

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 9-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City officials to execute an agreement between the City of Sheboygan and Visit Sheboygan, Inc. regarding a loan to Visit Sheboygan, Inc. for furnishings at its new visitor center.

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

REPORT DATE: May 6, 2019

MEETING DATE: May 13, 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:

Visit Sheboygan, Inc., the Sheboygan Area Room Tax Zone tourism entity will be a tenant in a new building being constructed on the former Wisconsin Power and Light property. Wild Leisle, LLC is the developer and will have two tenants, Visit Sheboygan, Inc. and Windway Capital. Visit Sheboygan will operate a tourism information center out of this location that will provide exhibits and educational experiences centered around the Great Lakes and shipwrecks.

Due to the timing of the receiving room tax collections and the opening of the new center, Visit Sheboygan has requested a \$100,000 room tax advancement to cover furnishings for the center. Visit Sheboygan will pay the City back the \$100,000 by December 31, 2020 with an annual interest of 2.2 percent. City staff will work with Visit Sheboygan on the purchase of some of the furnishings through the state contract that the city receives.

STAFF COMMENTS:

The new visitor center will be a great edition to the downtown and riverfront areas. Additional tourist and resident experiences are being developed as part of the center. The new center will house the Science on the Sphere as well as exterior improvements to tie underwater archeology and science together.

ACTION REQUESTED:

Motion to recommend to the Common Council to approve Res. No. 9-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to execute an agreement between the City of Sheboygan and Visit Sheboygan, Inc. regarding a loan to Visit Sheboygan, Inc. for furnishings at its new visitor center.

ATTACHMENTS:

I. Res. No. 9-19-20

III

4.3

Res. No. 9 - 19 - 20. By Alderpersons Donohue and Bohren. May 6, 2019.

A RESOLUTION authorizing the appropriate City officials to execute an Agreement Between the City of Sheboygan and Visit Sheboygan, Inc. Regarding a Loan to Visit Sheboygan, Inc. for Furnishings at its New Visitor Center.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Agreement Between the City of Sheboygan and Visit Sheboygan, Inc. Regarding a Loan to Visit Sheboygan, Inc. for Furnishings at its New Visitor Center, a copy of which is attached hereto.

BE IT FURTHER RESOLVED: That the Finance Director/Treasurer is hereby authorized to draw funds in the amount of One Hundred Thousand Dollars (\$100,000) from the Tourism Account No. 260-115999 to be used for the furnishings of the visitor center.

Finance + Personnel

James A. Bohren

James A. Bohren

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

**AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN
AND
VISIT SHEBOYGAN, INC.**

**REGARDING A LOAN TO VISIT SHEBOYGAN, INC. FOR FURNISHINGS AT ITS NEW
VISITOR CENTER**

This Agreement (“Agreement”) is made and entered into effective this ____ day of _____, 2019 (the “Effective Date”), by and between the City of Sheboygan (the “City”), a municipal corporation and Visit Sheboygan, Inc. (“Visit Sheboygan”).

WITNESSETH:

WHEREAS, Visit Sheboygan intends to be a tenant in a new building which will serve as a visitor center on South 8th Street in the City of Sheboygan; and

WHEREAS, the City recognizes that the presence of a visitor center in the City of Sheboygan is positive for the City, and wishes to support Visit Sheboygan’s efforts by providing it a low interest loan for furnishings of the visitor center; and

WHEREAS, this Agreement sets forth the terms upon which the loan is being provided.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. Other Agreements between the Parties.

This Agreement is not intended to affect any other agreement between the Parties.

2. Furnishing the New Visitor Center.

The City shall provide One Hundred Thousand Dollars (\$100,000) of value to Visit Sheboygan (the “Loan”) to be used for the furnishings of the visitor center. This may be provided in cash, as an “in kind” contribution, or a combination of cash and in kind contribution. The Common Council of the City authorizes Chad Pelishek to work with Visit Sheboygan in order to determine what combination of cash and in kind contributions are most beneficial to the City and to Visit Sheboygan.

Based on the current construction schedule for the visitor center, it is unclear exactly when Visit Sheboygan will be ready to furnish the visitor center and, therefore, when it will need the loan principal from the City. The Parties’ expectation is that the loan principal will not be needed prior to July 31, 2019.

Visit Sheboygan shall request the loan from the City by submitting a written request. In the event that the Parties agree that it is in the best interest of the Parties that an in kind contribution is a component of the Loan, the written request shall provide all necessary details about the in kind distribution. The City shall distribute any cash component of the Loan no later than the later of July 31, 2019 or thirty (30) days after the request is made.

The City shall distribute any in kind contribution that is a component of the Loan as soon as is practicable following the City's actual receipt of such goods; the Parties recognize that an in kind contribution may include goods ordered from one or more vendors, and that the Parties have no control over the availability of the desired goods. The City shall have no liability to Visit Sheboygan in the event that it takes more than thirty (30) days from the date of Visit Sheboygan's request to receive any component of a requested in kind distribution.

In recognition of the Local Government Investment Pool interest that the City is foregoing as a result of the Loan, Visit Sheboygan shall pay the City interest in the amount of Two and Two Tenths Percent (2.2%) per year. This interest shall remain the same regardless of how much cash and how much in kind contributions are provided to Visit Sheboygan. Because the Loan shall be One Hundred Thousand Dollars (\$100,000.00), Visit Sheboygan shall repay the City One Hundred Four Thousand Four Hundred Forty Eight Dollars and Forty Cents (\$104,448.40) ("Repayment Amount") on or before December 30, 2020.

Visit Sheboygan may, but is not obligated to make any payments to the City between the effective date of this Agreement and December 29, 2020. If Visit Sheboygan makes one or more payments during that time, the payment shall be subtracted from the Repayment Amount to determine the amount outstanding. There shall be no penalty for prepayment, but prepayment shall not result in more than a dollar-for-dollar reduction of the Repayment Amount.

3. Reporting Requirements.

Visit Sheboygan shall, within thirty (30) days of making an expenditure of cash received as part of the Loan, report to the City (in writing) where and how it was spent. Visit Sheboygan shall comply with all other reporting requirements set forth in federal, state, and local law.

In the event that Visit Sheboygan uses any of the cash received as part of the Loan for any purpose other than furnishings of the Visitor Center, or fails to make a required report to the City in the time period set forth above, the City may—in addition to any other right it may have, in law or in equity—declare the loan immediately due and payable.

4. Enforcement of Late Payments.

In the event that Visit Sheboygan's payment set forth in this Agreement becomes more than fifteen (15) days past due, Visit Sheboygan shall pay a late payment charge to the City equal to five percent (5%) of the entire unpaid amount of the Loan. In addition, interest shall continue to accrue at the rate of Two and Two Tenths Percent (2.2%) per year until the Loan is repaid in full, including the late payment charge.

In the event that it is necessary for the City to institute a suit or other action to enforce any right, power, or remedy set forth in this Agreement in relation to this Agreement, the prevailing party shall be entitled to recover its reasonable costs (including attorney fees) incurred from the suit or other action from the losing party.

5. Invoices.

The City shall not have any obligation to prepare invoices, payment requests, or any other form of reminder for the payment identified in this Agreement. The City may, at its sole option, issue formal or informal reminders of any upcoming payment, but the failure to do so shall not create any extension of the deadlines set forth above.

6. General Terms.

- a. *Entire Agreement.* The entire agreement of the Parties regarding the Loan is contained herein. This Agreement supersedes any and all oral contracts and negotiations between the Parties with respect to the topics addressed by this Agreement. As mentioned in Section 1, it has no effect on other contracts between these parties.
- b. *Amendments.* This Agreement shall be binding on the Parties, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the Parties. Any change in any provision of this Agreement may only be made by a written amendment and signed by the duly authorized agent or agents of the Parties. The Common Council of the City must approve any amendment on behalf of the City.
- c. *No Waiver.* No failure to exercise and no delay in exercising any right, power or remedy hereunder on the part of a party shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or remedy preclude any other further exercise thereof or the exercise of any other right, power, or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the party. A waiver of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.
- d. *Severability.* It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.
- e. *Notice.*

Notices to Visit Sheboygan shall be addressed to:

Amy Wilson, President
Visit Sheboygan,
826 S. 8th Street
Sheboygan, WI 53081

Notices to the City shall be addressed to:

City Clerk
City of Sheboygan
828 Center Ave.
Sheboygan, Wisconsin 53081

Any party may change its address for notice purposes at any time by providing notice to the other parties in writing.

- f. ***Third Party Rights.*** This Agreement is intended to be solely between the Parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge, or repeal existing rights, benefits, or privileges of any third party or parties, including—but not limited to—employees of either of the parties.
- g. ***Choice of Law and Venue.*** This Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The Parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be Sheboygan County Circuit Court, and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
- h. ***Authority.*** Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.
- i. ***No Party the Drafter.*** Despite the possibility that one party or its representatives may have prepared the initial draft of this Agreement (or any provision thereof), or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them shall be deemed the drafter of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement Regarding a Loan to Visit Sheboygan, Inc. for Furnishings at its New Visitor Center to be executed by their proper officers on the day and year first written above:

CITY OF SHEBOYGAN, WISCONSIN

VISIT SHEBOYGAN, INC.

BY: _____
Michael J. Vandersteen, Mayor

BY: _____
Chad Pelishek, Chairperson

ATTEST: _____
Meredith DeBruin, City Clerk

ATTEST: _____
Amy Wilson, President

DATE: _____

DATE: _____

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 10-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to execute the agreement between the City of Sheboygan and Visit Sheboygan, Inc. regarding events management.

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

REPORT DATE: May 7, 2019

MEETING DATE: May 13, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS:

Prior to Visit Sheboygan, Inc. separating into their own 501c6, they were under the Sheboygan County Chamber of Commerce umbrella. The city previously had an event management agreement with the Chamber for the management and operation of the 4th of July celebration and the Fountain Park Concert Series. Now that Visit Sheboygan, Inc. is its own entity, city staff felt the need to have a contract for event management with this entity.

STAFF COMMENTS:

Under the proposed agreement, Visit Sheboygan, Inc. would be responsible for event management pertaining to the 4th of July, Fountain Park Concert Series and the City Green programming. The agreement is annual with an automatic renewal provision unless three months prior notice nonrenewal is given.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 10-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to execute the agreement between the City of Sheboygan and Visit Sheboygan, Inc. regarding events management.

ATTACHMENTS:

- I. Res. No. 10-19-20

III

4.4

Res. No. 10 - 19 - 20. By Alderpersons Donohue and Bohren. May 6, 2019.

A RESOLUTION authorizing the appropriate City officials to execute the Agreement Between the City of Sheboygan and Visit Sheboygan, Inc. regarding Events Management.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Agreement Between the City of Sheboygan and Visit Sheboygan, Inc. Regarding Events Management, a copy of which is attached hereto and incorporated herein.

Finance
Personnel

Lylynn Donohue
James A. Bohren

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

**AGREEMENT BETWEEN THE
CITY OF SHEBOYGAN
AND
VISIT SHEBOYGAN, INC.
REGARDING
EVENTS MANAGEMENT**

This Agreement (“Agreement”) is made and effective this ____ day of _____, 2019, by and between the City of Sheboygan (the “City”), a municipal corporation and Visit Sheboygan, Inc. (“Visit Sheboygan”).

