Capita (Constant)	332.33	327.97	304.06	307.95	313.54

Conclusion

Revenue per capita decreased from 2014 to 2016. However, with a modest change in population, revenue per capita has moderately risen over the past few years. Despite this, the city has had little to no trouble in absorbing the population and has been able to maintain its service level.

Revenue

Trend: **Favorable**

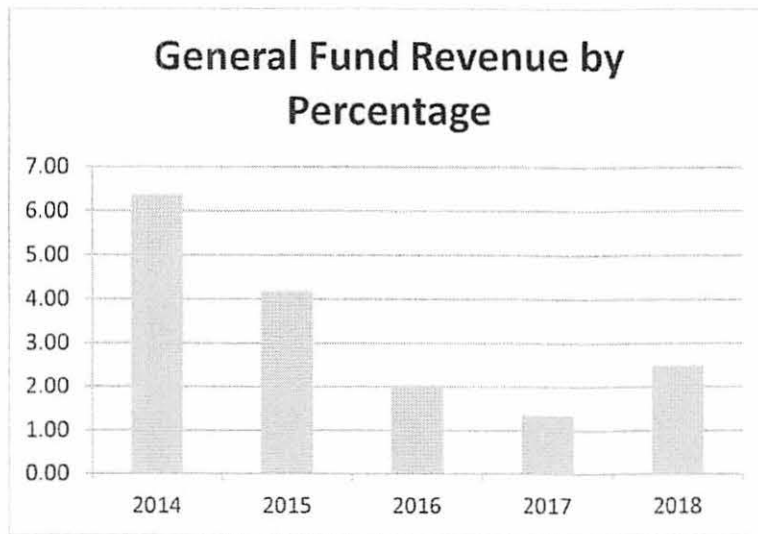
General Fund Revenue: Actual vs. Budget

Description

This indicator examines the comparison of the actual revenue received and budgeted in the General Fund revenue. This indicator is essential in examining the differences between the actual and budgeted funds to account for the operating revenue for services.

Analysis

The city has improved its projections for General Fund revenue in the past three years. The basis for its improved projection may be attributed to the city's enhanced analysis of planned permit fees associated with future development. With this downward trend since 2014, this trend is likely to remain constant.



Formula:

$$\frac{\text{Difference (Actual - Budgeted)}}{\text{Actual}}$$

	2014	2015	2016	2017	2018
Actual	\$35,020,791	\$34,426,556	\$33,126,796	\$33,665,263	\$35,091,324
Budgeted	\$32,922,200	\$33,045,716	\$32,469,155	\$33,212,132	\$34,121,641
Difference	\$ 2,098,591	\$ 1,380,840	\$ 657,641	\$ 453,131	\$ 969,683
Percentage Change	6.38	4.18	2.03	1.36	2.84

Conclusion

This trend is favorable. An under estimation of revenue means that the city may decide to increase property tax levy or applied fund balance more than necessary. An underestimated of budget revenues can result in constraints on services and/or capital projects. Therefore, examining the difference between the actual and budgeted revenues should be minimized as much as possible.

Revenue

Trend: **Favorable**

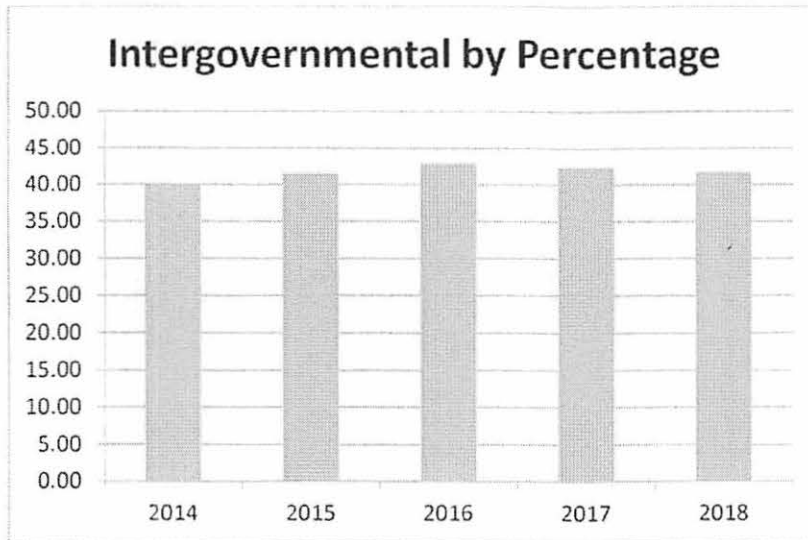
Intergovernmental Revenue

Description

Intergovernmental revenues are funds received from other governmental entities. However, an overdependence on intergovernmental revenue can have adverse impact on financial condition due to restrictions or stipulations that the other governmental entities attach to the revenue. For instance, as Federal and state governments struggle with their own budgetary problems, withdrawal or reduction of payments to local governments serve as one of their cutback options.

Analysis

Sheboygan’s intergovernmental revenue as a percentage of the General Fund revenue is the city’s second largest category (with Taxes being the largest category). Over the past five years, the percent of intergovernmental revenue has been very constant. In 2018, intergovernmental revenue increased by \$378,769 due, in part, to higher State Transportation Aids.



Formula:

$$\frac{\text{Intergovernmental Revenue}}{\text{Net Operating Revenue}}$$

	2014	2015	2016	2017	2018
Intergovernmental Revenue	\$14,047,489	\$14,297,099	\$14,207,490	\$14,258,858	\$14,637,627
Net Operating Revenue	\$35,020,791	\$34,426,556	\$33,126,796	\$33,665,263	\$35,091,324
Percentage	40.11	41.53	42.89	42.36	41.71

Conclusion

The city, similar to all other Wisconsin municipalities, relies heavily on intergovernmental aid and grants for operating purposes. The State of Wisconsin has restricted options of municipalities in generating additional direct revenue sources, i.e. sales and income taxes. State Transportation Aids to the city has increased in the last two years and is expected to increase in light of the State formula which rewards municipalities which spends more on transportation-related activities.

Expenditure

Trend: **Favorable**

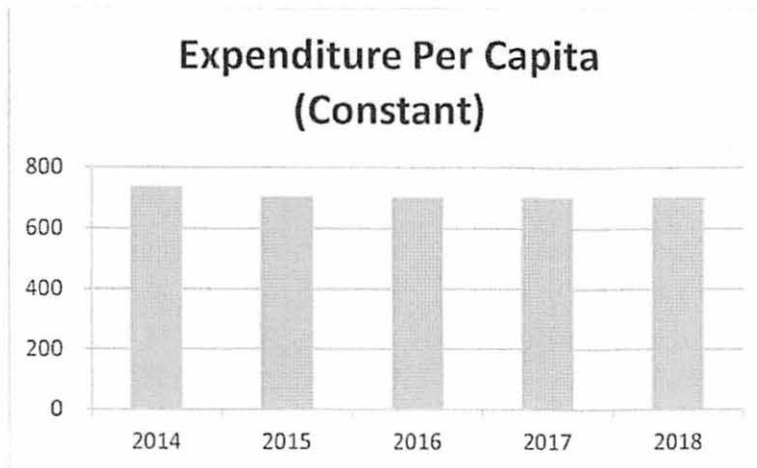
Expenditure Per Capita

Description

Expenditures per capita reflect changes of expenditures relative to the population. An increase in per capita may indicate that cost of providing services is exceeding the City's ability to pay. If the increase in spending is greater than would be expected from continued inflation and cannot be explained by the addition of new services, it can be an indicator of declining productivity, whereby the government is spending more real dollars to support the same level of services.

Analysis

With the exception of 2014, (General Fund) expenditures per capita have been stable.



Formula:

$$\frac{\text{Expenditure (Constant)}}{\text{Population}}$$

	2014	2015	2016	2017	2018
Expenditure	\$35,859,473	\$34,348,224	\$34,565,857*	\$35,104,914	\$36,460,099
CPI Conversion	1	0.999	0.986	0.966	0.943
Expenditure (Constant)	\$35,859,473	\$34,313,875	\$34,081,935	\$33,911,347	\$34,381,873
Total Population	48,649	48,654	48,514	48,329	48,846
Expenditure Per Capita	737.11	705.26	702.52	701.68	703.88

*The 2016 Expenditure amount does not include a \$2.5 million transfer to Sheboygan County for capital costs associated with the transfer of emergency dispatch services.

Conclusion

If expenditure per capita increased without offsetting increases in revenue, the city will have to be concerned over policy issues. However, the trend seems to reveal no significant changes and does not warrant changes over its policies.

Expenditure

Trend: **Favorable**

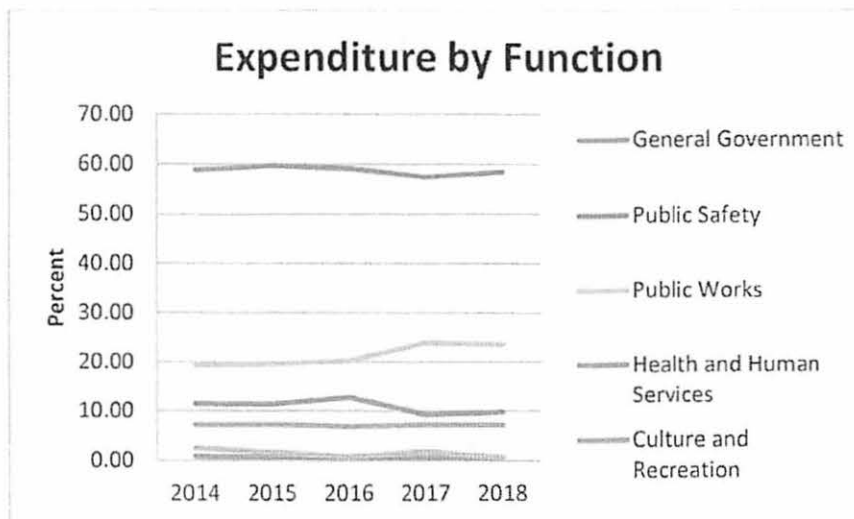
Expenditure by Function

Description

Expenditures by function show a breakdown of the General Fund expenditures. This can help analyze causes of changes in expenditures over time by department. The City of Sheboygan operates with at least six departments reflected in their finances in terms of employees, services, and benefits.

Analysis

The overall expenditures of the General Fund have been fairly stable with an average annual increase of less than 1 percent. (Please note the dollar amounts here have not been adjusted by the CPI Conversion.) Three categories experienced significant changes over the four year period: Public Works (increase), Health and Human Services (decrease), and Conservation and Development (decrease).



Formula:

$$\frac{\text{Expenditures}}{\text{Net Expenditures}}$$

	2014	2015	2016	2017	2018
General Government	\$ 4,036,423	\$ 3,886,099	4,689,064	3,221,641	3,523,721
Public Safety*	\$20,820,701	\$20,481,643	21,920,893	20,153,962	21,258,978
Public Works	\$ 6,809,341	\$ 6,711,257	7,443,242	8,359,079	8,550,172
Health and Human Services	\$ 301,953	\$ 233,341	233,451	221,626	188,887
Culture and Recreation	\$ 2,515,122	\$ 2,470,759	2,521,890	2,502,128	2,589,426
Conservation and Development	\$ 905,387	\$ 565,125	257,317	646,478	348,915
Total	\$35,388,927	\$34,348,224	\$37,065,857	\$35,104,914	\$36,460,099

*The 2016 Expenditure amount does not include a \$2.5 million transfer to Sheboygan County for capital costs associated with the transfer of emergency dispatch services.

