



PUBLIC WORKS COMMITTEE AGENDA

March 25, 2025 at 5:00 PM

**City Hall, 3rd Floor - Council Chambers, 828 Center Avenue,
Sheboygan, WI**

It is possible that a quorum (or a reverse quorum) of the Sheboygan Common Council or any other City committees/boards/commissions may be in attendance, thus requiring a notice pursuant to State ex rel. Badke v. Greendale Village Board, 173 Wis. 2d 553,494 N.W.2d 408 (1993).

Persons with disabilities who need accommodations to attend this meeting should contact the Department of Public Works at 920-459-3440. Persons other than council members who wish to participate remotely shall provide notice to the Public Works Department at 920-459-3440 at least 24 hours before the meeting so that the person may be provided a remote link for that purpose.

OPENING OF MEETING

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Introduction of Committee Members and Staff

MINUTES

5. Approval of Minutes: March 11, 2025

ITEMS FOR DISCUSSION & POSSIBLE ACTION

Open to public discussion - limit of three minutes per person with comments pertaining to items on the agenda.

6. Res. No. 187-24-25 / A resolution authorizing the creation of a City of Sheboygan Street Art Grant program, authorizing the appropriate City officials to apply for state, federal, and private street art grants, and authorizing the creation of the City of Sheboygan Street Art Grant Program.
7. Res. No. 188-24-25 / A resolution authorizing the appropriate City officials to enter into a lease with Bell Bank for the lease of a 2025 Vector Sewer Maintenance Vehicle.
8. Res. No. 189-24-25 / A resolution authorizing the appropriate City officials to execute the Agreement between the City of Sheboygan and Hardesty & Hanover LLC regarding inspection of the South 8th Street bridge.

NEXT MEETING DATE

9. Next Regular Meeting Date: April 8, 2025

ADJOURNMENT

10. Motion to adjourn

In compliance with Wisconsin's Open Meetings Law, this agenda was posted in the following locations more than 24 hours prior to the time of the meeting:

*City Hall • Mead Public Library
Sheboygan County Administration Building • City's website*

CITY OF SHEBOYGAN

PUBLIC WORKS COMMITTEE MINUTES

Tuesday, March 11, 2025

COMMITTEE MEMBERS PRESENT: Chair Dean Dekker, Vice Chair Angela Ramey, Alderperson Zach Rust, Alderperson Daniel Peterson, Alderperson John Belanger

STAFF/OFFICIALS PRESENT: Director of Public Works Travis Peterson, City Engineer Kevin Jump, Deputy Director of Field Operations Joel Kolste, Superintendent of Wastewater Jordan Skiff, Parks Manager Joe Kerlin, Director of Facilities & Operations Mike Willmas, Deputy City Attorney Liz Majerus, WSCS Program Director Scott Mealiff, Administrative Clerk Stacy Weseljak

OTHERS PRESENT: Randy Meyer, Markus Savaglio, Kathleen Currie, Mark Goswitz, John Winter, Mary Dotz, Cleo Messner, Edward Procek, Starr Gerk, Penny Weber, James & Sonja Chesnik, Ann Kraft, Lisa Salgado, Jon Dolson, Jenny Holm, Mike Close, Steven Bubb, Ruth Madson, Bryan Kelly, Tracy Brunette, Rick Weeden, Roberta Filicky-Peneski, Maywood Director Kendra Kelling.

1. Call to Order

Chair Dean Dekker called the meeting to order at 5:00 pm

2. Roll Call

3. Pledge of Allegiance

The Pledge of Allegiance was recited.

4. Introduction of Committee Members and Staff

MINUTES

5. Approval of Minutes: February 25, 2025

MOTION TO APPROVE MINUTES FROM FEBRUARY 25, 2025

Motion made by Alderperson Rust, Seconded by Alderperson Belanger.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

ITEMS FOR DISCUSSION & POSSIBLE ACTION

6. Dumpster Days DISCUSSION ONLY

7. Res. No. 176-24-25 / A resolution authorizing a 2025 budget amendment and the Purchasing Agent to issue a purchase order for the purchase of two Sludge Heat Exchangers for the Wastewater Treatment Plant.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Belanger, Seconded by Alderperson Peterson.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

8. Res. No. 179-24-25 / A resolution authorizing the Director of Public Works to grant permission to Boy Scouts of America – Lakeshore District to maintain a temporary campsite on property owned and maintained by the City and to maintain controlled fire(s) on such property for a Camporee event occurring May 2 – 4, 2025.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Belanger, Seconded by Alderperson Peterson.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

9. Res. No. 181-24-25 / A resolution authorizing the appropriate City officials to execute the Agreement Between City of Sheboygan and Fox Valley Athletics, LLC for the Management and Operation of Recreational Programs at Wildwood Athletic Complex.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Belanger, Seconded by Alderperson Rust.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

10. Res. No. 182-24-25 / A resolution releasing a property owner from liability associated with employees and/or agents of the City of Sheboygan entering upon the owner's land to obtain soil borings in conjunction with the Southside Interceptor Project.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Belanger, Seconded by Alderperson Peterson.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

11. Res. No. 183-24-25 / A resolution authorizing a budget amendment in order to participate in a Wisconsin Department of Natural Resources Targeted Runoff Management Grant to support stormwater runoff and erosion control activities in the Pigeon River Corridor located within Maywood and Evergreen Parks.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Belanger, Seconded by Alderperson Peterson.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

12. Direct Referral Res. No. 185-24-25 / A resolution authorizing the appropriate City officials to enter into contract for the replacement of roof-mounted mechanical equipment in conjunction with a replacement of the roof at the Municipal Service Building.

MOTION TO RECOMMEND THE COMMON COUNCIL ADOPT THE RESOLUTION

Motion made by Alderperson Belanger, Seconded by Alderperson Peterson.

Voting Yea: Chair Dekker, Vice Chair Ramey, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

NEXT MEETING DATE

13. Next Regular Meeting Date: March 25, 2025

ADJOURNMENT

14. Motion to adjourn

MOTION TO ADJOURN AT 6:19 PM

Motion made by Alderperson Belanger, Seconded by Alderperson Rust.

Voting Yea: Chair Dekker, Alderperson Rust, Alderperson Peterson, Alderperson Belanger

**CITY OF SHEBOYGAN
RESOLUTION 187-24-25**

BY ALDERPERSONS RAMEY AND PETERSON.

MARCH 17, 2025.

A RESOLUTION authorizing the creation of a City of Sheboygan Street Art Grant program, authorizing the appropriate City officials to apply for state, federal, and private street art grants, and authorizing the creation of the City of Sheboygan Street Art Grant Program.

WHEREAS, the City of Sheboygan wishes to engage with and support local artists and the creative community; and

WHEREAS, a 2022 Asphalt Art Safety Study conducted by Bloomberg Philanthropies in seventeen (17) cities across five (5) states shows an increase in pedestrian safety in and around painted streets, intersections, and crosswalks; and

WHEREAS, street art increases civic pride.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council authorizes the Mayor or the Mayor’s designee to apply for state, federal, and private street art grants, and where acceptance requires the City to match funds, Common Council approval shall be obtained unless such funds were otherwise included in the City’s operating budget.

BE IT FURTHER RESOLVED: That City staff is directed to develop a standardized framework for street art proposal review and approval, and until such time as the Common Council has approved the framework, the Common Council shall retain authority to approve or deny any street art proposed to be installed within a right of way or other City property.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

_____.

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of Sheboygan

Meredith DeBruin, City Clerk, City of Sheboygan

AGENDA ITEM MEMORANDUM

DATE: 3-18-2025

TO: Public Works Committee

FROM: Bernie Rammer-Purchasing Agent

SUBJECT: Resolution 188-24-25 Subs. of – A resolution to authorize the appropriate City Officials to enter into a five-year operating lease with Bell Bank for the lease of a 2025 Vactor Sewer Maintenance Vehicle. This vehicle will replace a similar vehicle for which the lease has matured. The City has leased these highly complex vehicles for the past ten years. Leasing, as opposed to purchase, allows the City to ensure these vehicles are in a constant state of readiness to respond to sewer emergencies and the five-year term does not allow them to become prone to failures and breakdowns.

ISSUE

Should the Public Works Committee recommend approval of the resolution, the City will receive the new vehicle which is nearing production completion in about two weeks.

STAFF RECOMMENDATION

Staff recommends approval of the resolution as the lease vs. buy program has been found to be extremely effective in assuring the highly complex Vactor vehicle(s) remain in a constant state of readiness; enabling timely response to sewer backups and emergencies.