WITNESSETH:

- WHEREAS,** the City desires to obtain event management services from an organization with the skills and experience necessary to coordinate and manage civic events in the City of Sheboygan, such as the Independence Day Celebration (“IDC”) and the Sheboygan Pops Summer Concert Series in Fountain Park (“Summer Concert Series”) and at City Green; and
- WHEREAS,** the IDC, Summer Concert Series, and events at City Green do not meet the definition of “tourism promotion and tourism development” under Wis. Stat. § 66.0615(1)(fm), because they are not “reasonably likely to generate paid overnight [hotel] stays”; and
- WHEREAS,** although these events do not meet the statutory definition of “tourism promotion and tourism development”, the City believes that these are important events; and
- WHEREAS,** Visit Sheboygan has the event management experience necessary to successfully coordinate and manage these events; and
- WHEREAS,** Visit Sheboygan is willing to provide the City with the necessary event management services under the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions set forth herein, the parties agree as follows:

- I. Event Management Services.**
 - A. Visit Sheboygan shall assume responsibility for organizing, promoting and executing the IDC, Summer Concert Series, and City-sponsored events at City Green (collectively the “Events”) as follows:**
 - (1) General**
 - a. Visit Sheboygan will coordinate and manage all pre-event logistics and supplier services and needs, on-site**

management, sponsorship fulfillment, and post-event functions necessary for each Event to be a success.

- b. Any and all agreements with third parties for services related to the Events shall be by and between the third party and Visit Sheboygan.**

(2) Independence Day Celebration

- a. Visit Sheboygan's responsibilities for the IDC shall include, but are not limited to:**

- 1. Coordination and management of the IDC parade, including: (1) parade entry, (2) coordination of line-up, (3) route management, (4) on-site management, (5) parade marshal coordination, (6) parade judges coordination, (7) winner acknowledgment, and (8) official parade announcements.**
- 2. Negotiation for services and management of all necessary suppliers, such as: (1) porta-potty/metro needs for the parade, (2) the lakeshore parks and fireworks viewing areas, (3) children and family entertainment, (4) tent, (5) fencing, (6) seating and logistical setup, (7) electrical fulfillment, (8) musical entertainment and logistics (including lights, sound, and staging), (9) vendor coordination and specifications for county health code and general safety, (10) signage and promotional material for sponsor fulfillment and public management, (11) advertising production and placement for event promotion and/or public service announcements, and (12) any other supplier relationships that may be necessary to successfully manage the IDC.**
- 3. Coordination and collaboration with the Sheboygan Police Department, Sheboygan Fire Department, Sheboygan Department of Public Works, and any other municipal entities or departments as necessary to ensure public safety and proper use and need for City equipment and services including, but not limited to, public park use, traffic control, on-site security, use and placement of park equipment, trash coordination for parks, street closures, and crowd control.**
- 4. Handle all permits, requests to the Common Council**

of the City, reservations to the Sheboygan Department of Public Works, and any other permits, licenses, or permissions necessary to ensure that proper resources and notifications are agreed to in advance by all parties and City departments involved in the IDC.

- b. The parties recognize that an exact delineation of the services is not practical, given the broad nature of the IDC, but the parties do agree that the City shall have final approval for all general event schedules of the IDC.
- c. Visit Sheboygan shall have no responsibility for the procurement, running or displaying of fireworks.

(3) Summer Concert Series

- a. The Summer Concert Series shall consist of approximately six concerts by the Sheboygan Pops Concert Band in Fountain Park.
- b. Visit Sheboygan's responsibilities for the Summer Concert Series shall include, but are not limited to:
 - 1. Coordination of dates, reservations, and equipment needs with the Sheboygan Department of Public Works for the Wednesday night Sheboygan Pops Summer Concert Series in Fountain Park.
 - 2. Issuance of payment to the Sheboygan Pops Concert Band for the summer performances based upon negotiated rates agreed to by the City.

(4) City Green

- a. Visit Sheboygan agrees to act as the general manager of City Green, including scheduling the space for public events, coordinating the maintenance and upkeep of the space with the calendar of scheduled events, working with organizations to ensure that City event requirements (such as street closures, permits, licenses, equipment needs, and electrical needs) are met, and managing the logistics and promotion for City-sponsored events held at City Green (as provided by I(A)(1) of this Agreement).

II. Sponsorship.

The City shall be responsible for securing funding for the IDC and the Summer Concert Series through sponsorships. Visit Sheboygan shall work and cooperate with the City to solicit prospective sponsors, with the intent of negotiating sponsor agreements between the City and the sponsoring individual, organization or company to procure funds for the IDC and the Summer Concert Series. The City and Visit Sheboygan may also solicit members of the Visit Sheboygan Board to assist in the procurement of sponsorships for the IDC. Visit Sheboygan shall invoice all sponsors on behalf of the City and shall collect all sponsor funds and hold the same for use only for the payment of the costs of the IDC and/or the Summer Concert Series.

III. Cost.

During the Initial Term, Visit Sheboygan shall create a budget to be submitted to the City no later than April 30 for the year's Events. During each year of the Subsequent Term, Visit Sheboygan shall create a budget to be submitted to the City no later than March 31 for the year's Events. The budget shall outline all anticipated event costs, including estimated cost of staff time to plan, coordinate and manage the events, including post-event wrap-up and reconciliation. The Parties' expectation is that the budget for each year's Events will be approximately \$160,000. Of the \$160,000, approximately \$50,000 is expected to be for the IDC fireworks (funded via sponsorship), approximately \$50,000 is expected to be for other expenses related to the Events (funded via sponsorship), approximately \$50,000 is expected to consist of in-kind donations from the City pursuant to I(A)(2)(a)(3) of this Agreement, and approximately \$10,000 is expected to consist of budgeted funds from the City's Planning Department Budget.

If the City's Planning and Development Department Budget for the year includes at least \$10,000 for the Events, and Visit Sheboygan's Budget does not exceed \$160,000, the Common Council of the City authorizes the City's Director of Planning and Development to review and approve the Budget for the Events. If the City's Planning and Development Department Budget for the year does not include at least \$10,000 for the Events, or Visit Sheboygan's Budget exceeds \$160,000, the Common Council of the City must review and approve the Budget prior to Visit Sheboygan providing further Services. The City shall be responsible for funding City-sponsored events at City Green. Visit Sheboygan shall manage City-sponsored events at City Green within the limitations of funding provided by the City, and Visit Sheboygan shall invoice the City for the cost of City-sponsored events at City Green upon conclusion of each event. The City agrees to reimburse Visit Sheboygan within the agreed upon budget, within 30 days of receipt of invoice. Visit Sheboygan shall provide evidence of cost, such as receipts and third-party contracts, as necessary and upon request by the City.

In the event sponsor funding exceeds expenses for an Event, Visit Sheboygan will hold the excess funds for the next year's Event, pay the excess funds to the City for future Event expenses, or, with the consent of the City's Director of Planning and Development, use them for the current year's Events. In the event that the Sponsorship efforts (pursuant to Article II) are insufficient at securing the necessary funding to cover the budgeted event expenses, Visit Sheboygan will work with the City on budget cut decisions. Subject to the appropriation of funds by the Common Council, the City

shall have responsibility for covering any shortfall. In no event shall the City have obligation for covering any expenses that exceed the approved Budget.

In the event of an unexpected expense due to an event of force majeure, Visit Sheboygan will contact the City's Director of Planning and Development as soon as practicable. The City and Visit Sheboygan will work collaboratively to determine an appropriate path forward.

IV. Additional City Services.

The City recognizes the Events require use of City land and services. The City agrees to provide use of the following for the Events at no cost:

- Use of Deland Park (including pavilions, shelters, and structures) for the IDC
- Use of Rotary Park and South Pier (including pavilions, shelters, and structures) for the IDC
- Use of Fountain Park (including pavilions, shelters, and structures) for the Summer Concert Series
- Use of City Green (including pavilions, shelters, and structures) for City-sponsored events.
- Use of City streets and lots, upon approval of a parade permit submitted by Visit Sheboygan and approved by the Sheboygan Police Department (as necessary for parade staging and route commencement).
- Appropriate police aid for traffic control and crowd control throughout the IDC
- Appropriate support and equipment from the Sheboygan Department of Public Works for park maintenance, picnic tables, grills, and any other appropriate equipment under the purview of the Department for use during the Events.
- Appropriate support and equipment from the Sheboygan Department of Public Works for park maintenance, picnic tables, grills, and any other appropriate equipment under the purview of the Department for use during the City Green event season.

V. General Provisions.

- A. **Term.** This Agreement shall begin upon the execution by both parties and shall continue until December 31, 2019 ("Initial Term"). It shall automatically renew for successive annual periods ("Subsequent Term") unless a Notice of Nonrenewal is given to one party by the other party at least three (3) months prior to the end of the then-current Term.
- B. **Default.** Should either party be in default of the terms and provisions of this Agreement, and such default continues for more than thirty (30) days after written notice of the same from the non-defaulting party, then the non-defaulting party may terminate this Agreement upon written notice to the defaulting party. Upon any termination of this Agreement, the City agrees to reimburse Visit Sheboygan for any payments made for outstanding obligations to third-party vendors incurred by Visit Sheboygan for event management services, and Visit Sheboygan agrees to pay the City any excess

unused, excess sponsor funding for procured for events pursuant to this Agreement.

- C. **Modifications.** This Agreement may be modified or amended by the parties at any time provided such changes are mutually agreed to, in writing, and signed by both parties.
- D. **Assignment by Visit Sheboygan.** Visit Sheboygan shall not assign, transfer, convey, pledge, sublet or otherwise dispose of this Agreement without prior consent of the City in writing.
- E. **Limitation of Authority.** Except as may be specifically provided for with respect to event management services, Visit Sheboygan shall have no power to solicit proposals, bids or contracts on behalf of the City and no authority to bind the City or act in the City's behalf in any manner whatsoever. Visit Sheboygan's authority is hereby limited to those duties and responsibilities specifically enumerated herein.
- F. **Verification of Expenditures.** Visit Sheboygan shall provide a final financial report, including a profit and loss statement, for the Events to the City Administrator or the City Administrator's Designee following the Events and after all invoices have been received, but no later than September 1 of each year. In addition, Visit Sheboygan shall provide all documentation reasonably requested by the City in order to verify expenses. The City's Finance Director/Treasurer shall have access to such books and records of Visit Sheboygan pertaining to activities pursuant to this Agreement.
- G. **Indemnity.** Visit Sheboygan shall indemnify, defend, and hold the City and its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Agreement.
- H. **Nondiscrimination Provision.** In connection with the performance of work under this Agreement, Visit Sheboygan agrees not to discriminate against any employee or applicant for employment on the basis of age, race, religion, color, handicap, sex, physical condition, developmental disability (as defined in Wis. Stat. 51.01(5)), sexual orientation (as defined in Wis. Stat. 111.32(13m)), or national origin. This provision shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training. Visit Sheboygan further agrees to take affirmative action to ensure equal employment opportunities.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized agents as of the date and year first written above.

CITY OF SHEBOYGAN

VISIT SHEBOYGAN, INC.

BY: _____
Michael J. Vandersteen
Mayor

BY: _____
Chad Pelishek
Chairman

ATTEST: _____
Meredith DeBruin
City Clerk

ATTEST: _____
Amy L. Wilson
President/CEO

DATED: _____

DATED: _____

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 11-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to execute the agreement between the City of Sheboygan, Visit Sheboygan, Inc., and Sheboygan Area Room Tax Commission regarding reimbursement of expenditures made by the City of Sheboygan related to Blue Harbor Resort and Conference Center.