Conclusion

With the exception of the Public Works category, Health and Human Services and Conservation and Development experienced one-time expenses in prior years which are not expected to be repeated. Future funding in the Public Works category is anticipated to continue at the 2017 and 2018 levels.

Expenditure

Trend: **Favorable**

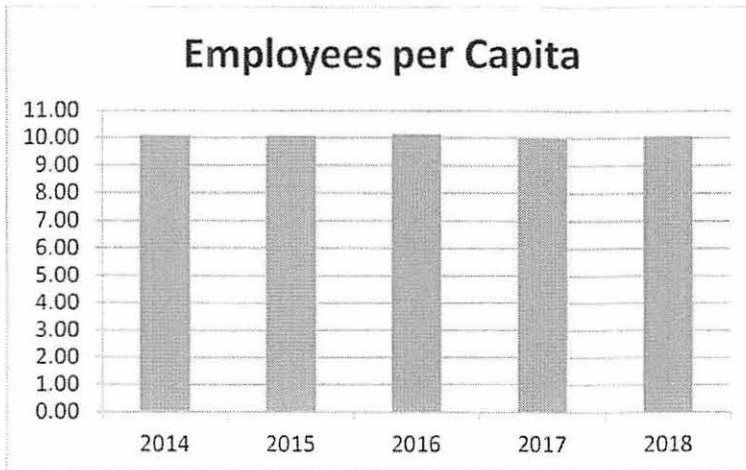
Employees per Capita

Description

This measure represents total employees on the payroll system. Personnel costs are a major portion of local government's operating budget. Therefore, plotting changes in the number of employees per capita is a good way to measure changes in expenditures. In addition, increasing ratio of employees per 1,000 in population can be a warning sign for declining productivity or more labor intensive services that have been added or expenditures are rising faster than revenues.

Analysis

Sheboygan's municipal government number of employees has remained consistent over the past five years. With no material change in population, no material change in employees has occurred during this period.



Formula:

$$\frac{\text{Number of Municipal Employees}}{\text{Population}}$$

	2014	2015	2016	2017	2018
Number of Employees	490	490	492	484	492
Total Population	48,649	48,654	48,514	48,329	48,846
Employees per 1000	10.07	10.07	10.14	10.01	10.07

Conclusion

There have been no significant changes over the past five years. In addition, the city has had no significant service demand or program changes that would indicate a basis for an increase in municipal employment, such as higher crime rates would mean more police officers.

Expenditure

Trend: **Favorable**

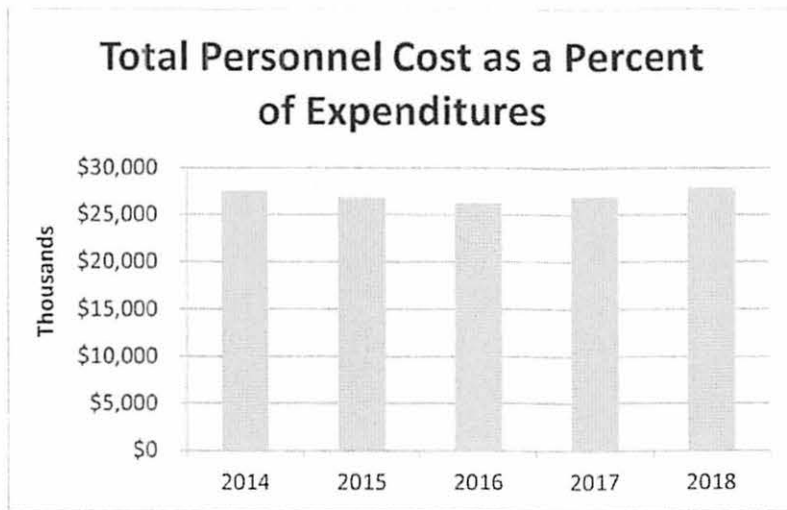
Personnel Cost as a Percentage of Expenditures

Description

As part of the operating (General Fund) expenditure, personnel cost is reflective of the community's ability to pay for the services government provides. In addition, plotting changes in the personnel cost is a good way to measure changes in expenditures. This is a measure of the average compensation, including benefits such as health care, social security, Medicare, and retirement for the average employee.

Analysis

To measure the average personnel cost, total personnel cost were divided by the total expenditures spent in that fiscal year. The average percentages of personnel costs have been stable over the 2014 - 2018 period.



Formula:

General Fund Wages and
Benefits

General Fund Expenditures

	2014	2015	2016	2017	2018
Total Personnel Cost	\$27,518,961	\$26,846,154	\$26,290,365	\$26,881,564	\$27,896,420
Total Expenditure	\$35,859,473	\$34,348,224	\$34,565,857*	\$35,104,914	\$36,460,099
Percentage in Personnel Costs	76.74	78.16	76.06	76.57	76.51

*The 2016 Expenditure amount does not include a \$2.5 million transfer to Sheboygan County for capital costs associated with the transfer of emergency dispatch services.

Conclusion

This indicator receives a favorable trend. While both expenditures and personnel costs since 2016 have increased slightly, the city has been able to manage its personnel cost.

Expenditure

Trend: **Favorable**

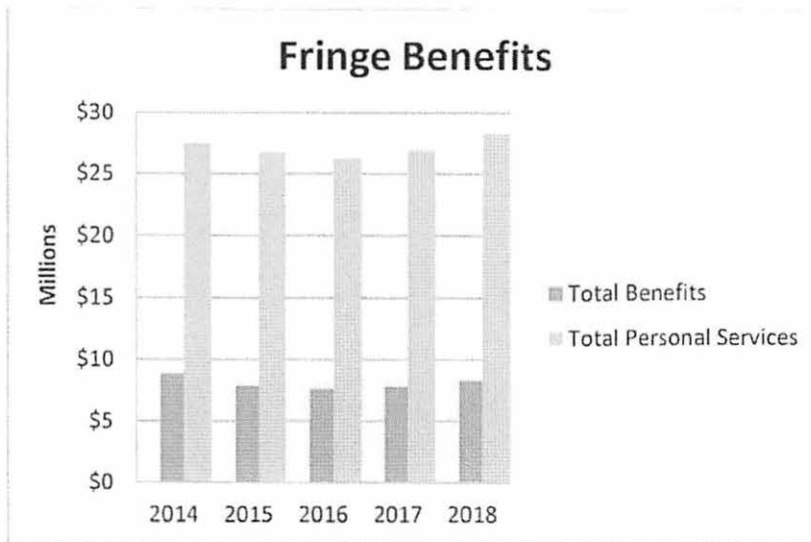
Fringe Benefits as a Percent of Personal Services

Description

Fringe benefits represent a significant share of the city operating cost. Common forms of fringe benefits in Sheboygan are Social Security, retirement, unfunded pension liability, health insurance, life insurance, dental insurance, worker’s compensation, unemployment compensation, and clothing allowance. Monitoring fringe benefits will allow the city to isolate increasing costs and make adjustment where necessary. The complexity of funding and recording of fringe benefits often involves complex processes that may go unnoticed, straining the government’s finances.

Analysis

Starting in 2015, fringe benefits in comparison to wages and salaries have remained stable. Specifically, active and retiree health insurance-related costs were significantly higher in 2014. Subsequently, the city modified its health insurance plan by implementing a high deductible policy design.



Formula:

$$\frac{\text{Fringe Benefits expenditure}}{\text{Personal Services expenditures}}$$

	2014	2015	2016	2017	2018
Fringe Benefits	\$ 8,865,372	\$ 7,884,409	\$ 7,603,100	\$ 7,814,496	\$ 8,272,026
Total Personal Services	\$27,464,592	\$26,828,974	\$26,269,195	\$26,946,746	\$28,270,608
Benefits as %	32.21%	29.38%	28.94%	29.00%	29.26%

Conclusion

The City of Sheboygan implemented a high deductible health insurance plan, effective in 2015. This change has resulted in a decline of costs by approximately 20 percent which has similarly reduced fringe benefit costs. Other costs have increased at the same inflationary rate as wages.

Operating Position

Trend: **Favorable**

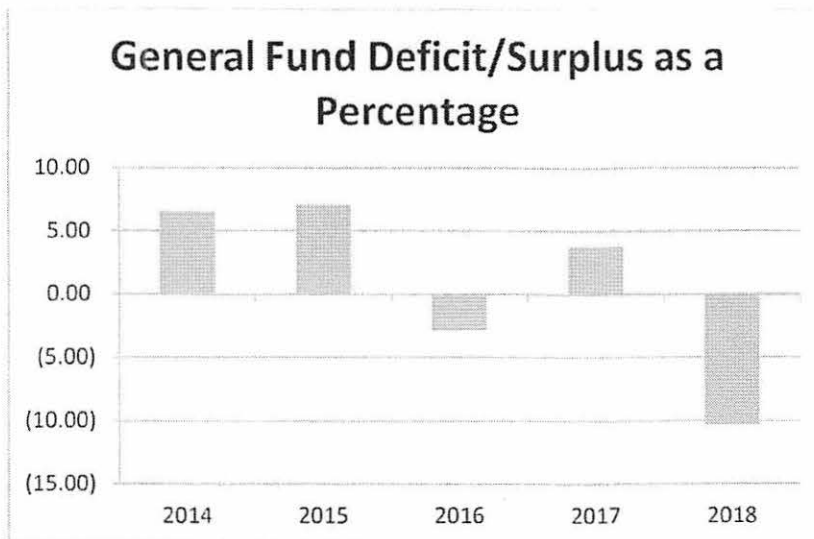
General Fund Operating Surplus or Deficit

Description

As one of the basic measure of localities in operating position, this measure examines a city well-being in how much money was spent as compared with the amount that was brought in. If more money is being spent, than the city will have to make adjustments in order to maintain operations. If expenditures are outpacing money being brought in, than the city will have to make adjustments in cutting cost or decrease level services.

Analysis

In 2016 and 2018, the Common Council supported one time contributions of \$2.5 million and \$5.5 million respectively from the General Fund to support the development of a County centralized emergency dispatch center and City Hall renovations. It is the city's normal practice to budget conservatively on its revenues and expenditures which usually results in end of year surpluses.



Formula:

$$\frac{\text{GF Revenue} - \text{GF Expenditure}}{\text{GF Revenue}}$$

	2014	2015	2016	2017	2018
Revenue	\$38,438,801	\$37,350,132	\$36,034,360	\$36,486,575	\$38,039,543
Expenditure	\$35,932,875	\$34,793,246	\$37,068,849	\$35,112,766	\$41,965,674
Deficit/Surplus	\$ 2,505,926	\$ 2,556,886	(\$1,034,489)	\$ 1,373,809	(\$3,926,131)
Deficit/Surplus as a Percentage	6.52	7.09	(2.87)	3.77	(10.32)

Conclusion

Due to the city's high fund balance in the General Fund, this fund is frequently a source of revenue for one-time projects. Without the \$2.5 million and \$5.5 million transfers, both 2016 and 2018 would have respectively experienced a surplus - \$1,465,511 in 2016 and \$1,573,869 in 2018.