BACKGROUND/DISCUSSION

This will be the third 5-year lease of a Vactor Vehicle. The City also currently leases a smaller, single axle Vactor Vehicle to allow access to smaller streets, cul de sacs etc. and this lease will mature in about two years. Vactor Vehicles have been found to be very effective and result in labor savings as all the technology to clear blockages is available on a single vehicle.

FUNDING IMPACT

The funding for this lease is courtesy of the Wastewater Fund (630-291600) in the amount of \$107,510.10 per year for a period of five years. This includes trade-in of the current 2020 Vactor Vehicle. The lease will be funded by the Wastewater Fund as has been past practice.

IF APPROVED, NEXT STEPS:

Following Council approval, the lease document will be finalized, as well as several related documents. The City will take delivery of the new truck within a few weeks.



DEPARTMENT OF
PUBLIC WORKS

2026 NEW JERSEY AVE.
SHEBOYGAN, WI
53081

920/459-3440
sheboyganwi.gov

**CITY OF SHEBOYGAN
RESOLUTION 188-24-25 SUBS. OF**

BY ALDERPERSONS DEKKER AND RAMEY.

APRIL 2, 2025.

A RESOLUTION authorizing the appropriate City officials to enter into a lease with Bell Bank for the lease of a 2025 Vactor Sewer Maintenance Vehicle.

WHEREAS, the Department of Public Works is responsible for maintaining the City's network of storm and sanitary sewer lines to assure uninterrupted flows and utilizes two primary vehicles for this purpose, both of which are leased through Bell Bank. The lease for the larger of the two vehicles has matured and the City wishes to enter into a new five-year lease for a new truck.

WHEREAS, the Department of Public Works has found this lease program to be beneficial in that it assures that the leased vehicles are reliable and maintained in a state of readiness to respond to emergencies; and

WHEREAS, in addition to the lease, City staff desires to purchase a maintenance program for the Vactor portion of the truck, which will relieve the Department of the need for intensive training for its maintenance technicians and assures very favorable residual values for the truck at the completion of the five-year lease term; and

WHEREAS, the City Attorney's Office has reviewed the lease document and found it to be acceptable in all aspects for the protection of the City; and

WHEREAS, the total cost over five years is anticipated to be \$448,592 broken down into annual payments of \$107,510.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are authorized to execute the necessary documents to enter into a lease for a 2025 Model Vactor Sewer Maintenance vehicle in the amount of \$107,510.00 per year for a term of five years.

BE IT FURTHER RESOLVED: That the Finance Director is hereby authorized and directed to draw on Account No. 630-291600 (Wastewater Fund – Lease Liability) in payment of same.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

_____.

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of Sheboygan

Meredith DeBruin, City Clerk, City of Sheboygan

Lease-Purchase Agreement

Lease Purchase Agreement Number: 102346-003

This Lease-Purchase Agreement dated the 31st day of March, 2025 (the "Lease"), by and between Bell Bank Equipment Finance, a division of Bell Bank, whose address is 15490 101st Ave N, Suite 200, Maple Grove, MN 55369, as agent for one or more persons (the "Lessor") and City of Sheboygan, located in Sheboygan County, as Lessee (the "Lessee"), whose address is 828 Center Ave, Sheboygan, WI 53081-4442.

WITNESSETH:

WHEREAS, Lessee is authorized by State statutes to acquire (1) 2025 Vactor 2100i Vac Excavator Truck, with 2025 International HV607 Chassis by entering into a lease-purchase agreement; and

WHEREAS, pursuant to a resolution duly adopted by the Lessee on see attached, the Lessee has determined that it is necessary to further the construction and maintenance purposes of the Lessee that it acquire (1) 2025 Vactor 2100i Vac Excavator Truck, with 2025 International HV607 Chassis described herein as Equipment; and

WHEREAS, Lessor is willing to acquire the Equipment and to lease and sell it to Lessee pursuant to this Lease;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 **Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

Authorized Representative: Shall mean (a) with respect to the Lessee, the officer of the Lessee or any other Person or Persons at any time designated by resolution of Lessee's governing body or written certificate conferring authority upon such person to act on behalf of the Lessee with respect to this Lease; and (b) with respect to the Lessor, any authorized signatory of the Lessor authorized by their bylaws to act or to execute documents on behalf of the Lessor.

Certificate of Acceptance: The Certificate of Acceptance of Lessee the form of which is attached hereto as Exhibit C.

Code: The Internal Revenue Code of 1986, as amended and any regulations promulgated thereunder by the United States Department of the Treasury.

Commencement Date: The date upon which Lessee's obligations to make Lease-Purchase Payments accrues as evidenced by the issuance to Lessor of the Certificate of Acceptance attached hereto as Exhibit C.

Contractor: Each of the manufacturers or vendors from whom Lessee (or Lessor at Lessee's request) has ordered or will order or with whom Lessee (or Lessor at Lessee's request) has contracted or will contract for the manufacture, delivery and/or installation of the Equipment.

Cost or Costs: The costs of acquisition and installation of the Equipment and all other costs incidental and related thereto, including the costs of preparation, marketing and sale of this Lease.

Equipment:

The (1) 2025 Vactor 2100i Vac Excavator Truck, with 2025 International HV607 Chassis described in the attached Exhibit A which is being leased and purchased by Lessee pursuant to this Lease.

Fiscal Year: Each twelve (12) month fiscal period of Lessee commencing on the 1st of January and ending on the 31st of December the following year.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

Interest: The portion of any Lease-Purchase Payment designated as and comprising interest as shown in the attached Exhibit B.

Lease: This Lease-Purchase Agreement dated as of 3/31/2025, whereby the Lessor has leased the Equipment to Lessee, as the same may from time to time be amended or modified.

Lease-Purchase Payment: The payment due from Lessee to Lessor on each Payment Date, as shown on Exhibit B.

Net Proceeds: Any insurance proceeds, paid with respect to the Equipment, remaining after payment therefrom of all expenses incurred in the collection thereof.

Payment Date: The date upon which any Lease-Purchase Payment is due and payable as provided in Exhibit B.

Permitted Encumbrances: As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to the provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and amendments hereto, (iii) Lessor's interest in the Equipment, and (iv) any mechanic's, laborers, material person's supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a Contractor or which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

Person or Persons: An individual, partnership, corporation, trust or unincorporated organization.

Prepayment Price: With respect to the Equipment, as of any Payment Date, the amount so designated and set forth opposite such date in the attached Exhibit B.

Principal: The portion of any Lease-Purchase Payment designated as principal in the attached Exhibit B.

Request for Disbursement of Funds: The Request for Disbursement of Funds of Lessee, the form of which is attached hereto as Exhibit C-1.

Specifications: The bid specifications and/or purchase order pursuant to which Lessee has ordered the Equipment from a Contractor.

State: The State of Wisconsin.

State and Federal Law or Laws: The Constitution and any law of the State and any charter, ordinance, rule or regulation or any agency or political subdivision of the State, and any law of the United States, and any rule or regulation of any federal agency.

Term, Term of this Lease or Lease Term: The period commencing on the execution of this Lease and ending on the date the last Lease-Purchase Payment is due and payable, as shown on Exhibit B.

Section 1.2 **Exhibits.** The following Exhibits are attached to and by reference made part of this Lease:

Exhibit A: A description of the Equipment including the serial number thereof which shall be inserted when available.

Exhibit B: A schedule to be completed by Lessor as provided in Section 4.1, indicating the date upon which the Term of this Lease shall end, the date and amount of each Lease-Purchase Payment coming due under the Lease Term and the amount of Principal and Interest comprising each Lease-Purchase Payment.

Exhibits C and C-1: A Certificate of Acceptance of Lessee with a Request for Disbursement of Funds attached indicating that the Equipment has been or will be delivered and installed in accordance with the Specifications, and has been accepted by Lessee, the date on which Lease-Payments shown in Exhibit B shall commence, and that certain other requirements have been met by Lessee.

Exhibit D: An opinion of counsel to Lessee as to the organization, nature and powers of Lessee, the validity, execution and delivery of this Lease and various related documents; the absence of litigation; and related matters.

Exhibit E: A form of resolution of the governing body of Lessee, relating to this Lease and, if applicable, certain federal tax matters.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 **Representations, Covenants and Warranties of Lessee.** Lessee represents, covenants and warrants as follows:

- (a) Lessee is a political subdivision and municipal corporation, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.