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

REPORT DATE: May 7, 2019

MEETING DATE: May 13, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS:

When the city constructed the Blue Harbor Conference Center, the city dedicated Blue Harbor's room taxes to pay the debt the city issued to construct the conference center. In November 2018, the debt was paid off. In years that Blue Harbor did not generate enough room tax (during the recession), the General Obligation Debt Fund advanced approximately \$749,399 over a number of years to make the debt payments. A previous council passed a resolution that the room tax should be paid back before it is provided to the Sheboygan Area Room Tax Commission. Since the passage of this resolution, the state statute was changed, disallowing this type of transfer.

Under the attached agreement, Visit Sheboygan, Inc. would pay back the city's room tax advance over a seven year period with between \$100,000 to \$125,000 per year to pay down the total advance of \$743,399. These funds would then be placed back into the General Obligation Debt Fund.

STAFF COMMENTS:

None

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 11-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to execute the agreement between the City of Sheboygan, Visit Sheboygan, Inc., and Sheboygan Area Room Tax Commission regarding reimbursement of expenditures made by the City of Sheboygan related to Blue Harbor Resort and Conference Center.

ATTACHMENTS:

- I. Res. No. 11-19-20

III

4.5

Res. No. 11 - 19 - 20. By Alderpersons Donohue and Bohren. May 6, 2019.

A RESOLUTION authorizing the appropriate City officials to execute the Agreement Between the City of Sheboygan, Visit Sheboygan, Inc., and Sheboygan Area Room Tax Commission Regarding Reimbursement of Expenditures Made By the City of Sheboygan Related to Blue Harbor Resort and Conference Center.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Agreement Between the City of Sheboygan, Visit Sheboygan, Inc., and Sheboygan Area Room Tax Commission Regarding Reimbursement of Expenditures Made By the City of Sheboygan Related to Blue Harbor Resort and Conference Center, a copy of which is attached hereto and incorporated herein.

*Finance
& Personnel*

William Donohue
James A. Bohren

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

**AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN,
VISIT SHEBOYGAN, INC., AND
SHEBOYGAN AREA ROOM TAX COMMISSION**

**REGARDING REIMBURSEMENT OF EXPENDITURES MADE BY THE CITY OF
SHEBOYGAN RELATED TO BLUE HARBOR RESORT AND CONFERENCE CENTER**

This Agreement (“Agreement”) is made and entered into effective this ____ day of _____, 2019 (the “Effective Date”), by and between: (1) the City of Sheboygan (the “City”), a municipal corporation, (2) Visit Sheboygan, Inc. (“Visit Sheboygan”), and (3) the Sheboygan Area Room Tax Commission (the “Commission”). Referenced together, the City, Visit Sheboygan, and the Commission are the parties (“Parties”) to this Agreement.

WITNESSETH:

- WHEREAS,** the Redevelopment Authority of the City of Sheboygan, Wisconsin (“Redevelopment Authority”) owned certain land on the south shore of the Sheboygan River bordering Lake Michigan in the City of Sheboygan (the “South Pier”); and
- WHEREAS,** the Redevelopment Authority and the City desired to have the South Pier developed; and
- WHEREAS,** the Redevelopment Authority and the City determined that it was desirable and in the best interest of the City and its citizens that the first phase of development at the South Pier include a hotel, water park, convention center, parking areas, condominiums, and other associated improvements (“Blue Harbor”); and
- WHEREAS,** in furtherance of that objective, the Redevelopment Authority and the City executed a number of documents on July 30, 2003, including a: (1) Development Agreement, (2) Ground Lease, and (3) Operating Lease; and
- WHEREAS,** pursuant to the Development Agreement, the City was to pay for the construction of the convention center, which would be constructed by The Great Lakes Companies, Inc., or Blue Harbor Resort Sheboygan, LLC; and
- WHEREAS,** pursuant to the Development Agreement, the Redevelopment Authority retained ownership of the land on which the convention center would be built, and the City would own the convention center; and

- WHEREAS,** pursuant to the Development Agreement, Blue Harbor Resort Sheboygan, LLC¹ would lease the convention center from the City, and operate the convention center; and
- WHEREAS,** the construction cost for the convention center was \$8,200,000; and
- WHEREAS,** in order to fund the construction cost for the convention center, the City issued taxable Bond Anticipation Notes on November 15, 2003; and
- WHEREAS,** the City issued General Obligation Taxable Bonds on July 1, 2006 to pay for the Bond Anticipation Notes, and refunded the 2006 Bonds on August 4, 2015 with General Obligation Taxable Bonds; and
- WHEREAS,** although the General Obligation Taxable Bonds provide that they are general obligations of the City payable from taxes levied on all taxable property in the City without limitation as to rate or amount, the anticipation was that the General Obligation Taxable Bonds would be paid via room tax receipts from Blue Harbor; and
- WHEREAS,** to protect the City's interests, the Development Agreement contained a guaranteed minimum room tax payment; and
- WHEREAS,** on January 19, 2015, the Common Council for the City of Sheboygan passed a resolution which observed that, despite the guaranteed minimum room tax provision, the actual room tax receipts had not been sufficient to cover the debt payments and, as a result, the City has been covering the shortfalls; and
- WHEREAS,** the January 19, 2015 resolution indicated that the convention center debt would be repaid in 2018 and, at that time, the City would be able to determine the total amount of shortfall from the room tax receipts; and
- WHEREAS,** the January 19, 2015 resolution directed the Finance Director / Treasurer to calculate the amount of shortfall; and
- WHEREAS,** the Finance Director / Treasurer has determined the amount of the shortfall to be Seven Hundred Forty Nine Thousand Three Hundred Ninety Nine Dollars (\$749,399) (the "Shortfall"); and
- WHEREAS,** the intent of all involved in the process was that room tax receipts would be used to reimburse the City for the funds it contributed to the debt payments for the

¹ The Parties note that in 2011 the Operating Lease with Blue Harbor Resort Sheboygan LLC was terminated and a new Operating Lease was executed with Claremont New Frontier Resort, LLC. This was due to a restructuring of the ownership interests in the various components of the Blue Harbor Resort and Convention Center project.

convention center not covered by actual room tax receipts, as represented by the Shortfall; and

WHEREAS, this reimbursement is permissible under Wis. Stat. § 66.0615(1m)(d); and

WHEREAS, this Agreement sets forth the terms upon which the reimbursement will be accomplished.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. Other Agreements between the Parties.

The City is one of the political subdivisions that established the Commission, and is a voting member of the Commission. This Agreement is not intended to affect any other agreement between the City and the Commission.

This Agreement is also not intended to affect any other agreement between the City and Visit Sheboygan.

Wis. Stat. § 66.0515 (the "Room Tax Act") outlines the statutory guidelines on the collection of a tax on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients by hotelkeepers, motel operators, lodging marketplaces, owners of short-term rentals, and other persons furnishing accommodations that are made available to the public (the "Room Tax"). The Commission is charged with coordinating tourism promotion and development for the Tourism Zone, which includes the usage of the Room Tax. Visit Sheboygan is currently the recipient of 70% of the Room Tax. Other than, to the extent required by law, to approve the reimbursement to the City addressed by this Agreement, this Agreement does not affect any agreement between any of the Parties and any other entity (including any of the other Parties) relating to Room Tax.

2. Repayment of the Blue Harbor Debt Service.

The Commission instructs Visit Sheboygan to repay the City for the debt service payments it made toward the convention center above and beyond the room tax receipts received from Blue Harbor. This repayment shall be actually received by the City on the following schedule:

December 30, 2019: \$100,000
December 30, 2020: \$100,000
December 30, 2021: \$125,000
December 29, 2022: \$125,000
December 28, 2023: \$125,000
December 30, 2024: \$125,000

December 30, 2025: \$49,399

(Collectively the "Reimbursement").

So long as the Reimbursement Payments are made timely, no interest shall be calculated on the Reimbursement.

Visit Sheboygan may, but is not obligated to make any payments to the City regarding the Reimbursement other than as set forth above. If Visit Sheboygan decides to make payments on a faster schedule than that set forth above, there shall be no penalty, but prepayment shall not result in more than a dollar-for-dollar reduction of the total amount of Reimbursement.

3. Enforcement of Late Payments.

In the event any payment from Visit Sheboygan to the City set forth in this Agreement becomes more than fifteen (15) days past due, Visit Sheboygan shall pay a late payment charge to the City equal to five percent (5%) of the entire unpaid amount of the installment. Payments received after any installment becomes more than fifteen (15) days past due shall be applied first to current installment(s) and then to delinquent installments for purposes of this provision.

In the event that it is necessary for the City to institute a suit or other action to enforce any right, power, or remedy set forth in this Agreement in relation to this Agreement, the prevailing party shall be entitled to recover its reasonable costs (including attorney fees) incurred from the suit or other action from the losing party.

4. Consent of the Sheboygan Area Room Tax Commission

For the avoidance of doubt, to the extent required by Wis. Stat. § 66.0515, or any other federal, state, or local law, the Sheboygan Area Room Tax Commission explicitly consents to the usage of Room Tax by Visit Sheboygan as set forth in this Agreement.

5. Invoices.

The City shall not have any obligation to prepare invoices, payment requests, or any other form of reminder for the payments identified in this Agreement. The City may, at its sole option, issue formal or informal reminders of upcoming payments, but the failure to do so shall not create any extension of the deadlines set forth above.

6. General Terms.

- a. *Entire Agreement.* The entire agreement of the Parties regarding the Reimbursement is contained herein. This Agreement supersedes any and all oral contracts and negotiations between the Parties with respect to the topics addressed by this Agreement. As mentioned in Section 1, it has no effect on other contracts between these parties.

- b. ***Amendments.*** This Agreement shall be binding on the Parties, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the Parties. Any change in any provision of this Agreement may only be made by a written amendment and signed by the duly authorized agent or agents of the Parties. The Common Council of the City must approve any amendment on behalf of the City.
- c. ***No Waiver.*** No failure to exercise and no delay in exercising any right, power or remedy hereunder on the part of a party shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or remedy preclude any other further exercise thereof or the exercise of any other right, power, or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the party. A waiver of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.
- d. ***Severability.*** It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.
- e. ***Notice.***

Notices to Visit Sheboygan shall be addressed to:

Amy Wilson, President
Visit Sheboygan,
826 S. 8th Street
Sheboygan, WI 53081

Notes to the Sheboygan Area Room Tax Commission shall be addressed to:

Chad Pelishek
Sheboygan Area Room Tax Commission
828 Center Avenue
Sheboygan, WI 53081

Notices to the City shall be addressed to:

City Clerk
City of Sheboygan
828 Center Ave.
Sheboygan, Wisconsin 53081

Any party may change its address for notice purposes at any time by providing notice to the other parties in writing, at the addresses set forth above.

- f. ***Third Party Rights.*** This Agreement is intended to be solely between the Parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge, or repeal existing rights, benefits, or privileges of any third party or parties, including—but not limited to—employees of either of the parties.
- g. ***Choice of Law and Venue.*** This Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The Parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be Sheboygan County Circuit Court, and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
- h. ***Authority.*** Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.
- i. ***No Party the Drafter.*** Despite the possibility that one party or its representatives may have prepared the initial draft of this Agreement (or any provision thereof), or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them shall be deemed the drafter of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement Regarding Reimbursement of Expenditures Made by the City of Sheboygan Related to Blue Harbor Resort and Conference Center to be executed by their proper officers on the day and year first written above:

CITY OF SHEBOYGAN, WISCONSIN

VISIT SHEBOYGAN, INC.