Operating Position

Trend: **Favorable**

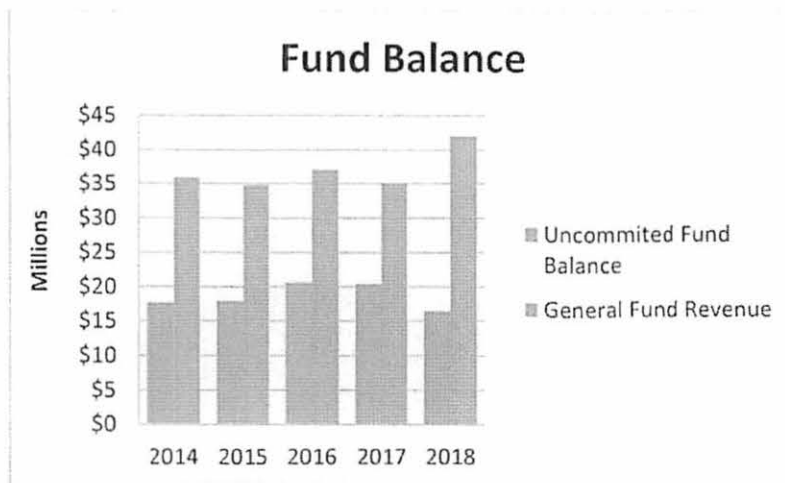
Fund Balance

Description

Fund balances are excess of revenues over expenditures. Positive fund balances can also be thought of reserves, although they are not always synonymous with appropriations. Reports may show allocations of fund balances as non-spendable, restricted, committed, assigned and/or unassigned/uncommitted.

Analysis

The city's financial policy includes a policy on uncommitted fund balance in the General Fund to be maintained at no less than 25 percent. The 2018 fund balance and the percent of fund balance were impacted by the use of \$5.5 million toward the City Hall renovation project. If the use of \$5.5 million did not occur, the uncommitted fund balance would be \$21,958,166 and the percentage of fund balance would be 60.22 percent. Prior to 2018, the trend for uncommitted fund balance reveals an upward trend. The percentage of fund balance in the General Fund had increased 9 percent in the past four years.



Formula:

$$\frac{\text{Fund Balance}}{\text{General Fund Expenditure}}$$

	2014	2015	2016	2017	2018
Uncommitted Fund Balance	\$17,707,173	\$17,905,924	\$20,678,879	\$20,461,650	\$16,458,166
General Fund Expenditure	\$35,932,875	\$34,793,246	\$37,068,849	\$35,112,766	\$41,965,674
Percentage of Fund Balance	49.28	51.46	55.79	58.27	39.22

Conclusion

The percent of uncommitted fund balance in the General Fund is favorable. The maintenance of an adequate fund balance suggests that government operations are running smoothly. In addition, city's ability to accumulate and maintain a fund balance at or above 25 percent is a good indicator of the city's ability to withstand financial emergencies, such as a natural disaster.

Debt Position

Trend: **Favorable**

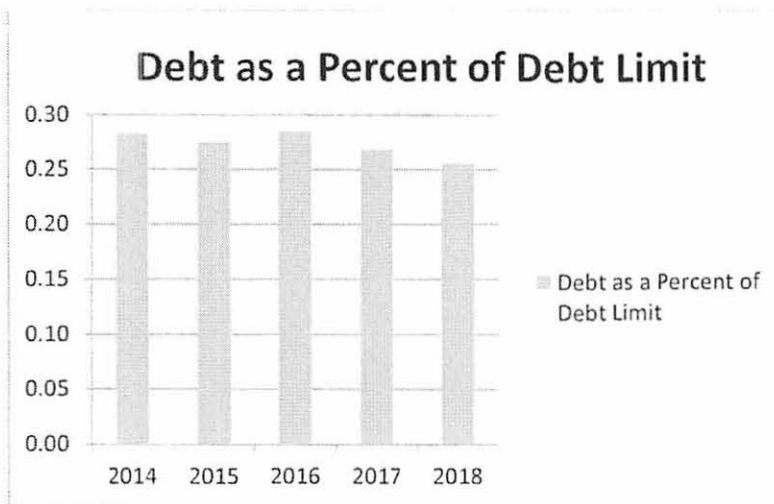
Net Direct Debt to Debt Limit

Description

The net direct debt includes all debt backed by the city's full faith and credit pledge, such as the general obligation bond. In Wisconsin, the debt capacity is limited by Wisconsin State Statutes to five percent of the equalized value.

Analysis

General Obligation (GO) debt has slightly increased (3 percent) from 2014 to 2018. Due to a moderate increase in equalized valuation, the city's Net Direct Debt to Equalized Value has remained relatively stable.



Formula:

$$\frac{\text{GO Debt}}{\text{WI Limit of Equalized Value}}$$

	2014	2015	2016	2017	2018
GO Debt	\$34,965,437	\$33,075,255	\$34,834,531	\$35,174,580	\$36,039,627
WI Debt Limit of Equalized Value (5%)	\$123,754,750	\$120,376,600	\$122,309,695	\$130,980,250	\$140,495,000
Net Equalized Value	0.28	0.27	0.28	0.27	0.26

Conclusion

The Great Recession severely impacted the real estate market and the overall local economy. As evidenced by the increase in equalized property values, 2017 was the first year of property appreciation since 2008. Increases in equalized property valuation positively impact the city's ability to incur additional debt. With the annual percent increase of equalized valuation exceeding the percent of increased debt, the city's overall debt as a percentage of debt limit remains stable or slightly lower.

Debt Service as a Percentage of Property Tax Levy

Trend: **Favorable**

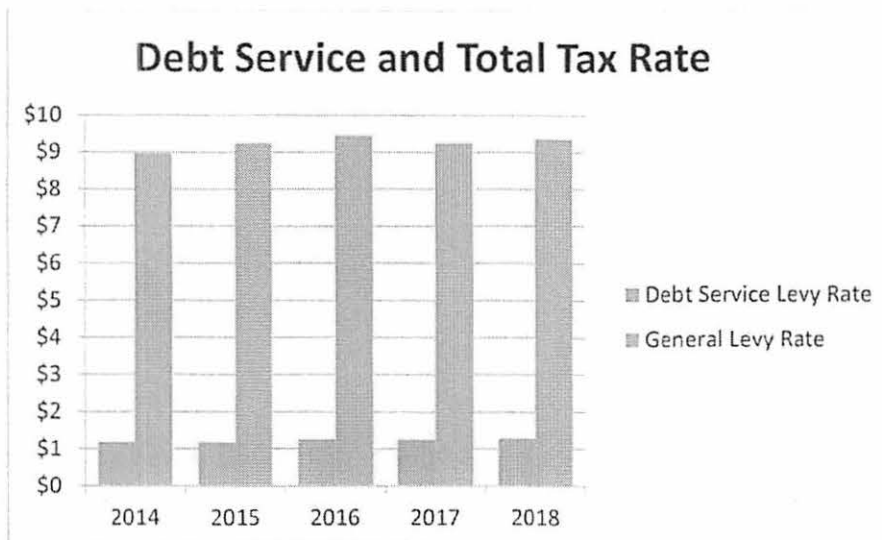
Annual Debt Service

Description

Debt Service as a Percentage of Property Tax Revenue is the amount of principal and interest that the city pays each year on long and short-term (non-development and non-utility) debt with property tax levy. As debt service increases, it adds to the city's obligations and reduces expenditure flexibility. In addition, debt service is a major part of the city's fixed costs and any increase may indicate excessive debt and fiscal strain.

Analysis

The share of the Property Tax Revenue (equalized tax rate) that is allocated to pay for debt service is stable. Although the tax rate has increased 10 cents per thousand dollar valuation since 2014, it remains proportional to the overall tax rate between the years 2014 - 2018.



Formula:

$$\frac{\text{Debt Service Levy Rate}}{\text{General Levy Rate}}$$

	2014	2015	2016	2017	2018
Debt Service-related Tax Rate	\$1.18	\$1.17	\$1.26	\$1.24	\$1.28
Total Municipal Tax Rate	\$8.96	\$9.24	\$9.45	\$9.52	\$9.36
Percent of Tax Rate	13%	13%	13%	13%	14%

Conclusion

The city's debt service which is funded by property taxes has been relatively stable as a percent of overall municipal property tax revenue. The percentage from 2014 – 2018 has increased by 1 percent. This resource reflects the traditional revenue source of debt service payments for General Obligation debt.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: R.O. 45-19-20 Consideration of the Finance and Personnel Committee regarding the distribution and format of the 2021 Executive Program Budget and 2021 Executive Program Budget-in-Brief documents.

REPORT PREPARED BY: Darrell Hofland, City Administrator

REPORT DATE: 7-10-2019

MEETING DATE: 7-22-2019

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

The Executive Program Budget is printed and prepared for all Common Council Members, Departments Head, two key staff members, and two copies for public viewing at the Mead Public Library and the Office of the City Clerk. Thirty five copies of the 462-page 2019 Executive Program Budget were printed and distributed at a cost of \$1,938. New in 2019, the 2019 Budget-In-Brief, a 28 page-condensed version of the Budget document, was provided to including key components and information from the complete Budget document. In alignment with the Strategic Plan focus area of Communication, the complete budget document is available electronically on the city's website, which can be accessed at any time via the Chromebooks provided at no additional cost to Council members. Approximately eight hours of staff time is required for the manual assembly of the 462 page Executive Program Budget.

STAFF COMMENTS:

In preparation of the 2020 Budget, the City Administrator has requested the departments to hold their Non-Personal Service portion of their respective budgets flat. One of the areas in the Office of the City Administrator's budget being considered for reduction is the high cost of printing the Executive Program Budget. Over the years, a number of Council Members have returned their printed copies of the Budget document to opt for use of the electronic version. Printed copies of the Budget Document would still be available for the standard public viewing locations, and for a small number of key staff utilizing the Budget on a daily basis. Council Members and all Department Heads would still receive printed copies of the Budget-in-Brief document. Reducing the number of printed copies to only key staff and public viewing copies will provide significant cost and time savings to the city.

ACTION REQUESTED:

Motion to recommend the Common Council receive R.O. 45-19-20 and adopt the recommendation.

ATTACHMENTS:

I. R.O. 45-19-20

II

3.4

R. O. No. 45 - 19 - 20. By CITY ADMINISTRATOR. July 15, 2019.

Consideration of the Finance and Personnel Committee regarding the distribution and format of the 2021 Executive Program Budget and 2021 Executive Program Budget-in-Brief documents.

CITY ADMINISTRATOR

Finance
Personnel

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 54-19-20 by Alderpersons Donohue and Bohren to authorize the transfer of appropriations in the 2019 Budget and to authorize City Officials to execute a contract with CliftonLarsonAllen LLP.

REPORT PREPARED BY: Marty Halverson, Finance Director/Treasurer

REPORT DATE: July 17, 2019

MEETING DATE: July 22, 2019

FISCAL SUMMARY:

Budget Line Item: 10115100-521900
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

Common Council expressed an interest in systematically conducting an outside review of each city department. A Fire Department study was conducted in 2018. Turnover of key personnel in the Finance Department, as well as a future collaborative work environment in the remodeled city hall is cause for a recommendation of reviewing these two internal services departments. R.C. No. 311-18-19 and Res. No. 206-18-19 both supported this approach by approving a Request for Proposal (RFP) for an operational assessment. Res. No. 54-18-19 is to enter into a contract and authorize a transfer of appropriations to execute this outside firm review.

STAFF COMMENTS:

This action supports both the current and future needs of the organization and will help to best identify appropriate organizational structure along with analysis to evaluate current processes. It is City staff's belief that this analysis will lead to efficiency gains as well as improved documentation working towards the necessary steps to improve the identified deficiencies following the 2018 year-end audit.

The Common Council approved RFP process generated four responses with fees ranging from \$14,800 to \$62,000. These four responses were narrowed down to the top two choices (CliftonLarsonAllen LLP "CLA" and Better Dash Faster Consulting) based on leadership discussion regarding the firm's staff and proposal. Based upon reference phone calls, management's recommendation is to select CLA as the best suited firm to meet the City's goals identified in the RFP.