- (c) The officer of Lessee executing this Lease has been duly authorized to execute and deliver this Lease under the terms and provisions of a resolution of Lessee's governing body, or by other appropriate official action.
- (d) In authorizing and executing this Lease, Lessee has complied with all open meeting laws, public bidding and other State and Federal laws applicable to this Lease and the acquisition of the Equipment by Lessee.
- (e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other Person, firm or corporation, except as provided under the terms of this Lease.
- (f) Lessee will use the Equipment during the Lease Term only to perform its essential governmental functions.
- (g) Lessee will take no action that would cause the interest portion of the Lease-Purchase Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the "Code") and Treasury Regulations promulgated thereunder (the "Regulations"), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the Lease-Purchase Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations.
- (h) Upon execution of this Lease-Purchase Agreement, and upon each request for a disbursement of funds hereunder, Lessee will provide to Lessor a completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit C.
- (i) Upon the execution of this Lease, Lessee will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit D.
- (j) Lessee will submit to the Internal Revenue Service an information reporting statement at the time and in the form required by the Code.
- (k) Lessee will cause a resolution substantially in the form attached hereto as Exhibit E to be adopted by its governing body.
- (l) Intentionally Omitted.

Section 2.2 **Representations, Covenants and Warranties of Lessor.** Lessor represents, covenants and warrants as follows:

- (a) Lessor has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same.
- (b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or agreement or instrument to which Lessor is now a party or by which Lessor is bound; constitutes a default under any of the foregoing; or results in the creation or imposition any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Equipment, except Permitted Encumbrances.

ARTICLE III AGREEMENT TO LEASE

Section 3.1 **Lease.** Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon terms and conditions set forth in this Lease and subject to the option to purchase set forth in Section 4.3 hereof.

Section 3.2 **Possession and Enjoyment.** Lessor hereby covenants to provide Lessee during the Term with the quiet use and enjoyment of the Equipment, and Lessee intends to during the Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in the Lease. Lessor will, at the request of Lessee and at Lessee's cost, join any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so. All warranties extended upon the Equipment by the Contractors shall inure to the benefit of the Lessee during the term of this Lease.

Section 3.3 **Lessor Access to Equipment.** Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Equipment. Lessee further agrees that Lessor shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder.

Section 3.4 **Tax and Ownership and Lessee.** The Lessor warrants and represents that it shall not at any time during the term of the Lease claim depreciation, cost recovery deductions, or tax credit for federal income tax purposes with respect to the equipment, or portion thereof,

and that it shall not take any position for federal income tax purposes that is inconsistent with the unequivocal title and ownership for any and all tax purposes of the Lessee.

ARTICLE IV TERM OF LEASE

- Section 4.1 **Lease Term.** This Lease shall be in effect for a Term commencing upon the execution hereof and ending as provided in Section 4.2.
- Section 4.2 **Termination of Lease Term.** The Term of this Lease will terminate upon the occurrence of the first of the following events:
- (a) A default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII without payment of all Lease-Purchase Payments; or
 - (b) The payment by Lessee of all Lease-Purchase Payments and all other amounts authorized or required to be paid by Lessee hereunder.
 - (c) Nonappropriation of funds by Lessee pursuant to Section 12.7 hereof.
- Section 4.3 **Option to Purchase.** Lessee has the option to purchase the Equipment by paying the applicable prepayment price in accordance with Section 10.1 hereof.

ARTICLE V LEASE-PURCHASE PAYMENTS

- Section 5.1 **Lease-Purchase Payments.** Lessee agrees to pay Lease-Purchase Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Lease-Purchase Payments shall be paid to Lessor at its offices at the address specified in Section 1.1 of this Lease, or to such other Person or entity to which Lessor has assigned such Lease-Purchase Payments as specified in Article XI, at such place as such assignee may from time to time designate in lawful money of the United States of America to Lessor or, in the event of assignment of the right to receive Lease-Purchase Payments by Lessor, to its assignee. Interest shall accrue from the date of the Certificate of Acceptance.
- Section 5.2 **Source of Payment.** All Lease-Purchase Payments required to be paid Lessor pursuant to this Lease shall be paid from moneys duly budgeted, appropriated, obligated and otherwise provided and made available therefor by Lessee.
- Section 5.3 **Interest Component.** A portion of each Lease-Purchase Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Lease-Purchase Payment.
- Section 5.4 **Lease-Purchase Payments to be Unconditional.** The obligation of Lessee to make Lease-Purchase Payments or any other payments required hereunder shall be absolute and unconditional in all events, except as expressly provided under this Lease. Notwithstanding any dispute between Lessee and Lessor or any other Person, Lessee shall make all Lease-Purchase Payments and other payments required hereunder when due and shall not withhold any Lease-Purchase Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Lease-Purchase Payments or other payments required under this Lease. Lessee's obligation to make Lease-Purchase Payments or other payments shall not be abated through accident or unforeseen circumstances. Except as provided in Section 12.7 hereof, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder, and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damage therefor.
- Section 5.5 **Late Payments.** See Section 12.6.

ARTICLE VI INSURANCE AND NEGLIGENCE

- Section 6.1 **Liability Insurance.** Upon receipt of possession of the Equipment, Lessee shall take measures as may be necessary to ensure that any liability for injuries to or death of any Person or damage to or loss of property arising out of or in any way relating to the condition or operation of the Equipment or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any

Net Proceeds may be paid.

- Section 6.2 **Property Insurance.** Upon receipt of possession of the Equipment, Lessee shall have and assume the risk of loss with respect thereto. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Equipment, or to the purchase of the Equipment, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.
- Section 6.3 **Worker's Compensation Insurance.** If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.
- Section 6.4 **Requirements for all Insurance.** All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (or riders) evidencing any such insurance procedure by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is not obtainable in which event Lessee shall notify Lessor of this fact.
- Section 6.5 **Lessee's Negligence.** Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any Person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses and damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fee) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit, or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.
- Section 6.6 **Damage to or Destruction of Equipment.** If after delivery of the Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practical after such event, replace the same at Lessee's sole cost and expense with equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement, subject to the provisions of Section 12.7 hereof. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, exercise its remedies under Article XII hereof. The Net Proceeds of all insurance payable with respect to the Equipment shall be available to Lessee and shall be used to discharge Lessee's obligations under this Section.
- Section 6.7 **Cooperation of Lessor.** The Lessor shall cooperate fully with the Lessee at the sole expense of the Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in this Section. To the extent it may lawfully do so, the Lessor will permit the Lessee to litigate in any proceeding resulting therefrom and the name of it and on behalf of the Lessor, provided that the Lessor has been indemnified from all costs and expenses therefor, including without limitation, reasonable counsel fees incurred by the Lessor in connection with any such litigation in its name. In no event will the Lessor voluntarily settle or consent to the settlement of any proceeding, arising out of any insurance claim with respect to the Equipment or any part thereof, without the written consent of the Lessee.

ARTICLE VII OTHER OBLIGATIONS OF LESSEE

- Section 7.1 **Use; Permits.** Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any State or Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary of the installation, operation, possession and use of the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, operation, possession and use of the Equipment, and if compliance with any such State or Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense.
- Section 7.2 **Maintenance of Equipment by Lessee.** Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such

condition. Lessor shall have no responsibility for any of these repairs or replacements.

- Section 7.3 **Taxes, Other Governmental Charges and Utility Charges.** (a) Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind whatsoever which are at any time lawfully assessed or levied against or with respect to the Equipment, the Lease-Purchase Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien of the Equipment; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.
- (b) Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contest to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss for forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in the form satisfactory to Lessor.
- Section 7.4 **Advances.** If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 18.0 % per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.
- Section 7.5 **Disbursements.** (a) As payments are required for the Equipment under this Lease, the Lessee as the agent for the Lessor shall prepare and submit a Certificate of Acceptance of Lessee with a Request for Disbursement of Funds to the Lessor. (b) The Lessor shall permit the withdrawal of funds requested in the Request for Disbursement of Funds, and such funds shall be applied to the payment of the Cost of the Equipment.

ARTICLE VIII TITLE

- Section 8.1 **Title.** During the Term of this Lease, legal title to the Equipment and any all repairs, replacements, substitutions and modifications to it shall be in Lessee's name subject to Lessor's interest. Upon termination of this Lease for any of the reasons specified in Section 4.2 (b), Lessor's interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in the Equipment.
- Section 8.2 **Security Interest.** Lessor shall have and retain a security interest under the Uniform Commercial Code, Certificate of Title or other applicable State or Federal Law in the Equipment, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof pursuant to Section 8.5, in order to secure Lessee's payment of all Lease-Purchase Payments due during the Term of this Lease and the performance of all other obligations herein to be performed by Lessee. Lessee will join with Lessor in executing such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags, and maintain such markings during the Term of this Lease, so as clearly to disclose Lessor's security interest in the Equipment.
- Section 8.3 **Liens.** During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.
- Section 8.4 **Installation of Lessee's Equipment.** Lessee may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Equipment, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Equipment resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to

installed pursuant to this Section under a conditional sale or lease-purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Equipment.