BY: _____
Michael J. Vandersteen, Mayor

BY: _____
Chad Pelishek, Chairperson

ATTEST: _____
Meredith DeBruin, City Clerk

ATTEST: _____
Amy Wilson, President

DATE: _____

DATE: _____

SHEBOYGAN AREA ROOM TAX COMMISSION

BY: _____
Chad Pelishek, Commission Chairperson

ATTEST: _____
Michael Vandersteen, Commission Vice-Chairperson

DATE: _____

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 12-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to execute a Purchase and Sale Agreement for the purchase of land from the Union Pacific Railroad Company.

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

REPORT DATE: May 7, 2019

MEETING DATE: May 13, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

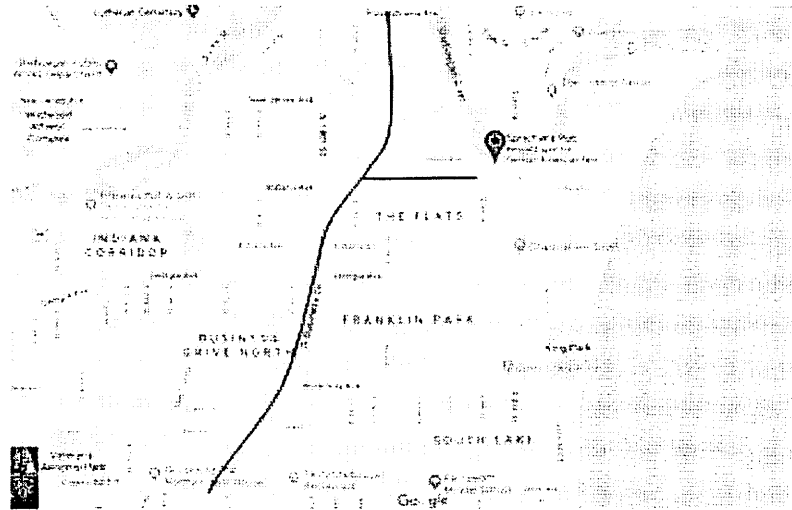
Budget Line Item:	42761100-631100	Wisconsin Statutes:	N/A
Budget Summary:	TID 17 Capital	Municipal Code:	N/A
Budgeted Expenditure:	\$1,500,000		
Budgeted Revenue:	\$1,500,000		

BACKGROUND / ANALYSIS:

The City's Harbor Centre Master Plan and city's Five Year Strategic Plan identify that purchase of the former Union Pacific Railroad right-of-way from Pennsylvania Avenue to Union Avenue and adjacent right-of-way along Indiana Avenue as an action item. The city has been working with railroad for a number of years to receive a purchase and sale agreement from them to purchase the approximately 21 acres of the land. The value of \$1,271,503 was determined from the price per square foot Sheboygan County paid in 2012 when they purchased the northern lag of right-of-way and constructed the Shoreland 400 trail. This purchase would allow the city to apply for state and federal grants to aid in the construction of the trail in the next few years.

STAFF COMMENTS:

The purchase and sale agreement allow the city a due diligence period to complete a survey to understand what the exact amount of land purchased will be and to complete environmental assessments to understand the extent of contamination. Under the agreement, the city will be response for title and survey work. The city is working with the Bay-Lake Regional Planning Commission through an EPA Brownfields Assessment Grant to complete a Phase 1 and Phase 2 environmental site assessments to understand contamination issues. City staff will be completing survey that can be used to develop conceptual plans and estimated costs to apply for grants to assist in funding the construction.



Union Pacific Railroad right-of-way location

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 12-19-20 by Alderpersons Donohue and Bohren authorizing the appropriate City Officials to execute a Purchase and Sale Agreement for the purchase of land from the Union Pacific Railroad Company.

ATTACHMENTS:

- I. Res. No. 12-19-20

III

4.6

Res. No. 12 - 19 - 20. By Alderpersons Donohue and Bohren. May 6, 2019.

A RESOLUTION authorizing the appropriate City officials to execute a Purchase and Sale Agreement for the purchase of land from the Union Pacific Railroad Company.

RESOLVED: That the appropriate City officials are hereby authorized to execute the Purchase and Sale agreement, a copy of which is attached hereto.

BE IT FURTHER RESOLVED: That the Finance Director/Treasurer is hereby authorized to make payments on same, as called for in the agreement, from the TID 16 Capital Improvements Fund - Improvements Other Than Buildings - account no. 42661100-631100.

*Finance
Personnel*

Melyne Nowlan

James A. Bohren

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

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2019 ("Execution Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, whose address is 1400 Douglas Street, Omaha, Nebraska 68179 ("Seller"), and **CITY OF SHEBOYGAN**, a Municipal corporation of the State of Wisconsin, whose address is 828 Center Avenue, Suite 301, Sheboygan, Wisconsin 53081 ("Buyer").

IT IS MUTUALLY AGREED
BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Section 1. Purchase and Sale of the Property.

A. Seller hereby agrees to sell and Buyer hereby agrees to purchase, on the terms and conditions of this Agreement, Seller's right, title and interest in and to the real property situated near the City of Sheboygan, Sheboygan County, State of Wisconsin, between Milepost 148.2 to Milepost 149.5 of Seller's former Sheboygan Passenger Line, identified as "SALE AREA" and generally shown in red crosshatching on the print dated June 22, 2018, attached hereto as Exhibit A and made a part hereof (the "Land"), together with other personal property, fixtures and improvements thereon to the extent owned by Seller, including, without limitation, ballast, if any, and any appurtenances related thereto (the "Personal Property"). The Land and the Personal Property are hereafter sometimes collectively called the "Property".

EXCEPTING from this sale and RESERVING unto Seller, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Seller, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Buyer, its successors or assigns.

B. The sale made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights whether or not of record or open and obvious on the ground.

Section 2. Purchase Price.

The purchase price for the Property is ONE MILLION TWO HUNDRED SEVENTY-ONE THOUSAND FIVE HUNDRED THREE AND NO/100th DOLLARS (\$1,271,503.00) ("Purchase Price"). The Purchase Price shall be paid by Buyer to Seller at Closing (as defined in Section 5).

Section 3. Compliance with Trails Act.

This Agreement is being entered into in accordance with and subject to the National Trails System Act, 16 U.S.C. §1247(d), and the terms and conditions contained in the decision to be served by the Surface Transportation Board ("Trails Use Decision"), as set forth in Section 4A below. After Closing, Buyer agrees to assume full responsibility for management of the Property and for any legal liability arising out of such transfer or use. If rail service on the Property is reactivated pursuant to the National Trails System Act, then Seller shall have the right to repurchase the Property for the then-current fair market value of the Property (including all improvements thereon) as determined by appraisal. The provisions of this Section 3 shall survive the Closing and the delivery of the Deed.

Section 4. Conditions Precedent to Sale.

This Agreement is made and executed by the parties hereto subject to the following conditions precedent:

A. STB Abandonment.

(i) Within thirty (30) days after the Execution Date, Seller shall commence the process to file an application, petition or notice of exemption with the Surface Transportation Board ("STB") to obtain authority to abandon Seller's common carrier obligations with respect to the Property (the "Abandonment Filing"). If the STB imposes any condition to the Abandonment Filing (including, without limitation, labor protection) Buyer agrees to be responsible for the cost of satisfying all such conditions. Seller agrees to provide reasonable assistance to Buyer in satisfying such conditions, at Buyer's sole cost. Seller shall not be obligated to close the transaction until all such conditions are satisfied.

(ii) **Risk.** Buyer recognizes and bears the risk that the Abandonment Filing may be denied or that conditions may be imposed on the Abandonment Filing.

(iii) **Trails Use Decision.** Buyer must file its notice for trail use within the time period specified under the applicable regulations. In the event the STB does not issue a Trails Use Decision, or the Trails Use Decision applicable to the Property lapses, expires or is invalidated prior to Closing, this Agreement shall be deemed terminated forthwith. In the event of such termination, this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

B. Title Evidence. Buyer may, at its sole cost and expense, obtain evidence of title to the property via a preliminary title report, a letter report, or other evidence of title deemed acceptable by the Buyer at its sole discretion. If title is not acceptable to the Buyer for closing, Buyer shall notify the Seller no less than fifteen (15) days prior to closing of its objections, and provide a copy of the evidence of title. In such event, Seller shall have a reasonable time, but not exceeding ten (10) days from Buyer's delivery of the notice of objection to deliver notice to Buyer whether or not Seller will remove the objections by the time set for closing. In the event that Seller is unable or unwilling to

remove said objections, Buyer may deliver to Seller written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, Buyer shall deliver written notice of termination and this Offer shall be null and void.

C. **Survey.** Buyer shall, at its sole cost and expense, obtain a survey of the Property. Buyer shall furnish a copy of such survey of the Property, prepared and certified to both Seller and Buyer by a public surveyor registered in the State of Wisconsin, to Seller within one hundred fifty (150) days after the Execution Date. The survey, as approved by Buyer and Seller, shall be used by Seller as the basis for preparation of the description of the Property.

D. **Feasibility Studies.** On or before two hundred ten (210) days after the Execution Date ("Feasibility Review Period"), Buyer, and its agents and contractors, are granted the privilege of entering upon the Property for the purpose of performing environmental audits, soil tests, engineering and feasibility studies of the Property as Buyer may deem necessary to determine the suitability of the soil conditions and other physical conditions of the Property. If the results of such audits, tests or studies are unsatisfactory in Buyer's reasonable opinion, Buyer may, at its option, elect to terminate this Agreement by giving Seller written notice of termination before the end of the Feasibility Review Period. If no such written notice of termination is given by Buyer to Seller before the end of the Feasibility Review Period, the Property shall be deemed suitable for Buyer's purposes. In the event of such termination by Buyer, then Buyer shall surrender to Seller copies of all audits, soils, engineering and any other reports prepared for Buyer pertaining to the Property and said reports shall become the sole property of Seller without cost or expense of Seller (and the contents thereof shall be kept confidential by Buyer and Buyer's consultants), and this Agreement shall terminate and be without any further force and effect, and without further obligation of either party to the other. Regardless of whether or not this Agreement is terminated, Buyer shall promptly furnish Seller with a copy of any and all reports on environmental assessments performed for the benefit of Buyer.

In the event Buyer, its agents or contractors, shall enter upon the Property for the purposes set forth in this Section 4.C., such entry shall be subject to the following terms and conditions:

(i) Buyer agrees to indemnify and save harmless Seller and/or Seller's affiliates ("Seller's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), their officers, agents, servants and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage arises in connection with or incident to the occupation or use of the Property by, or the presence thereon of Buyer, Buyer's agents, contractors, servants or licensees prior to Closing;

(ii) Buyer covenants and agrees to pay in full for all materials joined or affixed to the Property and to pay in full all persons who perform labor upon said premises, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished

thereon at the instance or request or on behalf of Buyer; and Buyer agrees to indemnify and hold harmless Seller against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished prior to Closing;

(iii) In the event the sale and purchase of the Property does not close, Buyer shall, as soon as possible and at Buyer's sole expense, restore the Property to the same condition it was in immediately prior to the time Buyer entered the Property, failing in which Seller may perform the work of restoration and Buyer shall reimburse Seller for the cost and expense thereof within thirty (30) days after rendition of bill therefore by Seller; and

(iv) Notwithstanding any provisions in this Agreement to the contrary, in the event this Agreement is terminated for any reason whatsoever, Buyer nevertheless shall be obligated to comply with the provisions of this Section 4.D.