ACTION REQUESTED:

Motion to recommend the Common Council adopt Res. No. 54-19-20 with amended CLA Engagement Letter to authorize the transfer of appropriations in the 2019 Budget and to authorize City Officials to execute a contract with CliftonLarsonAllen LLP.

ATTACHMENTS:

- I. Res. No. 54-19-20
- II. CLA Engagement Letter - Amended

III

4.2

Res. No. 54 - 19 - 20. By Alderpersons Donohue and Bohren. July 15, 2019.

A RESOLUTION to authorize a transfer of appropriations in the 2019 Budget and to authorize the appropriate City Officials to execute a contract with CliftonLarsonAllen LLP.

WHEREAS, pursuant to Res. No. 206-18-19, City Staff were instructed to seek proposals for an operational and departmental structure study of the City of Sheboygan Finance Department and Human Resources Department; and

WHEREAS, Staff has sought proposals and believes that the proposal with CliftonLarsonAllen LLP ("CLA") is in the best interest of the City.

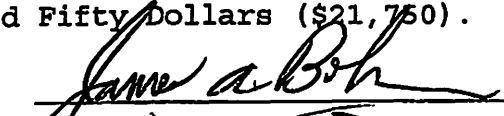
NOW, THEREFORE, BE IT RESOLVED: That the Finance Director be and is hereby authorized and directed to make the following transfers of appropriations in the 2019 Budget for the purpose of:

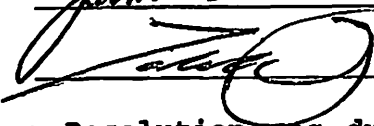
Establishing appropriations for the operational assessment of the finance and human resources departments:

<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
General Fund Unclassified Reserve for Contingency 10199020-810103	General Fund Finance Department Contracted Services 10115100-521900	\$ 21,750

BE IT FURTHER RESOLVED: That the appropriate City officials are authorized to sign the attached agreement with CLA for the operational assessment of the finance and human resources departments, which shall not exceed Twenty-One Thousand Seven Hundred Fifty Dollars (\$21,750).

*Finance
+
Personnel*





I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20__.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor



CliftonLarsonAllen LLP
10700 West Research Drive, Suite 200
Milwaukee, WI 53226
414-476-1880 | fax 414-476-7286
CLAconnect.com

June 21, 2019

Amended

Marty Halverson
City of Sheboygan
828 Center Ave., Ste. 301
Sheboygan, WI 53081

Dear Marty:

We are pleased to confirm our understanding of the terms, objectives, and scope of our engagement and the nature and limitations of the services CliftonLarsonAllen LLP ("CLA," "we," "us," and "our") will provide for City of Sheboygan ("you," "your," or "the entity").

Bill Judd is responsible for the services identified in this agreement. Joan Scholz is responsible for the daily activities of the engagement. Resources are dependent on client commitment date and fieldwork dates and subject to change. Additional Resources may include Thomas Schultz, Tom Killian, Bruce Pistiner, Hannah York, Jocie Dye and/or Kelsey Vatsaas.

Scope of professional services

CLA will perform an Operational and Organizational Assessment of the City's Finance and Human Resources (HR) Departments. The engagement will be executed leveraging the following phases:

- Phase 1: Planning and scoping
- Phase 2: Interviews with key stakeholders
- Phase 3: Aggregate results and identify common themes
- Phase 4: Benchmark analysis
- Phase 5: Develop organizational structure and staffing plan
- Phase 6: Reporting

The scope of the Assessment includes the following:

Operational

- Assess the efficiency of the Finance and HR department operations in relation to staffing, staff competencies, training needs, schedules and productivity
- Assess Finance and HR department process documentation, including policies and procedures
- Assess the workflow and information within Finance and HR
- Assess key processes to evaluate overall effectiveness
- Compare key system functionality capabilities to how the Finance and HR departments utilize the systems
- Evaluate the effectiveness of cross-departmental collaboration as it exists today between the two departments
- Develop recommendations that will enhance operational effectiveness of the Finance and HR departments

Organizational

Assess the Finance and HR organizational structure and operational practices including:

- Organizational Strategic Plan and department strategic plans, if available
- Roles and responsibilities
- Services provided
- Staffing levels
- Workload
- Reporting requirements

In addition, we will assess succession planning and cross training activities in the Finance and HR departments, and develop recommendations that will enhance the organizational structure of the department.

If modifications or changes are required during the course of the engagement that are beyond the initial scope of professional services, or if you request that we perform any additional services, we will provide you with a separate agreement for your signature. Such separate agreement will advise you of the additional fee and time required for such services to facilitate a clear understanding of the services.

For all services we may provide to you, your management agrees to assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience to understand and oversee the services; evaluate the adequacy and results of the services; and accept responsibility for the results of the services.

Our engagement cannot be relied upon to disclose errors, fraud, illegal acts, or noncompliance with laws and regulations. In addition, except as described in the scope of professional services section of this letter, we have no responsibility to identify and communicate deficiencies in your internal control as part of this engagement.

CLA cannot and does not provide legal advice. It is important that you consult with qualified labor counsel before adopting any new human resource policies. It is also your responsibility to determine whether legal review of the work product is necessary prior to implementation.

Fees, time estimates, and terms

We estimate that your current needs are approximately 116-150 hours and fees of between \$16,820 and \$21,750 starting as early as July 15, 2019. As the engagement progresses, we will update time estimates and engage you in conversation about the project status. The estimate is based on anticipated cooperation from your personnel and their assistance with preparing and providing requested information. If the requested items are not available on the dates required or are not accurate, the estimated fee for services will likely be higher.

Fees for travel time will be billed at one-half (1/2) the normal hourly rate. Should this engagement duration go beyond six (6) months or the scope of services change, CLA retains the right to discuss an hourly rate adjustment.

Fees, plus applicable state and local taxes, will be billed twice per month in arrears, due upon receipt. We will also bill you in arrears for reimbursement of any out-of-pocket travel expenses incurred (e.g., hotel, airfare, meals as actual or per diem, etc.) on a pass-through basis.

In accordance with our firm policies, work may be suspended if your account becomes six (60) days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed even if we have not completed the accounting assistance. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination.

Finance charges and collection expenses

You agree that if any statement is not paid within 30 days from its billing date, the unpaid balance shall accrue interest at the monthly rate of one and one-quarter percent (1.25%), which is an annual percentage rate of 15%. In the event that any collection action is required to collect unpaid balances due us, reasonable attorney fees and expenses shall be recoverable.

Limitation of remedies

Our role is strictly limited to the engagement described in this letter, and we offer no assurance as to the results or ultimate outcomes of this engagement or of any decisions that you may make based on our communications with you. You agree that it is appropriate to limit the liability of CLA, its partners, principals, directors, officers, employees, and agents (each a "CLA party"), without giving effect to choice of law principles.

You further agree that you will not hold CLA or any other CLA party liable for any claim, cost, or damage, whether based on warranty, tort, contract, or other law, arising from or related to this agreement, the services provided under this agreement, the work product, or for any plans, actions, or results of this engagement, except to the extent authorized by this agreement. In no event shall any CLA party be liable to you for any indirect, special, incidental, consequential, punitive, or exemplary damages, or for loss of profits or loss of goodwill, costs, or attorney fees.

The exclusive remedy available to you shall be the right to pursue claims for actual damages that are directly caused by acts or omissions that are breaches by a CLA party of our duties owed under this agreement, but any recovery on any such claims shall not exceed the fees actually paid under this agreement by you to CLA.

Other provisions

CLA will not disclose any confidential, proprietary, or privileged information of the entity to any persons without the authorization of entity management or unless required by law. This confidentiality provision does not prohibit us from disclosing your information to one or more of our affiliated companies in order to provide services that you have requested from us or from any such affiliated company. Any such affiliated company shall be subject to the same restrictions on the use and disclosure of your information as apply to us.

You acknowledge and agree that this agreement and the pricing structure and billing rates of CLA are sensitive information which you shall not furnish or otherwise disclose to any third party without the prior written consent of CLA.

Professional standards require us to be independent with respect to you in the performance of certain services. Any discussion that you have with our personnel regarding potential employment with you could impair our independence. Therefore, we request that you inform us prior to any such discussions so that we can implement appropriate safeguards to maintain our independence and objectivity. Further, any employment offers to any staff members working on this engagement without our prior knowledge may require substantial additional procedures to ensure our independence. You will be responsible for any additional costs incurred to perform these procedures.

We will be responsible for our own property and casualty, general liability, and workers compensation insurance, taxes, professional training, and other personnel costs related to the operation of our business.

When performing the services above, we will utilize the resources available at the entity to the extent practical to continue development of your personnel. During a portion of our work, we may require the use of your computers. We will try to give you advance notice and coordinate our use so it does not interfere with your employees.

The relationship of CLA with the entity shall be solely that of an independent contractor and nothing in this agreement shall be construed to create or imply any relationship of employment, agency, partnership, or any relationship other than an independent contractor.

If applicable, accounting standards and procedures will be suggested that are consistent with those normally utilized in an entity of your size and nature. We will require management to approve any changes in the application of accounting standards and procedures at the entity. Internal controls may be recommended relating to the safeguarding of the entity's assets. If fraud is initiated by your employees or other service providers, your insurance is responsible for covering any losses.

The entity agrees that CLA will not be assuming any fiduciary responsibility on your behalf during the course of this engagement.

Employment provision

You agree that during the term of this engagement and for a period of one year after the expiration or termination date of this engagement, you will not solicit, hire, contract with, or engage the services of any person providing services to you on behalf of CLA without the prior written consent of CLA.

You acknowledge that:

1. CLA personnel may be subject to agreements restricting their right to contract with or solicit business from you other than their service through CLA, and
2. If you breach this non-solicitation provision, you shall pay \$100,000 to CLA as liquidated damages within two weeks of the date on which the former CLA employee or consultant begins his or her new employment with you.

You acknowledge and agree that CLA's damages resulting from violation of this section are difficult or impossible to estimate and that the sum stipulated above is a reasonable pre-estimate of the probable loss

that CLA would incur based on the cost of replacement, training, lost resources for projects, and other factors and is not a penalty. Liquidated damages under this paragraph shall not limit or impair any other remedies CLA may seek for breach of this paragraph or this agreement.

Termination of agreement

Either party may terminate this agreement at any time by giving written notice to the other party. In that event, the provisions of this agreement shall continue to apply to all services rendered prior to termination.

Agreement

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. This letter constitutes the entire agreement regarding these services and supersedes all prior agreements (whether oral or written), understandings, negotiations, and discussions between you and CLA. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign, date, and return a signed copy to us by email or U.S. mail.

Sincerely,

CliftonLarsonAllen LLP



Megan Moore, CIA, CISA, CRMA
Principal
612-397-3129
megan.moore@CLAconnect.com

Response:

This letter correctly sets forth the understanding of City of Sheboygan.

Authorized Signature: _____

Title: _____

Date: _____

Email: _____

Telephone: _____

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 55-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to enter into a contract regarding the bulkhead line survey of the Sheboygan River and Lake Michigan shoreline.