- Section 8.5 **Modification of Equipment.** Lessee shall at its own expense, have the right to make repairs to the Equipment, and to make repairs, replacements, substitutions and modifications to all or any part of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Equipment and be subject to the provisions of the Lease. Such work shall not in any way damage the Equipment or cause it to be used for purposes other than those authorized under the provisions of State or Federal Law or those contemplated by this Lease; and the Equipment, upon completion of any such work shall be of a value which is not less than the value of the Equipment immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Equipment for labor or materials furnished in connection with any repair, replacement, substitution or modification made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessee will cooperate fully with Lessee in any such contest.
- Section 8.6 **Personal Property.** The Equipment is and shall at all times be and remain personal property notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.

ARTICLE IX WARRANTIES

- Section 9.1 **Selection of Equipment.** The Equipment and the Contractor have been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Contractor or its sales representative of the order submitted, or any delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee. Lessee authorized Lessor to add the serial number of the Equipment to Exhibit A when available.
- Section 9.2 **Installation and Maintenance of Equipment.** Lessor shall have no obligation to install, erect, test, inspect, service or maintain the Equipment under any circumstances, but such actions shall be the obligation of Lessee or the Contractor.
- Section 9.3 **Contractor's Warranties.** Lessor hereby assigns to Lessee for and during the Term of the Lease, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.
- Section 9.4 **Patent Infringement.** Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Equipment. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Equipment furnished pursuant to this Lease.
- Section 9.5 **Disclaimer of Warranties.** THE EQUIPMENT IS DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

ARTICLE X PREPAYMENT

- Section 10.1 **When Available.** Lessee shall have the option to prepay its obligations under this Lease on any Payment Date at an amount equal to the applicable Prepayment Price.
- Section 10.2 **Release of Lessor's Interest.** Upon the prepayment of Lessee's obligations under this Lease in accordance with Section 10.1 hereof, Lessee shall have no further obligations under this Lease and this Lease shall terminate in accordance with Section 4.2(b). Thereupon the Lessor shall relinquish title to the Equipment in accordance with Section 8.1.

ARTICLE XI ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 11.1 **Assignment by Lessor.** Except as otherwise provided herein, Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Lease-Purchase Payments or other amounts due hereunder and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment shall be effective as against Lessee unless and until the assignor shall have filed with Lessee a copy or written notice thereof identifying the assignee. Lessee shall pay all Lease-Purchase Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term, Lessee shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participation in its right, title and/or interest in and to this Lease, the Lease-Purchase Payments and other amounts due hereunder and the Equipment, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2 **Assignment and Subleasing by Lessee.** Neither this Lease nor Lessee's interest in the Equipment may be assigned by Lessee without the written consent of Lessor. However, the Equipment may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

- (a) This Lease and the obligation of Lessee to make Lease-Purchase Payments hereunder, shall remain obligations of Lessee.
- (b) The sublease shall assume the obligation of Lessee hereunder to the extent of the interest subleased.
- (c) Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.
- (d) No sublease by Lessee shall cause the Equipment to be used for a purpose other than an essential governmental function authorized under the provisions of the Constitution and the laws of the State.
- (e) No sublease shall cause the Interest component of the Lease-Purchase Payments due with respect to the Equipment to become includable in gross income of the recipient for federal income tax purposes.

Section 11.3 **Restriction on Mortgage or Sale of Equipment by Lessee.** Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term of this Lease, or remove the same from its boundaries, without the written consent of Lessor.

ARTICLE XII EVENTS OF DEFAULT AND REMEDIES

Section 12.1 **Events of Default Defined.** (a) The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Equipment, any one or more the following events:

- (i) Except as permitted by Section 12.7 hereof, failure by Lessee to pay any Lease-Purchase Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.
 - (ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.
 - (iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental or proprietary function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar acts which may hereafter be enacted.
- (b) The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is

unable in whole or in part to carry out its obligation under this Lease with respect to the Equipment, other than its obligation to pay Lease-Purchase Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of god, strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections, riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

Section 12.2 **Remedies of Default.** Whenever any event of default referred to in Section 12.1, clauses (i) to (iii) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

- (i) With or without terminating this Lease, re-enter and take possession of such Equipment and exclude Lessee from using it; provided, however, that if this Lease has not been terminated, Lessor shall return possession of such Equipment to Lessee when the event of default is cured; and provided further that Lessee shall continue to be responsible for the Lease-Purchase Payments due with respect to such Equipment during the Fiscal Year then in effect; or
- (ii) With or without terminating this Lease, re-enter and take possession of such Equipment, and sell, lease or sublease such Equipment or any part of it, holding Lessee liable for the difference between (a) the sales price, rent and other amounts paid by the purchaser, lessee or sublessee pursuant to such sales agreement, lease or sublease and (b) the balance of the Lease-Purchase Payments and other amounts owed by Lessee with respect to such Lease; provided, however, that nothing contained herein shall impose an obligation upon Lessor so to sell, lease or sublease such Equipment and provided that any excess proceeds from such disposition shall be retained by Lessor; or
- (iii) With or without terminating this Lease, declare all Lease-Purchase Payments during the Fiscal Year then in effect due or to become due with respect to such Lease in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Lease-Purchase Payments shall be immediately due and payable; or
- (iv) Take whatever action at law or in equity may appear necessary or desirable to collect the Lease-Purchase Payments then due and thereafter to become due during the then current Fiscal Year of Lessee with respect to such Lease, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

Section 12.3 **Return of Equipment.** Upon termination of this Lease prior to the payment of all Lease-Purchase Payments, Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 7.2, in the following manner as may be specified by Lessor: (a) by delivering the Equipment at Lessee's cost and expense to such place within the State as Lessor shall specify; or (b) by loading such portions of the Equipment as are considered movable at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the place specified by Lessor. If Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

Section 12.4 **No Remedy Exclusive.** No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof by any such right and power. Each remedy may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

Section 12.5 **Agreement to Pay Attorney's Fees and Expenses.** In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys and/or incur other expenses for the collection of monies or for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and/or such other reasonable expenses so incurred by the nondefaulting party. In the event that legal proceedings relating to this Lease are commenced in any court or before any other tribunal of competent jurisdiction, the reasonable legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the nonprevailing party on demand of the prevailing party.

Section 12.6 **Late Charges.** Whenever any event of default referred to in Section 12.1, clause (i) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge equal five percent (5.0%) per month of the delinquent Rental Payment, and Lessee shall be obligated to

pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 12.6 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

- Section 12.7 **Non-Appropriation of Funds.** (a) Notwithstanding any provision in the Lease to the contrary, in the event that no funds or insufficient funds are appropriated by Lessee's governing body for the next fiscal year for Lease-Purchase Payments due under this Lease, this Lease shall terminate the end of such fiscal year on the last day of the fiscal year for which appropriations were received and Lessee shall return the Equipment to Lessor (at Lessee's expense, to a destination Lessor directs, in good working condition less normal wear and tear), and cancel this Lease by notice to such effect served not less than thirty (30) days prior to the end of the Lessee's fiscal year. Lessee shall notify Lessor of nonappropriation within thirty (30) days of its occurrence.
- (b) Lessee and Lessor acknowledge and agree that the Lease-Purchase Payments hereunder shall constitute currently budgeting expenditures of Lessee from its capital expenditure fund or successor fund thereto. Lessee's obligations under this Lease shall be subject to Lessee's annual right to terminate this Lease, and shall not constitute a mandatory charge of requirement in any ensuing fiscal year beyond the then current fiscal year. No provision of this Lease shall be construed or interpreted as creating a general obligation or other indebtedness of Lessee within the meaning of any constitutional or statutory debt limitation. This Lease shall not directly or indirectly obligate Lessee to make any payments beyond those budgeted and appropriated from its general fund for Lessee's then current fiscal year. Lessee shall be under no obligation whatsoever to exercise its option to purchase the Equipment. No provision of this Lease shall be construed to pledge or create a lien on any class or source of Lessee monies.

ARTICLE XIII ADMINISTRATIVE PROVISIONS

- Section 13.1 **Notices.** All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified below; provided, that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificate, legal opinion or other communication will be sent.