E. Buyer's Approval. The terms and conditions of this transaction are subject to approval by Buyer's City Council. Notice of approval shall be given by Buyer to Seller on or before the Closing Date (as defined in Section 5), and failure to give such notice shall be deemed notice of disapproval. If the terms of this Agreement are not approved on or before the Closing Date for any reason by Buyer's City Council, then this Agreement shall be deemed terminated forthwith. In the event of such termination, this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

F. Seller's Management Approval. The terms and conditions of this transaction are subject to approval in accordance with Seller's Management Policy Statement. Notice of approval or disapproval shall be given by Seller to Buyer on or before the Closing Date, and failure to give such notice shall be deemed notice of disapproval. If the terms of this Agreement are not approved on or before the Closing Date for any reason in accordance with Seller's Management Policy Statement, then this Agreement shall be deemed terminated forthwith. In the event of such termination, this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

G. Joint Notice to Surface Transportation Board. At Closing and in accordance with the requirements of 49 C.F.R. 1152.29(h), Buyer and Seller agree to execute (i) a Joint Notice to the Surface Transportation Board certifying that this Agreement includes a provision requiring Buyer to fulfill the responsibilities described at 49 C.F.R. 1152.29(a)(3) ("Joint Notice"), and (ii) a Statement of Willingness to Assume Financial Responsibility ("Statement of Willingness"), both in the form attached hereto as **Exhibit B** and made a part hereof.

H. Removal of Track. Prior to the Closing Date, Seller, at its sole expense, shall remove or cause others to remove any railroad trackage, ties, signals and appurtenances now located on the Land. Buyer agrees to provide to Seller or other parties owning said railroad trackage, ties, signals and appurtenances necessary access for said removal.

I. **Utility Agreement.** Certain utility facilities are located on the Property pursuant to (i) Agreement for Assignment of Certain Licenses and Agreements between Seller and Strong Capital I ("Strong") dated May 24, 2001, as amended by Amendment dated June 22, 2001 (collectively, the "Strong Agreement"), and (ii) Agreement between Seller and Buyer dated August 17, 1977 identified in Seller's records as Audit No. 186953, and (iii) Agreement between Seller and Buyer dated August 22, 1977 identified in Seller's records as Audit No. 186930 (the latter two, collectively, the "Strong Licenses"). Upon Closing, Seller will send or cause to be sent to (1) Strong notice of removal of the Strong Licenses from the Strong Agreement, and (2) the Buyer notice of termination of the Strong Licenses. The notice of removal will be given in accordance with the provisions of the Strong Agreement. The notice of termination will be given in accordance with the provisions of the Strong Licenses, and will be effective not less than thirty-five (35) days after the notice of termination is sent to the Buyer. Seller will have no duty to enforce the obligations of Strong or the Buyer with respect to removal of the Strong Licenses from the Strong Agreement or termination of the Strong Licenses, including, without limitation, any obligations of the Buyer to remove the utility facilities. If requested in writing by Buyer, at Closing, Seller will assign to Buyer Seller's rights to enforce any such obligations of Strong and/or the Buyer. The fee of \$7,668.00 ("Strong Withdrawal Fee") required under the Strong Agreement to be paid by Seller to Strong for removal of the Strong Licenses from the Strong Agreement will be paid by Buyer to Seller at Closing.

Section 5. Closing.

A. The sale and purchase of the Property shall close ("Close" or "Closing") on or before thirty (30) days after the end of the Feasibility Review Period, or such earlier date to which Seller and Buyer may mutually agree ("Closing Date"). Possession of the Property shall pass to Buyer on Closing. Buyer shall have no right to possession or occupancy of or entry upon any portion of the Property, except as set forth in Section 4.C., and title thereto shall be and remain vested in Seller until Closing.

B. At the Closing, Buyer shall deliver to Seller the Purchase Price and the following documents as duly executed by Buyer:

- (i) The Deed referred to in Section 6;
- (ii) Quitclaim Bill of Sale (as defined in Section 6);
- (iii) Assignment and Assumption Agreement (as defined in Section 7);
and
- (iv) The Joint Notice and Statement of Willingness referred to in Section 4.G.

C. Seller shall deliver to Buyer the following documents as duly executed by Seller:

- (i) The Deed referred to in Section 6;

- (ii) Quitclaim Bill of Sale referred to in Section 6;
- (iii) Assignment and Assumption Agreement referred to in Section 7; and
- (iv) The Joint Notice and Statement of Willingness referred to in Section 4.G.

D. At Closing, Seller shall pay Seller's pro rata share of real estate taxes (whether general or special) assessed against the Property and due and payable for the year of Closing.

E. At Closing, Buyer shall pay the following costs:

- (i) Buyer's pro rata share of real estate taxes (whether general or special) assessed against the Property and due and payable for the year of Closing;
- (ii) The cost of recording the Deed;
- (iii) The Wisconsin State real estate excise tax, if any; and
- (iv) The cost of the required state revenue stamps, if any.

Section 6. Form of Deed and Quitclaim Bill of Sale.

A. Upon Closing as set forth in Section 5, Seller's right, title and interest in and to the Land shall be transferred by Seller to Buyer by a duly executed Quitclaim Deed (the "Deed") in the form attached hereto as **Exhibit C** and made a part hereof. Seller's right, title and interest in and to the Personal Property shall be transferred by Seller to Buyer by a duly executed Quitclaim Bill of Sale ("Quitclaim Bill of Sale") in the form attached hereto as **Exhibit D** and made a part hereof.

B. Post-Sale Covenant. The Property will be quitclaimed by Seller subject to the following covenant, condition and restriction which Buyer, by the acceptance of the Deed, shall covenant for itself, its successors and assigns, faithfully to keep, observe and perform:

Restriction on Use. Buyer, its successors and assigns, may use the Property for hike and bike trail purposes (including, but not limited to, structures constructed on paved ground that support the trail use, such as water fountains, restrooms and benches). Without limitation of the foregoing, the Property must not be used for any of the following purposes: (i) residential; (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers); or (iii) cultural, educational, or child-care facilities (including, without limitation, schools, kindergartens, day-care centers, gymnasiums, athletic fields, picnic grounds or parks). Notwithstanding any other provision herein, the terms "picnic grounds" and "parks" expressly do not prohibit structures constructed on paved ground that support the hike and bike trail use as described herein.

The foregoing covenant, condition and restriction shall run with the Property, and a breach of the foregoing covenant, condition and restriction, or the continuance thereof, may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Section 7. Assignment of Licenses.

A. Upon Closing, Seller shall assign to Buyer, and Buyer shall assume, all of Seller's right, title and interest in and to the license agreements listed as an exhibit to the form of Assignment and Assumption Agreement ("Assignment and Assumption"), attached hereto as Exhibit E and made a part hereof. There are no rentals or other payments under the Licenses to prorate between Seller and Buyer as of the Closing Date.

B. Buyer acknowledges that the Property may be subject to other licenses and other third party rights that have not been identified by Seller to Buyer from Seller's review of its records. It is the responsibility of Buyer to determine if any of these unidentified rights exist. If any license that affects the Property is identified after the Closing Date, Seller's rights (including, without limitation, any income) and obligations under such license to the extent such license affects the Property will be assigned to and assumed by Buyer after Closing by Assignment and Assumption Agreement.

Section 8. As Is; Release and Indemnity.

A. As Is. Buyer and its representatives, prior to the date of Closing, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire. Buyer, for itself, its successors and assigns, including any successor owner of any interest in the Property, acknowledges and agrees that the Property is to be sold and quitclaimed to and accepted by Buyer in an "as is" condition with all faults. Buyer further acknowledges that the Property was used for railroad right-of-way purposes. Seller makes no representation or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions, and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and the purchase and sale of the Property and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.

B. Release. BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, INCLUDING ANY SUCCESSOR OWNER OF ANY INTEREST IN THE PROPERTY, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, OF AND FROM

ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

C. Indemnity. FROM AND AFTER CLOSING, BUYER SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

D. General Allocation of Environmental Responsibility. With respect to any existing or future environmental contamination of the soil and/or groundwater in, on or under the Property, from and after Closing, Buyer, for itself, its successors and assigns, including any successor owner of any interest in the Property, at no cost to Seller, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or otherwise necessary to make the Property suitable for Buyer's use of the Property.

E. Additional and Independent Consideration. The release, indemnity and general allocation of environmental responsibility by Buyer are additional and independent consideration to Seller for the sale and purchase of the Property, without which Seller would not sell the Property for the Purchase Price.

Section 9. Notices.

A. Any notices required or desired to be given under this Agreement shall be in writing and personally served, given by overnight express delivery, or given by mail. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Seller: UNION PACIFIC RAILROAD COMPANY
 Attn: Rick L. Harris, Manager – Real Estate (2805-15)
 1400 Douglas Street, Mail Stop 1690
 Omaha, Nebraska 68179
 Telephone: (402) 544-8588
 Email: rharris@up.com

with copy to: UNION PACIFIC RAILROAD COMPANY
 Attn: Madeline E. Roebke, Senior General Attorney
 1400 Douglas Street, Mail Stop 1580
 Omaha, Nebraska 68179
 Telephone: (402) 544-1121
 Email: meroebke@up.com

Buyer: CITY OF SHEBOYGAN
 Attn: Mayor Michael Vandersteen
 828 Center Avenue, Suite 301
 Sheboygan, Wisconsin 53081
 Telephone: (920) 459-3317
 Email: mayor.vandersteen@sheboyganwi.gov

with copy to: CITY OF SHEBOYGAN
 Attn: Charles C. Adams, City Attorney
 828 Center Avenue, Suite 301
 Sheboygan, Wisconsin 53081
 Telephone: (920) 459-3917
 Email: charles.adams@sheboyganwi.gov

B. Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

Section 10. Assignment.

Buyer shall not transfer or assign this Agreement or any interest therein, without the consent in writing of Seller, and it is agreed that any such transfer or assignment, whether voluntary,

by operation of law or otherwise, without such consent in writing, shall be absolutely void and shall, at the option of Seller, terminate this Agreement.

Section 11. Waiver of Breach.

A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

Section 12. Time of the Essence.

Time is of the essence of this Agreement.

Section 13. Law Governing.

This Agreement shall be governed in all respects by the laws of the State of Wisconsin.

Section 14. Merger.

The terms, provisions, covenants and conditions herein contained shall merge into the deed to be delivered by Seller to Buyer at closing and shall not survive the closing of escrow, except for the provisions of Sections 3, 4.A, 4.B, 6.B, 7.B, 8, 15, and 17.

Section 15. No Brokers.

The negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the parties without the intervention of any person which would give rise to any valid claim against either of the parties hereto for brokerage commissions or other like payment. Each party hereto shall indemnify and hold harmless the other party against and from any and all claims for brokerage commission or other like payment arising out of the transaction contemplated by this Agreement and occasioned by the actions of such indemnifying party.

Section 16. Successors and Assigns.

Subject to the provisions of Section 10, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

Section 17. Certification of Non-Foreign Status.

Seller, Federal ID No. 94-6001323, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Buyer. A Certification prepared

in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached hereto as **Exhibit F** and made a part hereof.

Section 18. No Tax Advice.