REPORT PREPARED BY: Chad Pelishek, Director of Planning and Development

REPORT DATE: July 17, 2019

MEETING DATE: July 22, 2019

FISCAL SUMMARY:

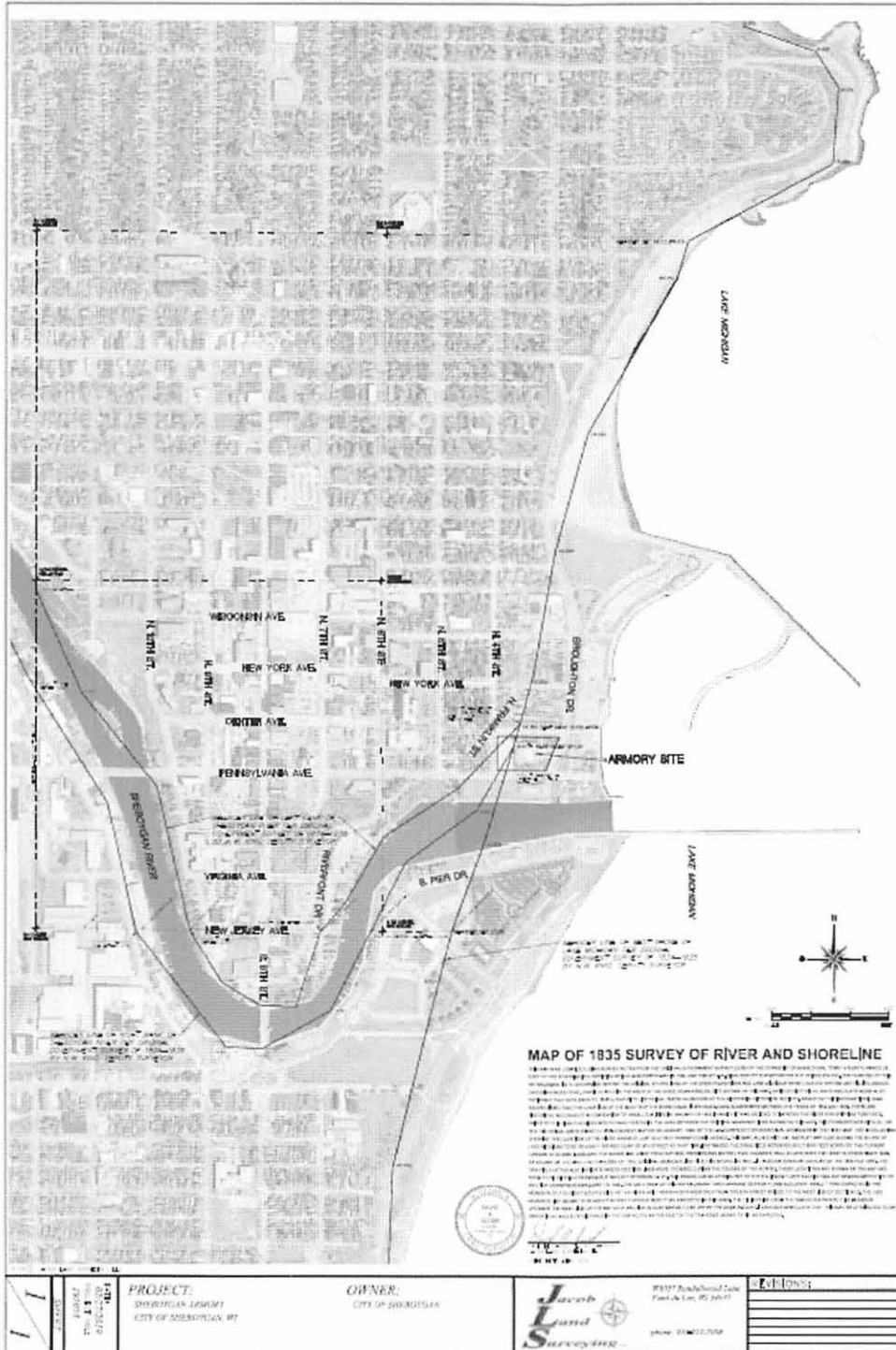
Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

As part of the efforts to redevelop the Sheboygan Municipal Armory site, city staff was made aware of the potential that the Armory property may be in a former riverbed or lakebed grant area. According to the Wisconsin Department of Natural Resources, they have jurisdiction only over the lakebed grant area, not riverbed areas. In February, 2019, the City hired a land surveyor to research documents at the Sheboygan County Register of Deeds and other locations to determine if the Armory property is indeed in a lakebed grant area. According to the results of this survey, it appears that the Armory and all properties west of Broughton Drive from the existing river to North 3rd Street are part of the lakebed grant area. A map showing the 1835 shoreline is on the next page.



STAFF COMMENTS:

Under state statute a bulkhead line can be established. Per Wis. Stats. 30.11, a municipality may, subject to approval by the Wisconsin Department of Natural Resources, by ordinance establish a bulkhead line and from time to time reestablish the same along any section of the shore of any navigable waters within its boundaries. After extensive search of existing

council documents, city staff was unable to locate any prior ordinance or resolution adopted by prior councils that established the bulkhead line for the shoreline north of the Sheboygan River. This proposal will hire TerraTec to survey and describe a line on the east side of Broughton Drive from North Point to the Coast Guard Station to legally describe this line and allow the Council to act on an ordinance setting the line for \$7,500.

ACTION REQUESTED:

Motion to recommend the Common Council adopt Res. No. 55-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to enter into a contract regarding the bulkhead line survey of the Sheboygan River and Lake Michigan shoreline.

ATTACHMENTS:

- I. Res. No. 55-19-20

Res. No. 55 - 19 - 20. By Alderpersons Donohue and Bohren. July 15, 2019.

A RESOLUTION authorizing the appropriate City officials to enter into a contract regarding the bulkhead line survey of the Sheboygan River and Lake Michigan shoreline.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into a contract with Terra Tec Engineering, LLC, a copy of which is attached hereto and incorporated herein.

BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw funds from the TID #12 Capital Projects Fund-Contracted Services (42261100-521900) in payment of same.

James A Boh

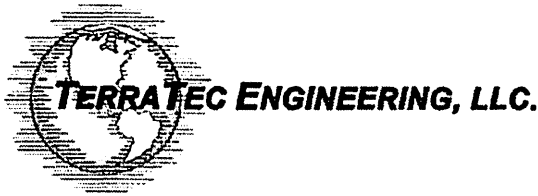
[Signature]

Finance + Personnel

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor



W67 N222 Evergreen Blvd., Suite 205
Cedarburg, Wisconsin 53012
Tel.: 262.377.9905
Fax: 262.375.1958

July 11, 2019

Mr. Chad Pelishek, Director
City of Sheboygan Planning and Development
828 Center Avenue
Sheboygan, WI 53081

Re: Bulkhead Survey – Sheboygan River and Lake Michigan Shoreline
Sheboygan, Wisconsin
TerraTec File No. P1906009

Dear Mr. Pelishek:

As requested, TerraTec Engineering, LLC. (TerraTec) is pleased to submit this proposal for surveying services for the above project. The following paragraphs describe the work scope, estimated project fees and proposal agreement.

PROJECT DESCRIPTION

Based on our meeting on June 18, 2019, TerraTec understands that the City of Sheboygan (City) is trying to re-establish the shoreland bulkhead location along the north side of the Sheboygan River from the west property line of Rotary Park to the Coast Guard Station and then north along the east side of Broughton Drive from Pennsylvania Avenue to the cross walk at North Point Park that connects to the west side access to north Point Drive (approximately 1.25 miles in length). The City intends to submit mapping and a legal description of this location to the Wisconsin Department of Natural Resources (WDNR) to re-establish an agreement of the bulkhead location.

SCOPE OF SERVICES

TerraTec anticipates performing the following tasks which are described in the paragraphs below:

- Task 1 – Topographic Survey
- Task 2 – Alignment Description and Exhibits

Task 1 – Topographic Survey

TerraTec will perform the following activities:

- Establish control tied to Public Land Survey corners in Wisconsin Coordinate Reference System (WisCRS) in Sheboygan County.
- Survey the northside of the boardwalk on the north side of the Sheboygan River from the west property line of Rotary Park to the Coast Guard Station.
- Survey the westside of the sidewalk from the boardwalk north to Pennsylvania Avenue.

- Survey the eastside of the northbound sidewalk on Broughton Drive from Pennsylvania Avenue to the crosswalk at the southside of North Point Park leading to the access to North Point Drive.
- Attend one meeting with the City to establish the desired offset distance to be used for the bulkhead line paralleling Broughton Drive.
- Establish an alignment at this offset distance to be used for the bulkhead description.

Task 2 – Alignment Description and Exhibits

TerraTec proposes to prepare a map depicting the re-established bulkhead alignment and a description of said alignment. Activities will include:

- Prepare 11x17-inch exhibits of the re-established bulkhead location at a 1" = 100' scale. These exhibits will incorporate the GIS orthographic mapping and approximate property lines provided by the City of Sheboygan. It is estimated the exhibits will require 4 sheets.
- Provide a description of the new bulkhead alignment location.
- Provide electronic and hardcopies of files associated with the exhibits and alignment description.

GENERAL PROJECT UNDERSTANDING

1. This proposal does not include wetland delineations/services, environmental, site design, geotechnical engineering, pavement design, architectural, electrical, structural, construction services, meetings or permit/application fees. These services can be provided for additional fees, if requested.
2. It is our understanding that the Owner/Client will submit all regulatory permit fees including those to the City/WDNR/State, etc.
3. All submittals are final. Any requested modifications will be performed on a time and material basis.
4. TerraTec cannot guarantee approvals of any applications.
5. Any modifications required due to revisions to the Concept Plan once TerraTec has been authorized to proceed will be performed on a time and material basis. Also, any revisions of submitted documents will be performed as requested by either the Client or a regulatory office on a time and material basis.
6. Invoices shall be submitted monthly or at the end of project completion, whichever occurs first. No work outside of the scope of services described above, shall be performed or charges invoiced, without prior Client authorization at an agreed upon unit price.
7. TerraTec will not warrant the accuracy or completeness of any survey mapping provided to TerraTec by other parties.
8. This proposal does not include the preparation of a property boundary survey or Certified Survey Map, nor does it include permit or application fees. These services can be provided for additional fees, if requested.
9. The map will be prepared in accordance with the drafting and design standards established by TerraTec in AutoCAD, which reflect common engineering practice.
10. Production and coordination of additional copies, electronic files or other requests for information above that detailed herein are considered a direct reimbursable in excess of the contract maximum and will be invoiced in accordance with the fee schedule.
11. TerraTec takes no responsibility and will not certify for any underground structures or buried materials such as foundations, wells, septic, holding tanks, utilities, hazardous materials, or any other items of which no evidence can be found on the surface by a reasonable inspection. TerraTec will not enter any buildings or utility structures on or off the site.
12. Utility locations are not included in this scope of work.
13. No topographic features are included in this survey other than the back of boardwalk and back of sidewalk.

14. Ownership and Use of Documents

- All survey drawings and maps are physical depictions of part of the service provided. Said drawings, maps and field notes are and shall remain the property of the Land Surveyor.
- The client may use the copies solely for the purpose for which the survey map was prepared as stated herein.
- The parties hereto acknowledge that the Land Surveyor is the author of the survey drawings under United States Copyright Law, 17 U.S.C. ss 101 et seq., and thereby retains sole ownership of the copyright of the drawing. In recognition of the Land Surveyor's claim to the copyright, the client shall not copy, reproduce, or adapt the survey drawings or engage in any other activity, which would violate the copyright therein without the Land Surveyor's consent.
- Nothing in this Section 14, or anywhere else in this Agreement, is intended to be inconsistent with Client's obligations under the Wisconsin Public Records Law.

ESTIMATED PROJECT FEES AND SCHEDULE

TerraTec proposes to perform this work on a lump sum basis of \$7,500. Additional tasks will be billed on a time and material basis upon your written request. These services will be performed upon your acceptance of this proposal and as described in the above paragraphs. This lump sum fee will be effective if this proposal is accepted by City of Sheboygan within 30 days of the date of this proposal.