Lessor: Bell Bank Equipment Finance
 15490 101st Ave N, Suite 200
 Maple Grove, MN 55369

Lessee: City of Sheboygan
 828 Center Ave
 Sheboygan, WI 53081-4442

- Section 13.2 **Financial Information.** During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue to pay Lease-Purchase Payments required under this Lease as may be requested by Lessor or its assignee.
- Section 13.3 **Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.
- Section 13.4 **Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- Section 13.5 **Amendments, Changes and Modification.** This Lease may be amended or any of its terms modified only by written document duly authorized, executed, and delivered by Lessor and Lessee.
- Section 13.6 **Captions.** The captions or headings in this Lease are for convenience only and in no way defend, limit or describe the scope or intent of any provisions, articles, sections or clauses of this Lease.
- Section 13.7 **Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, for carrying out the expressed intention of this Lease.
- Section 13.8 **Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- Section 13.9 **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State.

Section 13.10 **Anti-Discrimination.** Lessor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, sexual orientation or physical defect or disability with regard to but not limited to employment, upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination or selection for training.

Section 13.11 **Lessor and Lessee Representatives.** Whenever under the provisions of this Lease, the approval of the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given by an Authorized Representative of the Lessor, for the Lessor, and by an Authorized Representative of the Lessee, for the Lessee. Any party hereto shall be authorized to rely on such approval of request.

Section 13.12 **No Present Intent to Sell.** The Lessor is not acting as an Underwriter (defined below) with respect to the Lease. Lessor has no present intention to sell, reoffer, or otherwise dispose of the Lease (or any portion of the Lease or any interest in the Lease) until maturity or earlier redemption by the Lessee. The Lessor has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Lease and Lessor has not agreed with the Lessee pursuant to a written agreement to sell the Lease to persons other than the Lessor or a related party to the Lessor.

“Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter (defined below) or a related party. The term “related party” for purposes of this definition generally means any two or more persons who have greater than 50% common ownership, directly or indirectly.

“Underwriter” means (i) any person that agrees pursuant to a written contract with the Lessee (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Lease to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Lease to the Public (including a member of the selling group or a party to a retail distribution agreement participating in the initial sale of the Lease to the Public).

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officers; and Lessee has caused this Lease to be executed in its name by duly authorized officers, as of the date first above written.

BELL BANK EQUIPMENT FINANCE, a division of Bell Bank, as Lessor

_____ Print or type full name

By _____ Signature

Its _____

_____ City of Sheboygan _____ as Lessee

_____ Print or type full name

By _____ Signature

Its _____ Title

**EXHIBIT A
DESCRIPTION OF EQUIPMENT**

(1) 2025 Vactor 2100i Vac Excavator Truck - Serial Number: 25-03V-23342, with 2025 International HV607 Chassis Serial Number: 3HAEKTAT9SL515414

**EXHIBIT B
PAYMENT SCHEDULE**

Commencement Date: 3/31/2025

	<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Amount</u>	<u>Principal Amount</u>	<u>Purchase Option Price*</u>
Lease	03/31/2025				448,592.00
2025 Totals		0.00	0.00	0.00	
1	03/31/2026	107,510.10	28,485.60	79,024.50	369,567.50
2026 Totals		107,510.10	28,485.60	79,024.50	
2	03/31/2027	107,510.10	23,467.54	84,042.56	285,524.94
2027 Totals		107,510.10	23,467.54	84,042.56	
3	03/31/2028	107,510.10	18,130.84	89,379.26	196,145.68
2028 Totals		107,510.10	18,130.84	89,379.26	
4	03/31/2029	107,510.10	12,455.25	95,054.85	101,090.83
2029 Totals		107,510.10	12,455.25	95,054.85	
5	03/31/2030	107,510.10	6,419.27	101,090.83	0.00
2030 Totals		107,510.10	6,419.27	101,090.83	
Grand Totals		537,550.50	88,958.50	448,592.00	

TOTAL: \$448,592.00
INTEREST RATE: 6.35%

*Amount due after payment of Lease-Purchase Payment due on the same day.

All amounts received by Lessor shall be applied first to late payment charges and expenses, then to accrued interest, and then to principal payments in inverse order, as determined by lessor, as permitted by law.

**EXHIBIT C
ACCEPTANCE CERTIFICATE**

The undersigned, being a duly appointed Lessee Representative, under the Lease Purchase Agreement dated as of 3/31/2025 (the ("Lease"), by and between Bell Bank Equipment Finance ("Lessor"), and the City of Sheboygan, ("Lessee"), hereby certifies on behalf of Lessee with respect to the Equipment to be acquired under Lease Exhibit A, that the portion of the Equipment described on the attachment to this Acceptance Certificate has been delivered and installed pursuant to and in accordance with said Lease and has been accepted by Lessee.

Dated: _____.

As Lessee: _____ City of Sheboygan _____

_____ **Print or type full name**

By _____ **Signature**

Its _____ **Title**

**EXHIBIT C-1
REQUEST FOR DISBURSEMENT OF FUNDS**

TO: Bell Bank Equipment Finance ("Lessor")
15490 101st Ave N, Suite 200
Maple Grove, MN 55369

FROM: City of Sheboygan ("Lessee")
828 Center Ave
Sheboygan, WI 53081-4442

The Lessee hereby requests disbursement of funds pursuant to the Lease Purchase Agreement dated 3/31/2025 (the "Lease"), between the Lessor and Lessee, as follows:

1. Amount to be disbursed: \$448,592.00.
2. The payee is MacQueen Equipment.
3. Purchase of the payment: Payment for property as described in the Lease and Exhibit C.
4. Bills, receipts, invoices or other documents evidencing the amount requested are attached hereto.
5. The Lessee hereby certifies that the amounts requested to be disbursed were properly incurred in connection with the acquisition of the Equipment as described in the Lease and were not subject of any previous request for disbursement.
6. This request is the final disbursement request.

Dated: _____

LESSEE: _____ City of Sheboygan _____

Print or type full name

By _____

Signature

Its _____

Title

**EXHIBIT D
OPINION OF COUNSEL**

To: Bell Bank Equipment Finance (“Lessor”)
15490 101st Ave N, Suite 200
Maple Grove, MN 55369

Re: Lease Purchase Agreement by and between Bell Bank Equipment Finance, a division of Bell Bank (“Lessor”) and the City of Sheboygan (“Lessee”) dated as of 3/31/2025.

Ladies and Gentlemen:

I have acted as counsel to Lessee with respect to the Lease Purchase Agreement described above (the “Lease”) and various related matters, and in this capacity I have reviewed a duplicate original of the Lease and various other documents. Based upon the examination of these and such other documents as we deem relevant, it is our opinion that:

1. The Lessee is authorized and has power under State law to purchase, rent or otherwise provide for personal property and has power under state law to enter into the Lease and to carry out the obligations thereunder and the transactions contemplated thereby.
2. The Lease has been duly authorized, approved, executed and delivered by and on behalf of Lessee, and the Lease is a valid and binding contract of Lessee enforceable in accordance with its terms, except to the extent such enforceability is limited by State and Federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.
3. The authorization, approval and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting laws, public bidding laws and all other applicable laws, rules and regulations of the State.
4. The execution of the Lease and the appropriation of moneys to pay the Lease-Purchase Payments coming due thereunder, does not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.
5. There is no litigation, action, suit or proceeding threatened or pending before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of its officers; the proper authorization, approval and execution of the Lease and the other documents contemplated thereby; the appropriation of moneys to make Lease-Purchase Payments under the Lease for Lessee's current Fiscal Year; or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.
6. The Lease is not a general obligation debt of Lessee.

Dated: _____

Very truly yours,



Lessee's Authorization Resolution

Whereas, City of Sheboygan, (the "Governmental Entity"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Wisconsin (the "State"), is authorized by the laws of the State to purchase, acquire and lease personal property for the benefit of the Governmental Entity and its inhabitants and to enter into contracts with respect thereto; and

Whereas, in order to acquire such equipment, the Governmental Entity proposes to enter into a lease-purchase transaction pursuant to that certain governmental Equipment Lease-Purchase Agreement (the "Lease") with Bell Bank Equipment Finance, a division of Bell Bank, the form of which has been presented to the governing body of the Governmental Entity at this meeting;

Section 1. Approval of Documents. The form, terms and provisions of the Lease and all other schedules and exhibits attached thereto are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by counsel of the Governmental Entity or other members of the governing body of the Governmental Entity executing the same, the execution of such documents being conclusive evidence of such approval; and the persons holding the titles listed below or any other officer of the Governmental Entity who shall have the power to execute contracts on its behalf are hereby authorized and directed to execute, acknowledge, countersign and deliver the Lease and all exhibits attached thereto, and the Secretary/Clerk of the Governmental Entity is hereby authorized to attest to the foregoing and affix the seal of the Governmental Entity to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Governmental Entity shall take all action necessary as reasonably required by the parties to the Lease to carry out, give effect to and consummate the transactions contemplated thereby and to take all action necessary to conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Lease.