Seller and Buyer acknowledge and agree that they have not received and are not relying upon tax or other advice from the other party to this Agreement, and that they have and will continue to consult their own advisors.

Section 19. Not An Offer.

The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell the Property to Buyer or the granting of an option or other rights with respect to the Property to Buyer. No agreement with respect to the purchase and sale of the Property shall exist, and this writing shall have no binding force or effect, until executed and delivered by both Seller and Buyer.

Section 20. Severability.

In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction under applicable law, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

Section 21. Entire Agreement.

It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, that neither party is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both parties.

(Signature page to follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Printed Name: Chris D. Goble
Title: Assistant Vice President – Real Estate

**CITY OF SHEBOYGAN,
a Municipal corporation of the State of Wisconsin**

By: _____
Printed Name: Michael J. Vandersteen
Title: Mayor

Attest: _____
Printed Name: Meredith DeBruin
Title: City Clerk

EXHIBIT A

**PRINT OF THE LAND
(TO BE ATTACHED)**

EXHIBIT B

FORM OF JOINT NOTICE AND STATEMENT OF WILLINGNESS

_____, 201_

VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 "E" Street, S.W., Room #100
Washington, DC 20423-0001

**JOINT NOTICE OF INTERIM TRAIL USE / RAIL BANKING AGREEMENT
BETWEEN UNION PACIFIC RAILROAD COMPANY AND
CITY OF SHEBOYGAN IN ACCORDANCE WITH 49 C.F.R. 1152.29(h)**

Re: Abandonment of and Discontinuance of Service on the Sheboygan Passenger Line
from M.P. 148.2 to M.P. 149.5 near Sheboygan, Sheboygan County, Wisconsin; STB
Docket No. _____ (Sub-No. _____)

Dear Ms. Brown:

Union Pacific Railroad Company ("Union Pacific") and the City of Sheboygan (the "City") have entered into a trail use/rail banking agreement (the "Trail Use Agreement") covering the rail line from Milepost 148.2 to Milepost 149.5 near Sheboygan, Sheboygan County, Wisconsin on Union Pacific's former _____ Subdivision (the "Line"). Attached to this Joint Notice as **Exhibit A** is a map depicting an accurate description of the Line, including mileposts, that is the subject of said Trail Use Agreement. In accordance with the requirements of 49 C.F.R. 1152.29(h), Union Pacific and the City hereby certify that the Trail Use Agreement includes provisions requiring the trail sponsor, the City, to fulfill the responsibilities described at 49 C.F.R. 1152.29(a)(3). A copy of the City's Statement of Willingness to Assume Financial Responsibility under the Trail Use Agreement is attached hereto as **Exhibit B** and is hereby made a part hereof.

Sincerely,

UNION PACIFIC RAILROAD COMPANY

By: _____
Printed Name: _____
Title: _____

Sincerely,

CITY OF SHEBOYGAN

By: _____
Printed Name: _____
Title: _____

Enclosures

cc: _____

EXHIBIT A
TO FORM OF JOINT NOTICE AND STATEMENT OF WILLINGNESS

**PRINT/DEPICTION OF THE LINE
(TO BE ATTACHED)**

EXHIBIT B
TO FORM OF JOINT NOTICE AND STATEMENT OF WILLINGNESS

CITY OF SHEBOYGAN
STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY
UNDER THE TRAIL USE AGREEMENT

City of Sheboygan (the "City") acquired the Line as defined below on _____, 201_ under a Purchase and Sale Agreement between Union Pacific Railroad Company and the City dated _____, 201_.

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 with respect to the right-of-way owned by Union Pacific Railroad Company [see Discontinuance of Service _____ (Sub-No. _____)], the City hereby represents to the Surface Transportation Board and Union Pacific Railroad Company that the City assumes responsibility for (1) managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify Union Pacific Railroad Company against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right of way. The right of way is known as the Sheboygan Passenger Line from Milepost 148.2 to Milepost 149.5 near Sheboygan, Sheboygan County, Wisconsin (the "Line"). The right-of-way is part of a line of railroad proposed for abandonment by Union Pacific Railroad Company in Docket No. _____ (Sub No. _____). A map of the property depicting the right-of-way is attached hereto as Exhibit A and is hereby made a part hereof.

The City acknowledges that use of the right-of-way is subject to the City's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad on the same date it is being served on the Surface Transportation Board.

CITY OF SHEBOYGAN

By: _____
Title: _____

Agreed to and acknowledged by Union Pacific Railroad Company this _____ day of _____, 201_.

By: _____
Printed Name: Chris D. Goble
Title: Assistant Vice President – Real Estate

EXHIBIT C

FORM OF QUITCLAIM DEED

Document Number	QUITCLAIM DEED	
<p style="text-align: center;">COVER SHEET FOR RECORDATION OF QUITCLAIM DEED FROM UNION PACIFIC RAILROAD COMPANY TO CITY OF SHEBOYGAN</p>		Recording Area
		Name and Return Address

**Parcel Identification Number (PIN)
(When applicable)**

QUITCLAIM DEED**KNOW ALL MEN BY THESE PRESENTS:**

That **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation, successor in interest through merger with Union Pacific Railroad Company, a Utah corporation) ("Grantor"), in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does **REMISE, RELEASE** and forever **QUITCLAIM** unto **CITY OF SHEBOYGAN**, a Municipal corporation of the State of Wisconsin, whose address is 828 Center Avenue, Suite 301, Sheboygan, Wisconsin 53081 ("Grantee"), its successors and assigns, forever, all of its right, title, interest, estate, claim and demand, both at law and in equity, of, in and to the real estate situate in Sheboygan County, State of Wisconsin, more particularly described in **Exhibit A**, attached hereto and made a part hereof ("Property").

EXCEPTING from this quitclaim and **RESERVING** unto Grantor, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the lands hereby quitclaimed, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Grantee, its successors or assigns.

The Property is quitclaimed by Grantor subject to the following covenants, conditions and restrictions which Grantee, by the acceptance of this Quitclaim Deed, shall covenant for itself, its successors and assigns, faithfully to keep, observe and perform:

(a) **Restriction on Use.** Grantee, its successors and assigns, may use the Property for hike and bike trail purposes (including, but not limited to, structures constructed on paved ground that support the trail use, such as water fountains, restrooms and benches). Without limitation of the foregoing, the Property must not be used for any of the following purposes: (i) residential; (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers); or (iii) cultural, educational, or child-care facilities (including, without limitation, schools, kindergartens, day-care centers, gymnasiums, athletic fields, picnic grounds or parks). Notwithstanding any other provision herein, the terms "picnic grounds" and "parks" expressly do not prohibit structures constructed on paved ground that support the hike and bike trail use as described herein.

(b) If rail service on the Property is reactivated pursuant to the National Trails System Act, then Grantor shall have the right of first refusal to repurchase the Property for the then-current fair market value of the Property (including all improvements thereon) as determined by appraisal.

The foregoing and following covenants, conditions, restrictions and obligations shall run with the Property, the burdens of which will be binding on the successors and assigns of Grantee, and the benefits of which will inure to the successors and assigns of Grantor. A breach of the foregoing and following covenants, conditions, restrictions and obligations, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Environmental Covenants:

(a) "As Is" Sale. Grantee, for itself, its successors and assigns, including any successor owner of any interest in the Property, acknowledges and agrees that the Property has been sold and quitclaimed to and accepted by Grantee in an "AS IS" condition, with all faults, and Grantee acknowledges that the Property may have been used for railroad right-of-way and other commercial or industrial purposes, among other uses. Grantee acknowledges and agrees that any information Grantee may have received from Grantor or its agents concerning the Property (including, but not limited to, any lease or other document, engineering study or environmental assessment) was furnished on the condition that Grantee would make an independent verification of the accuracy of the information. Grantor does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, without limitation, Grantor makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements (collectively, "Condition of the Property"). Grantee acknowledges and agrees that the Property has been sold and quitclaimed on the basis of Grantee's own independent investigation of the physical and environmental conditions of the Property. Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

(b) Release. GRANTEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, INCLUDING ANY SUCCESSOR OWNER OF ANY INTEREST IN THE PROPERTY, HEREBY RELEASES GRANTOR, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFIES, DEFENDS AND SAVES HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEYS'

FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

(c) Indemnity. GRANTEE SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF GRANTOR, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

(d) General Allocation of Environmental Responsibility. With respect to any existing or future environmental contamination of the soil and/or groundwater in, on or under the Property, from the date of this Deed Without Warranty, Grantee, at no cost to Grantor, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or otherwise necessary to make the Property suitable for Grantee's use of the Property.

(Remainder of page intentionally left blank.)

EXHIBIT A
TO FORM OF QUITCLAIM DEED

EXHIBIT D

FORM OF QUITCLAIM BILL OF SALE

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Seller"), for and in consideration of One Dollar (\$1.00) and other valuable consideration does hereby **REMISE, RELEASE**, and forever **QUITCLAIM** to **CITY OF SHEBOYGAN**, a Municipal corporation of the State of Wisconsin ("Buyer"), all of Seller's right, title and interest in and to the following described personal property, to wit:

Any ballast and any materials related thereto located upon certain real property located in Sheboygan County, State of Wisconsin, described in **Exhibit A**, attached hereto and made a part hereof, (collectively, the "Personal Property").

SELLER, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING UNDERSTOOD THAT THE PERSONAL PROPERTY IS BEING QUITCLAIMED TO BUYER IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS, AND ASSUMES ALL RISKS IN CONNECTION THEREWITH, ACKNOWLEDGING THAT BUYER HAS EXAMINED THE PERSONAL PROPERTY AND KNOWS ITS CONDITION.

Seller does not convey or intend to convey by this Quitclaim Bill of Sale any right, title, estate or interest whatsoever in or to the real property on which the Personal Property is situated.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, Seller and Buyer have each duly executed this instrument
as of the _____ day of _____, 201_.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Printed Name: Chris D. Goble
Title: Assistant Vice President – Real Estate

**CITY OF SHEBOYGAN,
a Municipal corporation of the State of Wisconsin**

By: _____
Printed Name:
Title:

EXHIBIT A
TO FORM OF QUITCLAIM BILL OF SALE

EXHIBIT E

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor"), ASSIGNS AND TRANSFERS to CITY OF SHEBOYGAN, a Municipal corporation of the State of Wisconsin ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to the license agreements listed on Exhibit A, attached hereto and made a part hereof (the "Licenses"), to the extent the Licenses affect the real property legally described in Exhibit B, attached hereto and made a part hereof (the "Property").

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to Property accruing on and after the date of this Assignment and Assumption, and (b) indemnify, defend and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of Assignee's failure to comply with terms of the Licenses as they relate to the Property by the licensees or lessees named in the Licenses accruing on or after the date of this Assignment and Assumption.

This Assignment and Assumption is made and accepted without recourse against Assignor as to the performance by any party under such Licenses.