PROPOSAL AGREEMENT


TerraTec Engineering, LLC. proposes to perform this work under the attached General Services. Please indicate your acceptance of this proposal by having an authorized representative of your firm execute one copy and return it to TerraTec's office. If we are given a verbal notification to proceed, it will be mutually understood that both parties will be contractually bound by the proposal and General Terms and Conditions.

CLOSING

We appreciate this opportunity to assist you with this project. If you have any questions regarding this proposal or if you need additional assistance, please contact us.

Sincerely,

TERRATEC ENGINEERING, LLC.



Timothy J. Moyer, P.E.
Principal

ACCEPTED BY:

SIGNATURE: _____

TITLE: _____

FIRM: _____

DATE: _____

TERRATEC ENGINEERING LLC.
GENERAL TERMS AND CONDITIONS#

#

1. SCOPE OF SERVICES.

- (a) The scope of services, project schedule, and associated cost estimate included in the attached proposal are based on the information made available to TerraTec Engineering by the Client. If this information is incomplete/inaccurate or if site conditions are materially different from those indicated by the Client, a written amendment to this Agreement equitably adjusting the scope of services, costs or schedule shall be executed by the Client and TerraTec Engineering. TerraTec Engineering may suspend performance of its services until the Amendment has been executed. If the Amendment is not agreed to within a reasonable time as deemed by TerraTec Engineering, TerraTec Engineering may terminate this Agreement. In the event of Agreement termination, the Client shall pay TerraTec Engineering for all services performed prior to termination and termination expenses set forth in these General Terms and Conditions.

2. BILLINGS AND PAYMENTS.

- (a) Payments for services and reimbursable expenses will be made on the basis set forth in the attached proposal. TerraTec Engineering shall submit invoices for services performed and expenses incurred that have not been previously billed. Invoices shall be submitted not more frequently than monthly. Payment is due upon receipt. For all amounts unpaid after 30 days from the invoice date, the Client agrees to pay a finance charge of one and one-half percent (1-1/2%) per month, eighteen percent (18%) annually. The fees described in this agreement may be adjusted annually on the anniversary date of the effective date of this agreement. Any collection costs incurred by TerraTec to collect overdue sums from the Client shall immediately become due and payable to TerraTec from the Client.
- (b) The Client's obligation to pay for the services performed by TerraTec Engineering under this Agreement shall not be reduced or in any way impaired by or because of the Client's inability to obtain financing, zoning, approval of governmental or regulatory agencies, or any other cause, reason, or contingency. No deductions shall be made from any invoice on account of penalty or liquidated damages nor will any other sums be withheld or set off from payments to TerraTec Engineering. Client further agrees to pay TerraTec Engineering any and all expenses incurred in recovering any delinquent amounts due, including, but not limited to reasonable attorney's fees, arbitration or other dispute resolution costs and all court costs.
- (c) If any subpoena or court order is served upon TerraTec and/or any of its staff, subconsultants or subcontractors requiring presentation of documents or the appearance of TerraTec Engineering staff, subconsultants, or subcontractors at a trial, deposition, or for other discovery purposes arising out of TerraTec Engineering services performed under this Agreement, Client will pay TerraTec Engineering's fees (if any) applicable to TerraTec Engineering's compliance with the subpoena or court order. Fees will be based on actual units used at the standard rates in effect at the time of service upon TerraTec Engineering of the subpoena or court order. Billings shall include time and expenses incurred gathering, organizing and duplicating documents, preparing to give testimony, travel and testifying in deposition or trial. This provision shall not apply if TerraTec is a named party to a lawsuit as a result of its work performed under this Agreement.

3. STANDARD OF CARE.

- (a) TerraTec Engineering will strive to perform its services under this Agreement in conformance with the care and skill ordinarily exercised by members of the professional engineering community practicing under similar conditions at the same time in the same or similar locality.

- (b) No other warranty of any kind, expressed or implied, at common law or created by statute, is extended, made, or intended by the rendition of consulting services or by furnishing oral or written reports of the findings made.
- (c) If TerraTec Engineering breaches the standard of care, TerraTec Engineering shall be given an opportunity to correct any Services at no additional charge to Client.

4. ALLOCATION OF RISK.

- (a) Client shall indemnify and hold TerraTec Engineering, its members, managers, officers, agents, and employees harmless from and against any and all liabilities, losses, damages, costs, attorney fees, defense fees, and expenses which TerraTec Engineering, its directors, officers, and employees may hereafter suffer in connection with any claim, action, or right of action because of any injury or damage to person or property which arises out of the sole negligence or willful misconduct by Client or its directors, officers or employees, agents or invitees.
- (b) TerraTec Engineering shall indemnify, defend, and hold Client, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses caused by reason of any act, omission, fault, or negligence of TerraTec Engineering or of anyone acting under its direction or control or on its behalf.
- (c) Consequential damages – Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor TerraTec shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that wither party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

5. TERMINATION OF SERVICES.

- (a) This Agreement may be terminated by either party upon at least seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice.
- (b) TerraTec Engineering may suspend performance of Services by giving Client five (5) days prior written notice hereof, if:
 - (i) Client is in default of its payment obligations under Paragraph 2; or
 - (ii) Force Majeure, as set forth in Paragraph 7 hereof, causes an uninterrupted continual delay of thirty (30) days or more or
 - (iii) Suspension of the Project or TerraTec's services by the Client for more than 90 calendar days, consecutive or in the aggregate.
- (c) TerraTec shall have no liability, and the Client agrees to make no claim for any delay or damage as a result of suspension/termination caused by any breach of this Agreement by the Client.
- (d) In the event of any termination/suspension, the Client shall pay TerraTec, in addition to payment for services rendered and reimbursable costs incurred, for all expenses incurred by TerraTec in connection with the termination of this Agreement including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

6. TERRATEC ENGINEERING AS INDEPENDENT CONTRACTOR. TerraTec Engineering, in performing the Services, shall be deemed an independent contractor and not an agent or employee of Client.

7. FORCE MAJEURE. No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages, if, and to the extent, such delay or failure is caused by an occurrence beyond the reasonable control and without the fault or negligence of the party affected and by which said party is unable to prevent or provide against by exercise of reasonable diligence, including, but not limited to, Acts of God or the public enemy, acts of terrorism, expropriation or confiscation of facilities, material changes in applicable law, war, legal disputes, rebellion, sabotage or riots, floods, unusually severe weather, fires, explosions, or other catastrophes. Unless such Force Majeure substantially frustrates performance of this Agreement, it shall not operate to excuse, but only to delay performance hereunder.

8. ASSIGNMENT OF AGREEMENT. Neither party shall assign this Agreement or any part hereof without the prior written consent of the other party. Any assignment not made in accordance with this Agreement shall be void.

9. SUBCONTRACTS. TerraTec Engineering may subcontract any part of the Services with the prior written approval of Client. This approval may be provided by Client's Director of Planning & Development. Client reserves the right to reject any of TerraTec's personnel or proposed subcontractors, and to request that acceptable personnel be assigned to the project.

10. SURVIVAL OF OBLIGATIONS. Obligations of the parties under this Agreement shall survive termination or suspension of the Services or of this Agreement.

11. ENTIRE AGREEMENT. This Agreement including the attached proposal constitutes the entire Agreement between the parties and supersedes all prior negotiations, representations or agreements relating thereto, written or oral, except to the extent they are expressly incorporated herein. Unless otherwise provided for herein, no amendments, changes, alterations or modifications of this Agreement shall be effective unless in writing signed by Client and TerraTec Engineering.

12. WRITTEN NOTICES. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given if delivered by facsimile, delivered by private express service provider, if delivered in person or deposited in the United States mail, first-class certified or registered mail, postage prepaid, return receipt requested.

13. GOVERNING LAW.

(a) This Agreement shall be governed by the law of the State of Wisconsin.

14. SEVERABILITY. In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

15. PROJECT REPRESENTATIVE. Individuals who signed the attached proposal are the agents for receiving and giving notices unless otherwise specified in writing to the other party.

16. PERMITS, LICENSES AND ACCESS AGREEMENTS. Client shall cooperate with TerraTec Engineering in obtaining any permits or licenses required for the performance of the Services. Client shall obtain access agreements when necessary for the performance of services. Client shall pay all costs and fees necessary for such permits, licenses and access agreements.

17. ACCESS TO SITE AND INFORMATION.

In order that TerraTec Engineering may perform the Services, Client represents, warrants, and covenants that:

- (a) Client shall provide right-of-access to the site to TerraTec Engineering, its employees, agents and contractors, to conduct the planned field observations or services.
- (b) Prior to the execution and delivery of this Agreement, Client has supplied to TerraTec Engineering all information and documents in its possession, custody, or control known to the Client and material to the Site and necessary for the performance of the Services, including the location of subterranean structures and conditions such as, but not limited to, pipes, tanks, utilities, and telephone cables.
- (c) TerraTec Engineering may use such information, requirements, reports, data, surveys and instructions provided by others in performing its services and is entitled to rely upon the accuracy and completeness thereof. TerraTec Engineering shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.
- (d) During the term of this contract:
 - (i) TerraTec Engineering will have complete access to the Site and any facilities located thereon required to perform the services.
 - (ii) Client shall continue to supply to TerraTec Engineering all material information and documents in its possession, custody or control known to the Client and material to the Site and the Services.
 - (iii) Client will give prompt notice to TerraTec Engineering whenever it becomes actually aware of any development that materially and adversely affects the scope or timing of the Services.
 - (iv) TerraTec Engineering has not included in its fee, and is not responsible for, the cost of restoration for any damage resulting from its operations. For an additional fee, TerraTec Engineering will to the extent reasonably practicable restore the site to conditions substantially similar to those existing prior to TerraTec Engineering's operations at the request of Client.
 - (v) TerraTec Engineering shall not be liable for damage or injury to any subterranean structures (including, but not limited to, pipes, tanks and telephone cables) or any existing subterranean conditions—or the consequences of such damage or inquiry—unless the damage or injury was the result of the negligence of TerraTec Engineering or an agent of TerraTec Engineering or was the result of TerraTec Engineering breaching the standard of care set forth in Section 3 of this Agreement.

18. SAFETY.

- (a) TerraTec Engineering is responsible solely for the safe performance by TerraTec Engineering field personnel of their activities in performance of the scope of services. It is expressly agreed that TerraTec Engineering's professional services hereunder do not involve any responsibility for the protection and safety of persons on and about the Project site nor is TerraTec Engineering to review the adequacy of job safety on the Project site.

- (b) TerraTec Engineering has neither been assigned nor assumed the authority required of the "competent person" under OSHA 29 CFR Part 1926. TerraTec Engineering does not provide, and has not assumed, any duties of inspection/monitoring of excavations required of the "competent person" under OSHA 29 CFR Part 1926.

19. CHANGED CONDITIONS.

- (a) If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to TerraTec are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, TerraTec may call for renegotiation of appropriate portions of this Agreement. TerraTec shall notify the Client of the changed conditions necessitating renegotiation, and TerraTec and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot agree to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination provision hereof.