Section 3. No General Liability. Nothing contained in this Resolution, the Lease, or any other instrument shall be construed with respect to the Governmental Entity as incurring a pecuniary liability or charge upon the general credit of the Governmental Entity or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Lease, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Governmental Entity or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Lease are special limited obligations of the Governmental Entity as provided in the Lease.

Section 4. Authorized Signatories. Following are the true names, correct titles and specimen signatures of the incumbent officers referred to in the foregoing resolution.

Name (Print or Type)	Title (Print or Type)	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

Section 5. Effective Date. This Resolution shall be effective immediately upon its approval and adoption. This Resolution was adapted and approved on _____.

Signature: _____
Secretary/Clerk

Name Printed: _____

Date: _____



INSURANCE REQUIREMENTS FORM

DATE: 3/12/2025

LEASE PURCHASE AGREEMENT NO. 102346-003

Contact your agent to have a certificate of Insurance sent to the attention of the Bell Bank Representative below

TO: _____ (Name of Insurance Agency/Broker)
 _____ (Address)
 _____ (City, State, Zip)
 _____ (Telephone Number)

ATTN: _____ (Agent's Name)
 EMAIL ADDRESS: _____ (Insurance Agent/Broker Email Address)

Please issue a Certificate of Insurance in the name of City of Sheboygan covering the Lease Purchase Agreement identified above (collectively, the "Lease") and mail within five (5) business days to:

<p>ATTN: BELL BANK EQUIPMENT FINANCE A division of Bell Bank 15490 101st Ave N, Suite #200 Maple Grove, MN 55369</p>	<p>Bell Bank Equipment Finance Representative: Marka Kettle Telephone Number: (952) 905-5151 Fax Number: (833) 200-6043 Email Address: mkettle@bell.bank</p>
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The insurance requirements below are in connection with the Lease and cover the equipment identified on the Lease Purchase Agreement identified above, which are incorporated herein by reference (collectively, the "Equipment").

Equipment description:
 (1) 2025 Vactor 2100i Vac Excavator Truck - Serial Number: 25-03V-23342, with 2025 International HV607 Chassis
 Serial Number: 3HAECTAT9SL515414

I. **PHYSICAL DAMAGE REQUIREMENTS:**

- A. All Risk coverage for not less than \$448,592.00. The amount of the deductible must be stated here and on the certificate of Insurance. Deductible amount: \$ _____.
- B. **Endorsement:** It is understood and agreed that Bell Bank and/or its assigns and/or its successors are included as Loss Payee.
- C. **Endorsement:** It is understood and agreed that this insurance is primary insurance insofar as it relates to any and all collateral financed from Bell Bank pursuant to the Lease.
- D. **Endorsement:** It is understood and agreed that this policy shall not be cancelled, nor any reduction or restriction of coverage be effected until at least thirty (30) days prior written notice has been given to at the above address by Certified Mail, Return Receipt Requested.
- E. **Endorsement:** It is understood and agreed that any loss shall be adjusted with the named insured above and proceeds made payable to Bell Bank and/or its assigns and/or its successors, as their interests may appear.

Per the Lease Purchase Agreement you are required to provide and maintain insurance coverage as summarized above. If you have questions, please reference the Lease or call Bell Bank Equipment Finance. **Satisfactory evidence of insurance must be provided before the lease purchase agreement can be funded. By signing below Borrower hereby authorizes its agent to adjust its Insurance coverage to comply with the above requirements and to forward a certificate of Insurance evidencing such coverage to Bell Bank Equipment Finance and/or ISAOA.**

Lessee: City of Sheboygan

 By: _____
 Signature
 Title: _____



Title Requirements Acknowledgment

Description of Equipment:

(1) 2025 Vactor 2100i Vac Excavator Truck - Serial Number: 25-03V-23342, with 2025 International HV607 Chassis Serial Number: 3HAEKTAT9SL515414

The Equipment must be titled as follows:

Lienholder Name & Address

Bell Bank
15490 101st Ave N, Suite #200
Maple Grove, MN 55369

Miscellaneous Information

WI DMV Secured Party Code: 130475
Fed Tax ID#: 45-028331

Party Responsible for Titling:

- I will personally submit title work to the state for processing
- Titling Agency will submit title work to the state for processing
- Dealer/Vendor will submit title work to the state for processing
- Trucking Co. will submit title work to the state for processing

Contact Information for Titling Party:

Name _____

Street Address _____

City _____ State _____ Zip Code _____

Phone Number _____ Fax Number _____

Email Address _____

By signing below, I agree (1) to title the Equipment as set forth above; (2) that even if not personally submitting the title work to the state, I am responsible for ensuring that the Titling Party designated above will apply for title(s) immediately upon disbursement of funds; (3) I have confirmed that the current party holding the original title(s) or Certificate(s) of Origin for the titled equipment referenced above will deliver them to my designated Titling Party immediately upon funding; and (4) Titling Party agrees to send a copy of the processed title work application receipt as endorsed by the applicable State to the address set forth below within thirty days of funds being disbursed:

Bell Bank Equipment Finance
15490 101st Ave N, Suite #200
Maple Grove, MN 55369

Customer: City of Sheboygan

Dealer: MacQueen Equipment

Print or Type Full Name

Print or Type Full Name

By: _____
Signature

By: _____
Signature

Title: _____

Title: _____

Date: _____

Date: _____



PAY PROCEEDS AND REQUIRED INFORMATION FORM

In reference to Contract Number 102346-003 dated as of _____, Bell Bank Equipment Finance a division of Bell Bank is irrevocably instructed to disburse payment as follows:

Payee	Item	Amount
MacQueen Equipment	Invoice #E01180	\$448,197.00
	Documentation Fee	\$395.00
	TOTAL FINANCED	\$448,592.00

Please complete the following information:

Accounts Payable Information

Contact: _____ Email: _____ Phone: _____

Billing Address

828 Center Ave
Sheboygan, Wisconsin 53081-4442

The Billing Address stated above is correct.
OR
Change the Billing Address to:

Street: _____ City: _____ State: _____ Zip: _____

Location of Equipment Address

2026 New Jersey Ave
Sheboygan, Wisconsin 53081-4714

The Location of Equipment Address stated above is correct.
OR
Change the Location of Equipment Address to:

Street: _____ City: _____ State: _____ Zip: _____

Date of Delivery and Acceptance of Equipment

_____, **OR**, if equipment has not yet been delivered, please check box .

Customer Identification Program Notice

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions obtain, verify, and record information that identified each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Please include a copy of your driver's license with the signed documents.

Dated: _____

Borrower: City of Sheboygan

By: _____

Title: _____

AGENDA ITEM MEMORANDUM

DATE: 3/18/2025

TO: Public Works Committee

FROM: Kevin Jump, PE – City Engineer

SUBJECT: Resolution 189-24-25 - Authorizing the appropriate City officials to execute the Agreement between the City of Sheboygan and Hardesty & Hanover LLC regarding inspection of the South 8th Street bridge.

ISSUE

Should the Public Works Committee recommend signing an agreement between Hardest & Hanover LLC to perform bridge inspection on the South 8th Street bridge?

STAFF RECOMMENDATION

Staff recommends approval of the contract.

BACKGROUND/DISCUSSION

Every two years the City is required to perform detailed bridge inspections of the City's bridges. In 2025, we are scheduled to inspect the South 8th Street bridge. Hardesty and Hanover LLC (H&H) is a qualified and respected bridge inspection company.

H&H has asked for a change from the City Standard Terms and Conditions. Staff accepts their requested changes, but the changes require Common Council approval. H&H has asked that the words "act, omission, fault, or negligence" be replaced with "negligent act, omission, or fault" in the indemnification provision.

FUNDING IMPACT

Funds will be drawn from Streets Maintenance - Bridges Maintenance account.

IF APPROVED, NEXT STEPS:

Staff and H&H will sign the agreement, and inspection will begin in April.



DEPARTMENT OF
PUBLIC WORKS

2026 NEW JERSEY AVE.
SHEBOYGAN, WI
53081

920/459-3440
sheboyganwi.gov

**CITY OF SHEBOYGAN
RESOLUTION 189-24-25**

BY ALDERPERSONS DEKKER AND RAMEY.

MARCH 17, 2025.