Dated the _____ day of _____, 201_.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Printed Name: Chris D. Goble
Title: Assistant Vice President – Real Estate

**CITY OF SHEBOYGAN,
a Municipal corporation of the State of Wisconsin**

By: _____
Printed Name:
Title:

EXHIBIT A
TO FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

AUDIT	FOLDER	PARTY NAME	PURPOSE	COUNTY	CITY	ST	ANNUAL AMT	DISPOSITION	CONTAINED
186513	0544-81	CHARTER COMMUNICATIONS	Encroachment - Wireline	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Totally
181857	0205-90	MEINOLF KENNETH	Lease - Beautification/Parks	SHEBOYGAN	SHEBOYGAN	WI	\$25 00	Assigned	Totally
244407	2096-77	PRIGGE'S CHARTERED BUSES, INC	Lease: Encroachment - Part of Building	SHEBOYGAN	SHEBOYGAN	WI	\$4,243.00	Assigned	Totally
11V6759		CHARTER COMMUNICATIONS	Crossing - Wireline	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Totally
272701	2854-90	CHARTER COMMUNICATIONS	Crossing - Wireline	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Totally
191828	0693-82	CITY OF SHEBOYGAN / WI D O T	Crossing - Pipe line	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Partially
11W13074		STATE OF WISCONSIN	Crossing Public Roadway Grade Separation	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Totally
11WX4427	2623-27	WISCONSIN HWY. COMMISSION	Crossing Public Roadway Grade Separation	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Totally
11V12035	2623-32	STATE OF WISCONSIN	Crossing Public Roadway Grade Separation	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Totally
182085	0691-86	WISCONSIN POWER & LIGHT COMPANY	Crossing - Wire Line Master	SYSTEM	SYSTEM	WI	\$0 00	Assigned	Partially
11WX5906		WISCONSIN POWER & LIGHT CO.	Crossing - Wireline	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Partially
208081	0450-54	WISCONSIN POWER & LIGHT CO	Crossing - Wireline	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Partially
11WE3452		VAN DER VAART BRICK & BLDG	Crossing - Pipe line	SHEBOYGAN	SHEBOYGAN	WI	\$0 00	Assigned	Totally

EXHIBIT B
TO FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT F

FORM OF CERTIFICATION OF NON-FOREIGN STATUS

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, CITY OF SHEBOYGAN, a Municipal corporation of the State of Wisconsin, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY is not a disregarded entity as defined in Section 1.445.2(b)(2)(iii) of the Internal Revenue Code;
3. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
4. UNION PACIFIC RAILROAD COMPANY'S office address is 1400 Douglas Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Printed Name: Chris D. Goble
Title: Assistant Vice President – Real Estate
Date: _____

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 13-19-20 by Alderpersons Donohue and Bohren approving the FY 2019 One-Year Annual Action Plan for the Community Development Block Grant (CDBG) Program Submission.

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

REPORT DATE: May 7, 2019

MEETING DATE: May 13, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS:

The City of Sheboygan receives a yearly allocation from the Community Development Block Grant program based on a formula calculated with the Department of Housing and Urban Development. The 2018 allocation amount was \$867,998. The 2019 amount is \$892,414. Funds must be spend in low to moderate income census tracts which is roughly an area from Geele Avenue to Union Avenue and North 18th Street to Lake Michigan.

STAFF COMMENTS:

Federal law only allows 15 percent of the funds to be spent on public service (non-profits) and 20 percent spent on planning and administration. Earlier this year, city staff issued a request for proposals to allow the public service agencies to submit their request for funds. The attached spreadsheet shows the amount funded in the prior year, the requested amount and the staff recommended amount.

The public service applications received totals \$159,743. The total available under the 15 percent cap is \$133,000. The Finance and Personnel Committee needs to determine recommended allocation amounts that total \$133,000, excluding Partners for Community Development which follows under the housing category which is exempt from the 15 percent cap.

The remaining funds would be used as follows:

- | | |
|--|-----------|
| 1. Library Plaza Update | \$247,311 |
| 2. Downtown Playground | \$30,000 |
| 3. Painting of the South Pier Railings | \$131,300 |
| 4. Historic Preservation | \$100,000 |
| 5. Streetscaping | \$72,320 |
| 6. Program Administration | \$178,483 |

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 13-19-20 by Alderpersons Donohue and Bohren approving the FY 2019 One-Year Annual Action Plan for the Community Development Block Grant (CDBG) Program Submission as amended.

ATTACHMENTS:

- I. Res. No. 13-19-20

III

47

Res. No. 13 - 19 - 20. By Alderpersons Donohue and Bohren. May 6, 2019.

A RESOLUTION approving the FY 2019 One-Year Annual Action Plan for the Community Development Block Grant (CDBG) Program Submission.

WHEREAS, \$892,414 in entitlement Community Development Block Grant (CDBG) funds has been awarded in 2018 from the U.S. Department of Housing and Urban Development (HUD) to the City of Sheboygan for community development and housing activities; and

WHEREAS, the Finance and Personnel Committee has recommended to the Common Council that it approve the Final Statement of Community Development Objectives and Proposed Use of Funds; and

WHEREAS, the Finance and Personnel Committee further recommends to the Common Council that it authorize and direct the Mayor to execute all documents for the FY 2019 Community Development Block Grant submission, including the various certifications for the funds; and

WHEREAS, the following requests were made to the City of Sheboygan through a Request for Proposals process from public service agencies:

Partners for Community Development	\$25,000 (Housing)
Salvation Army	\$50,000 (Public Service)
Safe Harbor	\$10,000 (Public Service)
Lakeshore Community Health Center	\$ 3,000 (Public Service)
SCIO	\$10,000 (Public Service)
Shoreline Metro	\$42,493 (Public Service)
Family Service Association	\$20,000 (Public Service)
Family Connections	\$ 5,000 (Public Service)
Lakeshore CAP	\$19,250 (Public Service)

and

WHEREAS, federal law allows for the expenditure on public service activities not to exceed 15 percent of the annual allocation or \$133,000, excluding housing activities. The above public service requests total \$159,743. The Finance and Personnel Committee needs to determine the recommended allocation amounts that total \$133,000. Housing activities are exempt from the 15 percent cap; and

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WHEREAS, the following projects have been budgeted to utilize the remaining CDBG funds:

Library Plaza Updates	\$247,311
Downtown Playground	\$ 30,000
Painting of Railings	\$131,300
Historic Preservation	\$100,000
Streetscaping	\$ 72,320
Program Administration	\$178,483

and

WHEREAS, the Common Council has reviewed and hereby approves the Citizens Participation Plan for the development of this submission; and

WHEREAS, the Common Council finds that it is in the City's best interest to secure the FY 2019 funds for the activities approved by the Finance and Personnel Committee.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council authorizes and directs the Mayor to submit to HUD the Final Statement of Community Development Objectives and Proposed Use of Funds listed below as recommended by the Finance and Personnel Committee along with the assurances contained therein, and to provide any other information requested by HUD:

FINANCE & PERSONNEL RECOMMENDATIONS

Partners for Community Development	\$	(Housing)
Salvation Army	\$	(Public Service)
Safe Harbor	\$	(Public Service)
Lakeshore Community Health Center	\$	(Public Service)
SCIO	\$	(Public Service)
Shoreline Metro	\$	(Public Service)
Family Service Association	\$	(Public Service)
Family Connections	\$	(Public Service)
Lakeshore CAP	\$	(Public Service)

Melvin Dowling

James A. Bohrer

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

SCORING CRITERIA	HOUSING	PUBLIC SERVICE							
	Partners for Community Dev.*	Family Connection	Salvation Army	Safe Harbor	SCIO	Shoreline Metro	Lakeshore Community Health Clinic	Family Service Assoc	Lakeshore CAP
Is the Application Complete?	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes
2019 Funding Request	\$25,000	\$5,000	\$50,000	\$10,000	\$10,000	\$42,493	\$3,000	\$20,000	\$19,250
2018 Funding Awarded	\$25,000	\$5,000	\$49,706	\$10,000	\$5,000	\$42,493	\$3,000	\$15,000	NA
2018 PROPOSED	\$25,000	\$5,000	\$50,000	\$10,000	\$5,000	\$42,493	\$3,000	\$15,000	NA
What is the proposed activity?	Housing down payment & weatherization	Child Care Payments & Fee	Emergency Shelter	Emergency Shelter	Bridgeway & Beyond	Saturday and Evenings	Health Serv. & transportation	Rent Smart & Home Buyer	Supportive Housing Programs
Does the activity meet a national objective?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Does the applicant provide written doc. re: income verification with sample data?	Yes	Yes	yes	yes	Yes	Yes	Yes	yes	Yes
Does the applicant have a plan for sustainability?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Is the proposed activity a new service or existing service or an increase in the level of services	Existing Service	Existing Service	Existing Service	Existing Service	Existing Service	Existing Service	Existing Service	New	New
Is the activity addressing a need in the community?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
What is the number of persons that will benefit from the proposed activity?	250	60	400	100	10 households	1050	1000	320	350
Quarterly Reports completed and submitted?	YES	YES	YES	1st -3rd	1st -3rd	1st -3rd	YES	1st -3rd	NA

	<u>2019 Requests</u>
Totals for Public Service	\$159,743
Totals for Housing	\$25,000
Totals for Public Facilities	\$0

<u>FUNDING AVAILABILITY</u>	
2011 15% Cap	\$147,500
2012 15% Cap	\$119,368
2013 15% Cap	\$118,000
2014 15% Cap	\$115,992
2015 15% Cap	\$122,009
2016 15% Cap	\$119,461
2017 15% Cap	\$118,804
2018 15% Cap	\$130,000
2019 15% Cap	\$133,000

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: R.O. No.17-19-20, submittal of 2020 preliminary budget factors for guidance prior to departmental budget preparation

REPORT PREPARED BY: Darrell Hofland, City Administrator

REPORT DATE: May 8, 2019

MEETING DATE: May 13, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS:

As city staff begins the development of their departmental requests for the 2020 budget, insight and input from the Finance and Personnel Committee is important.

STAFF COMMENTS:

Members of the management team have initiated a preliminary analysis of fiscal factors that are anticipated to affect the 2020 budget.

In conjunction with the preliminary analysis of fiscal factors, the following are suggested goals and parameters to be used by the City Administrator as the management team develops the 2020 Executive Budget:

1. General Fund Budget that retains eligibility for Wisconsin's Expenditure Restraint Program.
2. Equalized tax rate to increase no more than inflationary levels.
3. Maintain city services with no decrease in service level.
4. Leverage city resources through partnerships and shared services/facilities with other entities.
5. Leverage intergovernmental money to offset city cost for projects or programs that promote city priorities, goals or objectives.
6. Funding for a 2.25 percent increase in wages for city workforce, including collective bargaining agreements.
7. Review user fees including utility rates.
8. Identify planned borrowed funds which will not affect the city's current Aa2 bond rating.
9. Continue Garbage User and Vehicle Registration Fees, which allows property tax levy to be reallocated to fund street improvement projects.
10. Balance all Fund budgets, if necessary utilize applied fund balance or planned borrowed funds proceeds.

11. Incorporate 2020 projects, equipment and vehicles identified in the 2020 – 2024 Capital Improvement Program.
12. Continue use of donations between Tax Incremental Districts.
13. Maintain a minimum of 25 percent uncommitted Fund Balance in the General Fund budget.

ACTION REQUESTED:

Motion to recommend the Common Council accept and file R.O. No.17-19-20, submittal of 2020 preliminary budget factors for guidance prior to departmental budget preparation.