20. THIRD-PARTY BENEFICIARIES.

- (a) Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

21. REPORTS AND OWNERSHIP OF DOCUMENTS.

- (a) All reports, plans, specifications, computer files, field data, notes and other documents and instruments prepared by TerraTec as instruments of service shall remain the property of TerraTec. TerraTec shall retain all common law, statutory, and other reserved rights, including the copyright thereto.
- (b) Client agrees that all plans/reports or other work product furnished to the Client not paid for in full will be returned upon demand and will not be used for any purpose, including, but not limited to design, construction, permits or licensing.
- (c) Electronic Files – The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others without the prior written consent of TerraTec. The Client agrees to indemnify and hold harmless TerraTec, its officers, employees and subconsultants against all damages, liabilities or costs, including attorneys' fees and defense costs, arising from any changes made by anyone other than TerraTec from any reuse of the electronic files. In no event shall TerraTec be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

22. DISPUTE RESOLUTION.

- (a) All claims, disputes, controversies arising out of this Agreement or any breach thereof shall be submitted to mediation before and as a condition precedent to any other remedy. Upon written request by either

party to this Agreement for mediation of any dispute, Client and TerraTec Engineering shall select by mutual agreement a neutral mediator. The selection shall be made within fifteen (15) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and TerraTec Engineering within fifteen (15) days, a mediator shall be chosen as specified in the Construction Industry Mediation Rules of the American Arbitration Association then in effect.

- (b) If a dispute cannot be settled through mediation, venue of any dispute arising under this Agreement shall be in Sheboygan County Circuit Court.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 56-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to enter into a contract regarding surveying services for the proposed Union Pacific Trail.

REPORT PREPARED BY: Chad Pelishek, Director of Planning and Development

REPORT DATE: July 17, 2019

MEETING DATE: July 22, 2019

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

On May 20, 2019, the Common Council approved a purchase and sale agreement between the City of Sheboygan and Union Pacific railroad for the city to purchase up to 21 acres of vacant railroad property between Pennsylvania Avenue and Union Avenue and along Indiana Avenue. This agreement requires the city to survey the land and determine the final amount of acreage to be purchased as part of the closing.

STAFF COMMENTS:

Given current workloads with street reconstruction in the Department of Public Works, surveyor time is limited and with the extent of this project, it was decided to hire an outside consultant to assist. Two quotes were received and city staff recommends proceeding with TerraTec for \$33,000. Funding for this expenditure was included in the City's 2019 borrowing and is a TID 17 eligible expense.

ACTION REQUESTED:

Motion to recommend the Common Council adopt Res. No. 56-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to enter into a contract regarding surveying services for the proposed Union Pacific Trail.

ATTACHMENTS:

- I. Res. No. 56-19-20

Res. No. 56-19-20. By Alderpersons Donohue and Bohren. July 15, 2019.

A RESOLUTION authorizing the appropriate City officials to enter into a contract regarding surveying services for the proposed Union Pacific Trail.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into a contract with Terra Tec Engineering, LLC, a copy of which is attached hereto and incorporated herein.

BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw funds from the TID #17 Fund (42761100-611100) in payment of same.

James A. Bohren

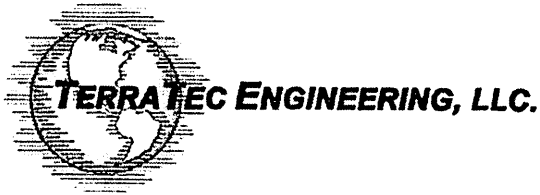
[Signature]

Finance + Personnel

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor



W67 N222 Evergreen Blvd., Suite 205
Cedarburg, Wisconsin 53012
Tel.: 262.377.9905
Fax: 262.375.1958

July 8, 2019

Mr. Chad Pelishek, Director
City of Sheboygan Planning and Development
828 Center Avenue
Sheboygan, WI 53081

Re: Plat of Survey with Topography Proposal
Sheboygan, Wisconsin
TerraTec File No. P1904010

Dear Mr. Pelishek:

As requested, TerraTec Engineering, LLC (TerraTec) is pleased to submit this proposal for surveying services for the above project. The following paragraphs describe the work scope, estimated project fees and proposal agreement.

PROJECT DESCRIPTION

Based on our meeting on April 30, 2019, TerraTec understands that the City of Sheboygan (Client) is pursuing the purchase of approximately 20.8 acres of property currently owned by the Union Pacific Railroad (UPRR). The limits of the purchase area were provided in our meeting in the UPRR Exhibit "A" entitled "Map CNW WI V-37 / 13 A-B & V-14 / 12 B" dated June 22, 2018. Upon review of the purchase area extent, TerraTec notified you that a portion of this area had been purchased by the City during a previous highway project. The extent of this prior purchase is depicted in the Right-of-Way Plat for Broadway Avenue (WisDOT Project ID 4996-00-21) and the Right-of-Way Plat for South Business Drive (WisDOT Project ID 4010-11-21). Thus, reducing the area of purchase to approximately 19 acres.

The limits of the survey will be from the east right of way line to the west right of way line for the north-south corridor beginning at Union Avenue and Pennsylvania and from north right of way line to south right of way line for the east-west corridor of the Union Pacific Railroad property from the east right of way line of the north/south corridor to South 10th street..

The project area is as follows:

- On the west side of South Business Drive from 25-feet south of Union Avenue to the railroad underpass of South Business Drive, approximately 500-feet south of Indiana Avenue.
- On the east side of South Business Drive from the underpass of South Business to Indiana Avenue.
- Along the west property line of Rockline Industries and Prigges' Bus Service from Indiana Avenue to the south roadway edge of Pennsylvania Avenue.
- 150-feet north of Indiana Avenue from the Union Pacific north-south corridor (near South 13th Street) east 1200-feet to South 10th Street.

SCOPE OF SERVICES

TerraTec anticipates performing the following tasks which are described in the paragraphs below:

- Task 1 – Topographic Survey
- Task 2 – Right-of-Way Plat

Task 1 – Topographic Survey

TerraTec will perform the following activities:

- Establish control and benchmarks for the project.
- Contact and coordinate field markings of existing utilities by "Digger's Hotline."
- Perform a field survey of the subject property including ground shots for contouring, edge of pavement, roadway centerline, utilities, structures, surface features, water edge, etc.
- Perform measure downs for sanitary manholes, storm manholes and catch basins located both up and down gradient of the site.
- Trees over 8-inch diameter will be located, wooded areas will be outlined.
- Develop a topographic map based on 1-foot contours.
- Prepare a map that will be placed on a 24" x 36" size sheet and shall contain a location map, legend, benchmarks and surface features measured in the field.

Task 2 – Plat of Survey

TerraTec proposes to prepare a Plat of Survey based on current Title Reports in accordance with Chapter A-E7 of the Wisconsin Code (Minimum Standards for Property Surveys in Wisconsin) of the subject area. Activities will include:

- Obtain Title Reports – Up to 15 separate Title Reports will be included. The Title Reports shall include the following:
 - ✓ Extend over and cover a minimum period of sixty (60) years or to the last conveyance of record if more than sixty (60) years and shall include a certificate to the Owner of all entries of record affecting the titles of the said properties or premises during such period.
 - ✓ Include a copy of the last deed of record shall be included as part of the title report along with copies of any referenced documents delineated in the last deed.
 - ✓ Identify all easements of record on purchased property.
 - ✓ Identify all liens, mortgages, and tax records.
 - ✓ Include appropriate quarter section maps and tax roll listings and if applicable subdivision plats or certified survey maps.
 - ✓ This assumes straightforward title reports with no property or title research necessary (if necessary, TerraTec will contact you for pre-approval of the additional work). No title up-dates are expected.
- Review title reports.
- Locate existing property corners and PLSS corners within the project limits to be used to establish existing property lines
- Establish existing abutting property lines based on field work, existing recorded surveys and title reports.
- Prepare a property map and description for parcel boundary.
- Set property corners which are not located in the field.
- Provide electronic and hardcopies of files associated with the Plat of Survey.

ESTIMATED PROJECT FEES AND SCHEDULE

TerraTec proposes to perform the above described work scope for a sum of **\$14,000 for Task 1 and \$19,700 for Task 2**. This lump sum fee will be effective if this proposal is accepted by City of Sheboygan within 30 days of the date of this proposal.

GENERAL PROJECT UNDERSTANDING

1. This proposal does not include wetland delineations/services, environmental, geotechnical engineering, pavement design, architectural, electrical, structural, construction services, meetings or permit/application fees. These services can be provided for additional fees, if requested.
2. It is our understanding that the Owner/Client will submit all regulatory permit fees including those to the City/WDNR/State, etc.
3. All submittals are final. Any requested modifications will be performed on a time and material basis.
4. TerraTec cannot guarantee approvals of any applications.
5. Any modifications required due to revisions to the Concept Plan once TerraTec has been authorized to proceed will be performed on a time and material basis. Also, any revisions of submitted documents will be performed as requested by either the Client or a regulatory office on a time and material basis.
6. Invoices shall be submitted monthly or at the end of project completion, whichever occurs first. No work outside of the scope of services described above, shall be performed or charges invoiced, without prior Client authorization at an agreed upon unit price.
7. TerraTec will not warrant the accuracy or completeness of any survey mapping provided to TerraTec by other parties.
8. This proposal does not include the preparation of a property boundary survey or Certified Survey Map, nor does it include permit or application fees. These services can be provided for additional fees, if requested.
9. The maps will be prepared in accordance with the drafting and design standards established by TerraTec in Autocad, which reflect common engineering practice.
10. Production and coordination of additional copies, electronic files or other requests for information above that detailed herein are considered a direct reimbursable in excess of the contract maximum and will be invoiced in accordance with the fee schedule.
11. TerraTec takes no responsibility and will not certify for any underground structures or buried materials such as foundations, wells, septic, holding tanks, utilities, hazardous materials, or any other items of which no evidence can be found on the surface by a reasonable inspection. TerraTec will not enter any buildings or utility structures on or off the site.
12. The utility locations are limited to the public utilities based upon plans readily available from the municipality and private underground utilities marked in the field by "Digger's Hotline." If additional utilities are known to exist on the property, the Client will provide existing plans of other utilities serving the site and the building that otherwise cannot be located by a visual inspection of the property or of which the surveyor would have no knowledge. The utilities are shown for informational purposes only and are not guaranteed to be accurate or all-inclusive.
13. Individual trees will not be located nor identified on the drawing. Tree groupings and wooded areas will be outlined only. Species will not be listed and are not included in this proposal. If species are required, this service can be provided for additional fees if required and requested by the Client.
14. Ownership and Use of Documents
 - All survey drawings and maps are physical depictions of part of the service provided. Said drawings, maps and field notes are and shall remain the property of the Land Surveyor.
 - The client may use the copies solely for the purpose for which the survey map was prepared as stated herein.
 - The parties hereto acknowledge that the Land Surveyor is the author of the survey drawings under United States Copyright Law, 17 U.S.C. ss 101 et seq., and thereby retains sole ownership of the

copyright of the drawing. In recognition of the Land Surveyor's claim to the copyright, the client shall not copy, reproduce, or adapt the survey drawings or engage in any other activity, which would violate the copyright therein without the Land Surveyor's consent.

- Nothing in this Section 14, or anywhere else in this Agreement, is intended to be inconsistent with Client's obligations under the Wisconsin Public Records Law.

PROPOSAL AGREEMENT


TerraTec Engineering, LLC proposes to perform this work under the attached General Services. Please indicate your acceptance of this proposal by having an authorized representative of your firm execute one copy and return it to TerraTec's office. If we are given a verbal notification to proceed, it will be mutually understood that both parties will be contractually bound by the proposal and General Terms and Conditions.

CLOSING

We appreciate this opportunity to assist you with this project. If you have any questions regarding this proposal or if you need additional assistance, please contact us.