A RESOLUTION authorizing the appropriate City officials to execute the Agreement between the City of Sheboygan and Hardesty & Hanover LLC regarding inspection of the South 8th Street bridge.

RESOLVED: That City Engineer Kevin Jump is hereby authorized to execute the Agreement between the City of Sheboygan and Hardesty & Hanover LLC in the amount of \$39,500.00, a copy of which is attached hereto.

BE IT FURTHER RESOLVED: That the Finance Director is hereby authorized and directed to draw on Account No. 101331-553110 (General Fund - Streets Maintenance - Bridges Maintenance) in payment of same.

PASSED AND ADOPTED BY THE CITY OF SHEBOYGAN COMMON COUNCIL

_____.

Presiding Officer

Attest

Ryan Sorenson, Mayor, City of
Sheboygan

Meredith DeBruin, City Clerk, City of
Sheboygan

**AGREEMENT BETWEEN CLIENT AND HARDESTY & HANOVER, LLC
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made this ____ day of _____, 2025, by and between The City of Sheboygan Department of Public Works (“the Client”) and Hardesty & Hanover, LLC, a Delaware Limited Liability Corporation (“the Consultant”).

WHEREAS, the Client requires the services of a professional engineering firm for the purposes of the inspection of the South 8th Street Movable Bridge (B-59-154) over the Sheboygan River (“the Project”): and

WHEREAS, the Client desires to engage a qualified and experienced Consultant to conduct said services as stated above, hereinafter called (the “Services): and

WHEREAS, the Consultant has represented to the Client that it is experienced and qualified to provide those services, and the Client has relied upon such representation: and

WHEREAS, the Client and the Consultant desire to set forth herein the general terms and conditions whereby the Consultant will to provide services to the Client, the particulars of this engagement being set forth as executed herein.

NOW, THEREFORE, the Client and the Consultant, in consideration of their mutual covenants herein, agree in respect of the performance of professional Consulting services by the Consultant and the payment of those services by the Client as set forth below.

In the event of any inconsistencies or conflicts between the documents that form part of this Agreement, the order of precedence shall be as follows:

1. Exhibit C – City of Sheboygan Standard Contract Terms General Services Agreement (Non-Construction)
2. Exhibit D – City of Sheboygan Insurance Requirements General Service Agreement (Non-Construction)
3. Articles 1-21 of the Agreement
4. Exhibit A – Scope of Services
5. Exhibit B – Fee

(1) SCOPE OF SERVICES. The undertaking of the Consultant to perform professional Services under this Agreement extends only to the services set forth in Exhibit A (“the Services”). However, if requested by

the Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services") and shall be compensated as set forth below. In addition, the Consultant is authorized to perform, and will be similarly compensated therefor, Additional Services for those services the Consultant deems advisable due to emergencies, errors or other unanticipated actions by the Client's contractor(s), revised regulations governing the Consultant's services, or requirements of authorities if, in the Consultant's opinion, such Additional Services are clearly in the Client's interest, and advance authorization cannot be obtained. In the event of the performance of such Additional Services, the Consultant will notify the Client as soon as practical of the necessity, extent, and inception of the Additional Services.

(2) CLIENT'S RESPONSIBILITIES. In addition to other responsibilities described in this Agreement or imposed by law, the Client shall have the following responsibilities:

(a) Designate in writing a person to act as the Client's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Client's policies and decisions with respect to the Consultant's services for the Project.

(b) Provide all criteria and full information as to the Client's requirements for the Project, including objectives and constraints, space, capacity and performance requirements and expectations, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which the Client will require to be used or included in the drawings and specifications.

(c) Assist the Consultant by placing at its disposal all available information pertinent to the Project including previous reports and any other data relative to studies, design, or construction or operation of the Project.

(d) Furnish to the Consultant, as required for performance of the Consultant's Services (except to the extent provided otherwise in Exhibit A) (i) data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspection of samples, materials and equipment; (ii) appropriate professional interpretations of all of the foregoing; (iii) environmental assessment and impact statements; (iv) property, boundary, easement, right-of-way, topographic and utility surveys; (v) property descriptions; (vi) zoning, deed and other land use restrictions; and (vii) other special data or consultations; all of which Consultant may use and rely upon.

(e) Provide Consultant surveys to establish reference points for construction (except to the extent provided otherwise in Exhibit A).

(f) Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for the Consultant to perform services under this Agreement.

(g) Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Consultant, obtain advice of an attorney, insurance counselor and other consultants as the Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant. The Consultant shall have no liability to the Client for delays

resulting from Client's failure to review documents promptly.

(h) Furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

(i) Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such as legal services as the Client may require or the Consultant may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by any contractor(s) employed by the Client (hereinafter the "Contractor"), such auditing services as the Client may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract, and such inspection services as the Client may require to ascertain that the Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

(j) If the Client designates a person to represent the Client at the site who is not the Consultant or the Consultant's agent or employee, set forth the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of the Consultant, stating these matters in an exhibit that is to be identified, attached to, and made a part of this Agreement before such services begin.

(k) If more than one prime contract is to be awarded for construction, materials, equipment and services for the Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

(l) Furnish to the Consultant data or estimated figures as to the Client's anticipated costs for services to be provided by others for the Client as required for the Consultant to support opinions of probable total Project costs.

(m) Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.

(n) Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, or any defect or nonconformance in any aspect of the Project.

(o) Bear all costs incident to compliance with the requirements of this paragraph.

(3) PERIOD OF SERVICES. The provisions of this section and the rates of compensation for the Consultant provided for elsewhere in this Agreement have been agreed to in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Consultant's Services. The Consultant shall begin work timely after receipt of a fully executed copy of this Agreement. The times for performance shall be extended as necessary for periods of suspension or delay resulting from circumstances the Consultant does not control. Such suspension or delay shall not terminate the Project or this Agreement unless the Consultant elects to terminate in accordance with other provisions of this Agreement. If such suspension or delay extends for more than six months (cumulatively), the rates of compensation in this Agreement shall be renegotiated.

(4) COMPENSATION FOR SERVICES.

The Consultant's compensation shall be computed on the basis set forth in Exhibit B ("the Fee").

(5) COMPENSATION FOR ADDITIONAL SERVICES. If upon the request of the Client, the Consultant performs Additional Services hereunder, the Client shall pay the Consultant an amount agreed to by the parties.

(6) METHOD OF PAYMENT.

(a) Invoices will be submitted by the Consultant to the Client periodically for services performed and expenses incurred. Payment of each invoice will be due within twenty-five (25) days of receipt. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant for services and expenses within thirty (30) days after the Consultant's transmittal of its invoice therefor, the Consultant may, after giving seven (7) days' written notice to the Client, suspend services under this Agreement until it has been paid in full all amounts due.

(b) If the Client objects to any charge on an invoice, it shall so advise the Consultant in writing giving its reasons within fourteen (14) days of receipt of the invoice or all such objections shall be waived, and the amount stated in the invoice shall conclusively be deemed due and owing.

(c) The Client acknowledges and agrees that the payment for services rendered and expenses incurred by the Consultant pursuant to this Agreement is not subject to any contingency.

(7) USE OF DOCUMENTS. All documents, including but not limited to drawings, specifications and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described herein. They are not intended or represented to be suitable for partial use or reuse by the Client or others on extensions of this Project or on any other project. Any modifications made by the Client to any of the Consultant's documents, including the partial use of the Consultant's documents, or any reuse without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability or legal exposure to the Consultant. The Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting therefrom. Any such authorization or adaptation will entitle the Consultant to further compensation at rates to be agreed upon by the Client and the Consultant.

(8) OPINIONS OF COST. Since the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any and all opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does

not guarantee that proposals, bids or actual costs will not vary from opinions of cost prepared by it. If at any time the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator to make such determination. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services by the Client.

(9) **TERMINATION.** The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Consultant will be paid for all services rendered to the effective date of termination, all expenses subject to reimbursement, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation hereunder is determined on an hourly basis, the amount payable to the Consultant for services so rendered shall be established on the basis of the time and authorized expenses actually incurred on the Project to the effective date of termination. If the Consultant's compensation under this Agreement is a lump sum, upon such termination the amount payable to the Consultant for services rendered will be a proportional amount of the total fee based on a ratio of the services done, as reasonably determined by the Consultant, to the total services which were to have been performed, less prior partial payments, if any.