ATTACHMENTS:

- I. Preliminary 2020 Budget Fiscal Factors
- II. R.O. No. 17-19-20

II

DIRECT REFERRAL TO FINANCE AND PERSONNEL COMMITTEE

R. O. No. 17 - 19 - 20. By CITY ADMINISTRATOR DARRELL HOFLAND. May 15, 2019.

Submitting the 2020 preliminary budget fiscal factors for guidance prior to departmental budget preparations as follows:

1. General Fund Budget that retains eligibility for Wisconsin's Expenditure Restraint Program.
2. Equalized tax rate to increase no more than inflationary levels.
3. Maintain city services with no decrease in service levels.
4. Leverage city resources through partnerships and shared services/facilities with other entities.
5. Leverage intergovernmental funds to offset city costs for projects or programs that promote city priorities, goals and/or objectives.
6. Funds for a 2.25 percent increase in wages for the city workforce including collective bargaining agreements.
7. Review user fees including utility rates.
8. Identify planned borrowed fund which will not affect the city's current bond rating of Aa2.
9. Continue Garbage User and Vehicle Registration Fees, which allows property tax levy to be reallocated to fund street improvement projects.
10. Balance all Fund budgets, if necessary utilize applied fund balance or planned borrowed funds proceeds.
11. Incorporate 2020 projects, equipment and vehicles identified in the 2020 - 2024 Capital Improvements Program.
12. Maintain a minimum of 25 percent uncommitted Fund Balance in the General Fund.

Finance + Personnel

CITY ADMINISTRATOR

2020 Budget Factors

	Revenues	Expenditures
General Fund	\$ 37,311,794	\$ 37,977,572 *
2020 Adjustments		
Net new construction based on +\$11 million	\$ 109,010	
Change in Transportation Aids	\$ -	
Salaries/Benefits		\$ 505,000
Health Insurance +5%		\$ 200,000
Elections		\$ 86,000
Recycling - service upgrade		\$ (572,046)
Motor Vehicle Fund Charges +10%		\$ 150,000
IT Fund Charges +6%		\$ 45,000
Adjusted	<u>\$ 37,420,804</u>	<u>\$ 38,391,526</u>
Shortfall		\$ (970,722)
2018 Increase in General Fund reserves		\$ 2,129,334 **
Debt Service Fund		
Change in debt service		\$ 120,000

* Reduced by \$500,000 in contingency account

** Does not include \$5,500,000 in transfer to Capital Project Fund for City Hall project

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Benchmark measurements for Office of City Clerk for the period commencing January 1, 2019 and ending March 31, 2019.

REPORT PREPARED BY: Meredith DeBruin, City Clerk

REPORT DATE: May 6, 2019

MEETING DATE: May 13, 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:

This report includes the first quarter 2019 Benchmark measurements for the Office of the City Clerk (including Elections, Common Council and City Clerk) reflecting the performance for the period commencing January 1, 2019 and ending March 31, 2019.

ELECTIONS:

	2017 Actual	2018 Actual	2019 YTD	2019 Goals
Measurements				
<u>Workload</u>				
Number of elections	2	4	*	2
Total votes cast	9,856	34,740		10,000
Percent of votes cast by absentee ballot	22%	19%		18%
New registrants	300	3,943		300
Percent of voters who were new registrants	52%	39%		25%
<u>Efficiency</u>				
Cost per vote	\$5.64	\$3.05		\$6.00

*There were no elections in the first quarter of 2019.

COMMON COUNCIL:

	2017 Actual	2018 Actual	2019 YTD	2019 Goals
Measurements				
<u>Effectiveness</u>				
Resident Satisfaction Rating	76%	73%	86%	80%

CITY CLERK:

	2017 Actual	2018 Actual	2019 YTD	2018 Goals
Measurements				
<u>Effectiveness</u>				
Resident Satisfaction Rating	92%	94%	98%	80%

ACTION REQUESTED:

For informational purposes only.

ATTACHMENTS:

None.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Benchmark Measurements for Information Technology (IT) Department, for period commencing January 1, 2019 and ending March 31, 2019

REPORT PREPARED BY: Eric Bushman, Director of Information Technology

REPORT DATE: May 6, 2019

MEETING DATE: May 13, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS:

These are the benchmark measurements as defined in the 2019 strategic plan for IT.

STAFF COMMENTS:

The following are the YTD measurements and 2019 goals.

Measurements	2017 Actual	2018 YTD	2018 Actual	2019 YTD	2019 Goals
<u>Efficiency</u>					
Average close time of Critical/High IT Help Tickets (Days)	N/A	2.00	4.80	3.25	5.00
<u>Effectiveness</u>					
Percent closed within timeframe	N/A	83%	75%	75%	90%
<u>Efficiency</u>					
Maintain core server/network at current -1 firmware	N/A	93%	98%	98%	100%
<u>Workload</u>					
Percentage of Computers Installed with FortiGate Client Installed	75%	98%	99%	100%	100%
Number of legacy applications retired	N/A	N/A	N/A	0	3
Number of Security Audits Performed	1	0	0	1	2
System Availability	N/A	94%	97%	99%	99%

ACTION REQUESTED:

For informational purposes only.

ATTACHMENTS:

None

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Benchmark Measurements for Cable TV (WSCS) Department, for period commencing January 1, 2019 and ending March 31, 2019.

REPORT PREPARED BY: Eric Bushman, Director of Information Technology

REPORT DATE: May 6, 2019

MEETING DATE: May 13, 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:

These are the benchmark measurements as defined in the 2019 strategic plan for WSCS

STAFF COMMENTS:

The following are the YTD measurements and 2019 goals.

Measurements	2017 Actual	2018 YTD	2018 Actual	2019 YTD	2019 Goals
<u>Workload</u>					
Number of Programs Produced	480	157	622	142	500
Number PSAs Produced	5	0	0	0	9
Number of televised Common Council and Committee of the Whole meetings	29	6	29	6	29
<u>Effectiveness</u>					
On-Demand Viewing	8,298	1,546	3,778	1,655	9,500
On-Demand Unique Visitors	3,252	1,258	3,254	1,304	3,500
Number of Film Awards	3	8	8	7	8

ACTION REQUESTED:

For informational purposes only.

ATTACHMENTS:

None

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: First Quarterly Performance Report (2019) for the Department of City Development: Planning and Development Division.

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

REPORT DATE: May 7, 2019

MEETING DATE: May 13, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS:

As part of the annual budgeting process, the department has developed performance benchmarks to track progress of the department's activities.

STAFF COMMENTS:

Normally the first quarter of the new year is typically a slower month. The Planning and Development Division continues to be active in new business development and working with our current businesses to expand.

ACTION REQUESTED:

For informational purposes only.

ATTACHMENTS:

- I. Quarterly Performance Report for January 1, 2019 – March 31, 2019.



QUARTERLY PERFORMANCE REPORT
DEPARTMENT OF CITY DEVELOPMENT: PLANNING & DEVELOPMENT
First Quarter of Fiscal Year 2019: January 1, 2019 – March 31, 2019

This report covers the first quarter of fiscal year 2019 and provides a progress update toward achieving the performance measures in the annual budget book.

For more information about this report, contact Chad Pelishek, Director of Planning and Development at (920) 459-3383.

Planning and Development Division

	<u>2017 Actual</u>	<u>2018 YTD</u>	<u>2018 Actual</u>	<u>2019 YTD</u>	<u>2019 Goals</u>
# Existing businesses assisted	27	13	38	12	40
# Start-up businesses assisted	12	8	24	5	20
# of commission applications approved	24	25	93	8	125
# of comprehensive plan/ordinance amendments adopted	2	2	4	0	10
# of special projects	9	17	28	14	10
# of sign permits issued	43	51	141	30	100
# of Neighborhood Development Plans completed	0	0	2	0	3
# of new neighborhood associations	0	0	3	0	3
Coordinate programming at Arts/Culture Plaza	N/A	1	1	0.50	1
Coordinate new development of city owned sites	1	0.10	0.50	0.50	1
Construction of new hotel	1	0	1	1	1
Construct new business park	1	0.10	0.90	0.90	1

Redevelopment Authority Fund

	<u>2017 Actual</u>	<u>2018 YTD</u>	<u>2018 Actual</u>	<u>2019 YTD</u>	<u>2019 Goals</u>
Redevelopment of existing properties	N/A	5	5	1	3
# of new ground leases negotiated	N/A	0	0	1	1

Business Revolving Loan Fund

	<u>2017 Actual</u>	<u>2018 YTD</u>	<u>2018 Actual</u>	<u>2019 YTD</u>	<u>2019 Goals</u>
Loan funds available (as of December 31, 2018)	N/A	\$717,875	Not Available	Not Available	\$300,000
Outstanding Loan Amount (as of December 31, 2018)	\$3,755,165	\$3,036,688	\$3,036,688	\$3,036,668	\$3,000,000
Number of new loans	0	0	1	0	1
Number of new jobs created	0	0	29	0	10

Housing Revolving Loan Fund

	<u>2017 Actual</u>	<u>2018 YTD</u>	<u>2018 Actual</u>	<u>2019 YTD</u>	<u>2019 Goals</u>
Loan funds available (as of December 31, 2018)	N/A	\$518,065	\$611,790	Not Available	\$200,000
Outstanding Loan Amount (as of December 31, 2018)	N/A	\$2,890,000	\$3,116,554	\$3,116,554	\$2,850,000
Number of new loans	6	2	7	0	8

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Benchmark Measurements for the Human Resources Department for the period of January 1, 2019 and ending March 31, 2019.

REPORT PREPARED BY: Sandy Rohrick, Director of Human Resources and Labor Relations

REPORT DATE: May 10, 2019

MEETING DATE: May 13, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS:

This report includes the first quarter 2019 Benchmark measurements for the Human Resources Department reflecting the performance for the period commencing January 1, 2019 and ending March 31, 2019.

MEASUREMENTS

	<u>2017</u> <u>Actual</u>	<u>2018</u> <u>YTD</u>	<u>2018</u> <u>Actual</u>	<u>2019</u> <u>YTD</u>	<u>2019</u> <u>GOAL</u>
Group Health Insurance Loss Ratio	108.25%	114.78%	109.46%	68.49%	100.00%
Group Dental Insurance Loss Ratio	102.45%	117.05%	103.35%	107.56%	100.00%
Turnover	7.60%	--	13.60%	1.80%	5.00%

ACTION REQUESTED:

For informational purposes only.

ATTACHMENTS:

None.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Benchmark measurements for Office of the City Administrator for the period commencing January 1, 2019 and ending March 31, 2019

REPORT PREPARED BY: Darrell Hofland, City Administrator

REPORT DATE: April 26, 2019

MEETING DATE: May 13, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS:

This report includes the first quarter 2019 Benchmark measurements for the Office of the City Administrator reflecting the performance for the period commencing January 1, 2019 and ending March 31, 2019.

STAFF COMMENTS:

The following information indicates the Benchmark measurements established for the Office of the City Administrator relative to the calendar year 2019. These Benchmarks were created as a result of the 2017 – 2021 Strategic Plan, specifically providing support to the appropriate Focus Areas outlined within the Strategic Plan.

Measurements	2017 Actual	2018 YTD	2018 Actual	2019 YTD	2019 Goals
Effectiveness					
Resident satisfaction rating with service efficiency	87%	91%	91%	91%	80%
Resident satisfaction rating with communication	97%	87%	87%	91%	80%
Resident satisfaction rating with city performance	94%	95%	95%	98%	80%
GFOA Budget Award	N/A	N/A	Yes	No	Yes
ICMA CPM Award	N/A	N/A	Yes	No	Yes
GFOA PAFR Award	N/A	N/A	Yes	Yes	Yes
Number of Strategic Plan quarterly updates	N/A	1	1	1	4

ACTION REQUESTED:

For informational purposes only.

ATTACHMENTS:

None