Sincerely,

TERRATEC ENGINEERING, LLC



Timothy J. Moyer, P.E.
Principal

ACCEPTED BY:

SIGNATURE: _____

TITLE: _____

FIRM: _____

DATE: _____

**TERRATEC ENGINEERING LLC.
GENERAL TERMS AND CONDITIONS**

1. SCOPE OF SERVICES.

- (a) The scope of services, project schedule, and associated cost estimate included in the attached proposal are based on the information made available to TerraTec Engineering by the Client. If this information is incomplete/inaccurate or if site conditions are materially different from those indicated by the Client, a written amendment to this Agreement equitably adjusting the scope of services, costs or schedule shall be executed by the Client and TerraTec Engineering. TerraTec Engineering may suspend performance of its services until the Amendment has been executed. If the Amendment is not agreed to within a reasonable time as deemed by TerraTec Engineering, TerraTec Engineering may terminate this Agreement. In the event of Agreement termination, the Client shall pay TerraTec Engineering for all services performed prior to termination and termination expenses set forth in these General Terms and Conditions.

2. BILLINGS AND PAYMENTS.

- (a) Payments for services and reimbursable expenses will be made on the basis set forth in the attached proposal. TerraTec Engineering shall submit invoices for services performed and expenses incurred that have not been previously billed. Invoices shall be submitted not more frequently than monthly. Payment is due upon receipt. For all amounts unpaid after 30 days from the invoice date, the Client agrees to pay a finance charge of one and one-half percent (1-1/2%) per month, eighteen percent (18%) annually. The fees described in this agreement may be adjusted annually on the anniversary date of the effective date of this agreement. Any collection costs incurred by TerraTec to collect overdue sums from the Client shall immediately become due and payable to TerraTec from the Client.
- (b) The Client's obligation to pay for the services performed by TerraTec Engineering under this Agreement shall not be reduced or in any way impaired by or because of the Client's inability to obtain financing, zoning, approval of governmental or regulatory agencies, or any other cause, reason, or contingency. No deductions shall be made from any invoice on account of penalty or liquidated damages nor will any other sums be withheld or set off from payments to TerraTec Engineering. Client further agrees to pay TerraTec Engineering any and all expenses incurred in recovering any delinquent amounts due, including, but not limited to reasonable attorney's fees, arbitration or other dispute resolution costs and all court costs.
- (c) If any subpoena or court order is served upon TerraTec and/or any of its staff, subconsultants or subcontractors requiring presentation of documents or the appearance of TerraTec Engineering staff, subconsultants, or subcontractors at a trial, deposition, or for other discovery purposes arising out of TerraTec Engineering services performed under this Agreement, Client will pay TerraTec Engineering's fees (if any) applicable to TerraTec Engineering's compliance with the subpoena or court order. Fees will be based on actual units used at the standard rates in effect at the time of service upon TerraTec Engineering of the subpoena or court order. Billings shall include time and expenses incurred gathering, organizing and duplicating documents, preparing to give testimony, travel and testifying in deposition or trial. This provision shall not apply if TerraTec is a named party to a lawsuit as a result of its work performed under this Agreement.

3. STANDARD OF CARE.

- (a) TerraTec Engineering will strive to perform its services under this Agreement in conformance with the care and skill ordinarily exercised by members of the professional engineering community practicing under similar conditions at the same time in the same or similar locality.

- (b) No other warranty of any kind, expressed or implied, at common law or created by statute, is extended, made, or intended by the rendition of consulting services or by furnishing oral or written reports of the findings made.
- (c) If TerraTec Engineering breaches the standard of care, TerraTec Engineering shall be given an opportunity to correct any Services at no additional charge to Client.

4. ALLOCATION OF RISK.

- (a) Client shall indemnify and hold TerraTec Engineering, its members, managers, officers, agents, and employees harmless from and against any and all liabilities, losses, damages, costs, attorney fees, defense fees, and expenses which TerraTec Engineering, its directors, officers, and employees may hereafter suffer in connection with any claim, action, or right of action because of any injury or damage to person or property which arises out of the sole negligence or willful misconduct by Client or its directors, officers or employees, agents or invitees.
- (b) TerraTec Engineering shall indemnify, defend, and hold Client, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses caused by reason of any act, omission, fault, or negligence of TerraTec Engineering or of anyone acting under its direction or control or on its behalf.
- (c) Consequential damages – Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor TerraTec shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

5. TERMINATION OF SERVICES.

- (a) This Agreement may be terminated by either party upon at least seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice.
- (b) TerraTec Engineering may suspend performance of Services by giving Client five (5) days prior written notice hereof, if:
 - (i) Client is in default of its payment obligations under Paragraph 2; or
 - (ii) Force Majeure, as set forth in Paragraph 7 hereof, causes an uninterrupted continual delay of thirty (30) days or more or
 - (iii) Suspension of the Project or TerraTec's services by the Client for more than 90 calendar days, consecutive or in the aggregate.
- (c) TerraTec shall have no liability, and the Client agrees to make no claim for any delay or damage as a result of suspension/termination caused by any breach of this Agreement by the Client.
- (d) In the event of any termination/suspension, the Client shall pay TerraTec, in addition to payment for services rendered and reimbursable costs incurred, for all expenses incurred by TerraTec in connection with the termination of this Agreement including but not limited to demobilization,

reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

6. TERRATEC ENGINEERING AS INDEPENDENT CONTRACTOR. TerraTec Engineering, in performing the Services, shall be deemed an independent contractor and not an agent or employee of Client.

7. FORCE MAJEURE. No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages, if, and to the extent, such delay or failure is caused by an occurrence beyond the reasonable control and without the fault or negligence of the party affected and by which said party is unable to prevent or provide against by exercise of reasonable diligence, including, but not limited to, Acts of God or the public enemy, acts of terrorism, expropriation or confiscation of facilities, material changes in applicable law, war, legal disputes, rebellion, sabotage or riots, floods, unusually severe weather, fires, explosions, or other catastrophes. Unless such Force Majeure substantially frustrates performance of this Agreement, it shall not operate to excuse, but only to delay performance hereunder.

8. ASSIGNMENT OF AGREEMENT. Neither party shall assign this Agreement or any part hereof without the prior written consent of the other party. Any assignment not made in accordance with this Agreement shall be void.

9. SUBCONTRACTS. TerraTec Engineering may subcontract any part of the Services with the prior written approval of Client. This approval may be provided by Client's Director of Planning & Development. Client reserves the right to reject any of TerraTec's personnel or proposed subcontractors, and to request that acceptable personnel be assigned to the project.

10. SURVIVAL OF OBLIGATIONS. Obligations of the parties under this Agreement shall survive termination or suspension of the Services or of this Agreement.

11. ENTIRE AGREEMENT. This Agreement including the attached proposal constitutes the entire Agreement between the parties and supersedes all prior negotiations, representations or agreements relating thereto, written or oral, except to the extent they are expressly incorporated herein. Unless otherwise provided for herein, no amendments, changes, alterations or modifications of this Agreement shall be effective unless in writing signed by Client and TerraTec Engineering.

12. WRITTEN NOTICES. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given if delivered by facsimile, delivered by private express service provider, if delivered in person or deposited in the United States mail, first-class certified or registered mail, postage prepaid, return receipt requested.

13. GOVERNING LAW.

(a) This Agreement shall be governed by the law of the State of Wisconsin.

14. SEVERABILITY. In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

15. PROJECT REPRESENTATIVE. Individuals who signed the attached proposal are the agents for receiving and giving notices unless otherwise specified in writing to the other party.

16. PERMITS, LICENSES AND ACCESS AGREEMENTS. Client shall cooperate with TerraTec Engineering in obtaining any permits or licenses required for the performance of the Services. Client shall obtain access agreements when necessary for the performance of services. Client shall pay all costs and fees necessary for such permits, licenses and access agreements.

17. ACCESS TO SITE AND INFORMATION.

In order that TerraTec Engineering may perform the Services, Client represents, warrants, and covenants that:

- (a) Client shall provide right-of-access to the site to TerraTec Engineering, its employees, agents and contractors, to conduct the planned field observations or services.
- (b) Prior to the execution and delivery of this Agreement, Client has supplied to TerraTec Engineering all information and documents in its possession, custody, or control known to the Client and material to the Site and necessary for the performance of the Services, including the location of subterranean structures and conditions such as, but not limited to, pipes, tanks, utilities, and telephone cables.
- (c) TerraTec Engineering may use such information, requirements, reports, data, surveys and instructions provided by others in performing its services and is entitled to rely upon the accuracy and completeness thereof. TerraTec Engineering shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.
- (d) During the term of this contract:
 - (i) TerraTec Engineering will have complete access to the Site and any facilities located thereon required to perform the services.
 - (ii) Client shall continue to supply to TerraTec Engineering all material information and documents in its possession, custody or control known to the Client and material to the Site and the Services.
 - (iii) Client will give prompt notice to TerraTec Engineering whenever it becomes actually aware of any development that materially and adversely affects the scope or timing of the Services.
 - (iv) TerraTec Engineering has not included in its fee, and is not responsible for, the cost of restoration for any damage resulting from its operations. For an additional fee, TerraTec Engineering will to the extent reasonably practicable restore the site to conditions substantially similar to those existing prior to TerraTec Engineering's operations at the request of Client.
 - (v) TerraTec Engineering shall not be liable for damage or injury to any subterranean structures (including, but not limited to, pipes, tanks and telephone cables) or any existing subterranean conditions—or the consequences of such damage or injury—unless the damage or injury was the result of the negligence of TerraTec Engineering or an agent of TerraTec Engineering or was the result of TerraTec Engineering breaching the standard of care set forth in Section 3 of this Agreement.

18. SAFETY.

- (a) TerraTec Engineering is responsible solely for the safe performance by TerraTec Engineering field personnel of their activities in performance of the scope of services. It is expressly agreed that TerraTec Engineering's professional services hereunder do not involve any responsibility for the protection and safety of persons on and about the Project site nor is TerraTec Engineering to review the adequacy of job safety on the Project site.
- (b) TerraTec Engineering has neither been assigned nor assumed the authority required of the "competent person" under OSHA 29 CFR Part 1926. TerraTec Engineering does not provide, and has not assumed, any duties of inspection/monitoring of excavations required of the "competent person" under OSHA 29 CFR Part 1926.

19. CHANGED CONDITIONS.

- (a) If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to TerraTec are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, TerraTec may call for renegotiation of appropriate portions of this Agreement. TerraTec shall notify the Client of the changed conditions necessitating renegotiation, and TerraTec and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot agree to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination provision hereof.

20. THIRD-PARTY BENEFICIARIES.

- (a) Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

21. REPORTS AND OWNERSHIP OF DOCUMENTS.

- (a) All reports, plans, specifications, computer files, field data, notes and other documents and instruments prepared by TerraTec as instruments of service shall remain the property of TerraTec. TerraTec shall retain all common law, statutory, and other reserved rights, including the copyright thereto.
- (b) Client agrees that all plans/reports or other work product furnished to the Client not paid for in full will be returned upon demand and will not be used for any purpose, including, but not limited to design, construction, permits or licensing.
- (c) Electronic Files – The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others without the prior written consent of TerraTec. The Client agrees to indemnify and hold harmless TerraTec, its officers, employees and subconsultants against all damages, liabilities or costs, including attorneys' fees and defense costs, arising from any changes made by anyone other than TerraTec from any reuse of the electronic files. In no event shall TerraTec be liable

for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

22. DISPUTE RESOLUTION.

- (a) All claims, disputes, controversies arising out of this Agreement or any breach thereof shall be submitted to mediation before and as a condition precedent to any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and TerraTec Engineering shall select by mutual agreement a neutral mediator. The selection shall be made within fifteen (15) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and TerraTec Engineering within fifteen (15) days, a mediator shall be chosen as specified in the Construction Industry Mediation Rules of the American Arbitration Association then in effect.
- (b) If a dispute cannot be settled through mediation, venue of any dispute arising under this Agreement shall be in Sheboygan County Circuit Court.