(10) **INSURANCE.** The Consultant shall procure and maintain, at its own expense, the insurance coverages as set forth in Exhibit D, but not less than the following:

Workers' Compensation	Statutory
Including Longshore and Harbor Workers Act and/or Jones Act Coverage (as applicable if Services are in or around water bodies)	
Employer's Liability	
Bodily Injury by Accident	\$1M each accident
Bodily Injury by Disease	\$1M policy limit
Bodily Injury by Disease	\$1M each employee
Commercial General Liability	
Including Contractual Liability, Personal Injury, Modified Watercraft Exclusion, Bodily Injury and Property Damage Combined,	\$1M per Occurrence/\$2M Aggregate
Automobile Liability	
Bodily Injury and Property Damage Combined	\$1M CSL
Professional Liability Insurance	\$2M Each and Every Claim
Including errors and Omissions	\$2M Aggregate
Umbrella/Excess Insurance	\$5M

If Consultants present coverage is insufficient, Consultant must obtain additional coverage at no cost to Client. Consultant's insurance coverage must extend to claims made four years beyond the completion of the services and

the project, if available, and if unavailable, the Consultant agrees to obtain and maintain in effect policies which will extend such coverage during each of the four years following completion of the services and the project. Upon executing this Agreement, and during the four-year period following the completion of the services and the project, Consultant shall provide Client with a certificate(s) indicating that the above insurance coverage is in effect. Such certificate(s) shall name Client as an additional insured with waiver of subrogation under Consultant's comprehensive general liability and automobile liability, and umbrella/excess liability policies, and provide Client with a waiver of subrogation under the Professional Liability and workers' compensation policy and shall provide 30 days written notice to the certificate holder prior to cancellation or modification of coverage (ten (10) days written notice is required if cancellation is for nonpayment of premium).

Consultant shall provide to Client proof of Marine Coverage including P&I insurance from owner of boat/vessel utilized on any project hereunder.

(11) STANDARD OF CARE. In performing its professional services hereunder, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services hereunder.

(12) CERTIFICATIONS. The Consultant shall not be required to execute any certifications or other documents that in any way might, in the judgment of the Consultant, increase the Consultant's risk or affect the availability or cost of its insurance.

(13) EXPENSES OF LITIGATION. In the event litigation or arbitration in any way related to the services performed hereunder is initiated against the Consultant by the Client, its Contractor, or subcontractors, or if litigation is initiated by the Consultant against the Client to collect any unpaid invoice, or portion thereof, and such proceeding concludes with the entry of a final judgment or award favorable to the Consultant, the Client shall reimburse the Consultant for its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the litigation. Such expenses shall include, but shall not be limited to, the cost, determined at the Consultant's normal hourly billing rates, of the time devoted to such litigation by the Consultant's employees.

(14) DISPUTE RESOLUTION. If a dispute arises out of or relates to this Agreement, which cannot be resolved through good-faith negotiations, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures before resorting to litigation. Mediation and litigation shall be conducted in Sheboygan County, Wisconsin. Any action must be commenced within the allowable Wisconsin statute of limitations.

(15) **HAZARDOUS SUBSTANCES.**

(a) Unless stated in Exhibit A ("the Services"), it is agreed that the Client does not request the Consultant to perform any services or to make any determinations involving hazardous substances or conditions, as defined by federal or state law. If such services are agreed to, Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant will stop affected portions of its services. The parties shall decide if Consultant is to proceed with testing and evaluation and may enter into further agreements as to the additional scope, fee, and terms for such services.

(c) Except to the extent of negligence, if any, on the part of the Consultant in performing services expressly undertaken in connection with hazardous substances and conditions, the Client agrees to hold harmless, indemnify, and defend the Consultant from and against any and all claims, losses, damages, liability, and costs in any way arising out or connected with the presence, discharge, release, or escape of hazardous substances or conditions of any kind, or environmental liability of any nature, in any manner related to services of the Consultant.

(16) **CONSTRUCTION PHASE SERVICES.**

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(17) **ASSIGNMENT AND SUBCONTRACTING.** Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and

responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party. Neither the Client nor the Consultant shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Consultant from employing such independent professional associates, subconsultants, and suppliers as the Consultant may deem appropriate to assist in the performance of the Services.

(18) CONFIDENTIALITY. The Client hereby consents to the use and dissemination by the Consultant of photographs of the Project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. Notwithstanding the foregoing, with respect to any facts, data or information specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of such identified material.

(19) MISCELLANEOUS PROVISIONS. This Agreement is to be governed by the law of the State in which (“the Project”) is located which shall also be the venue for any litigation. This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors and assigns. This Agreement contains the entire and fully integrated agreement between the parties, and supersede all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. This Agreement can be supplemented or amended only by a written document executed by both the Consultant and the Client. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. Also, the non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(20) DURATION OF THIS AGREEMENT. This Agreement shall be effective from the date of execution by both parties until two years after such date. This Agreement may be extended or renewed, with or without changes, by written amendment.

(21) IDEMNIFICATION & HOLD HARMLESS. The Consultant, shall indemnify, hold and save harmless the Client, their officers, agents and employees, from liability of any nature or kind, including costs and expenses (including reasonable attorney’s fees), for or on account of any or all claims or suits for damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property to the extent arising from negligent acts, errors, or omissions or misconduct of the Consultant, its employees and agents, and the Consultant’s subcontractors, and suppliers, their employees and agents.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

City of Sheboygan Department of Public Works

Hardesty & Hanover, LLC

By: _____

By: _____

Typed Name: Casey Bradley

Typed Name: Sean A. Bluni

Title: City Administrator

Title: Chief Executive Officer

1. The Consultant will provide a thorough element level inspection of the structural, mechanical, and electrical components of the bridge and report findings and all applicable procedures in WisDOT's Highway Structure Information System (HSIS). The inspection of the bridge will also include the approach spans and approach pavement. The reporting in HSIS will identify current conditions of the structure, any significant findings and provide repair recommendations along with applicable photographs documenting the condition of the bridge. Field inspection work for this project must be completed by 4/30/25.

2. The Consultant will perform routine, NSTM and movable inspections in accordance with the National Bridge Inspection Standards (NBIS/SNBI), AASHTO's Manual for Bridge Evaluation (MBE), FHWA Bridge Inspector's Reference Manual (BIRM), AASHTO's Movable Bridge Inspection, Evaluation, and Maintenance Manual (2017), and Wisconsin's Structure Inspection Manual (2024) and Structure Inspection Field Manual (2024). Previous inspection reports, forms and inventory data are accessible in HSIS for referencing past conditions and planning upcoming inspection activities.

- A. The Consultant will perform a Routine Inspection on all deck, superstructure and substructure elements above water on the flanking and bascule spans of B-59-0154.
- B. The Consultant will perform an NSTM inspection on the bascule span of B-59-0154.
- C. The Consultant will perform a detailed Movable Inspection on the bascule span of B-59-0154 using WisDOT forms (DT2014 through DT2017) to document components related to the moveable operation of the bridge. These forms will be updated and attached into HSIS as part of the Movable Inspection.

3. The Consultant will create an Inspection Work Plan, Safety Plan, and QA/QC Plan for inspection of the structure to be shared with the City of Sheboygan prior to beginning work. These updated plans will be included into HSIS as part of the final inspection reporting.

4. The Consultant will coordinate with the City of Sheboygan to receive proper US Coast Guard approval for any inspection activities which will cause the bridge operation to deviate from its normal schedule.

5. The Consultant will coordinate with the City of Sheboygan to ensure provisions are made to allow proper inspection of all mechanical and hydraulic components.

6. If elements are encountered during the inspection that trigger a structural review, the Consultant will follow WisDOT's Process Guide for Structural Reviews and Other inspection Actions to determine the severity of the defect.

7. The Consultant will be responsible for communicating traffic control needs a minimum of two weeks in advance of inspection activities with the City of Sheboygan.

8. The Consultant will be responsible for obtaining a vehicle for hands-on access under the bridge

9. The Consultant will begin reporting in HSIS within 1 month of field inspection work beginning. Final inspection reports with an e-signature will be completed in HSIS within 90 days of field inspection work beginning.

The inspections and related work shall conform to and be in accordance with the Wisconsin Statutes 84.17 and TRANS 212, Standards for the Inspection of the Bridges in the State of Wisconsin.

All work must be performed under the direct supervision of a WisDOT-qualified bridge inspection team leader on site for the duration of the inspection, with credentials for Team Leader, NSTM inspection, Movable Bridge Inspection, and all required refresher training listed in the WisDOT HSIS system.

This Team Leader must have training from the National Highway Institute's Safety Inspection of Highway Structures. The Lead Movable Structural Inspector, Lead Mechanical Inspector, Lead Hydraulic Inspector and Lead Electrical Inspector must all meet the requirements of the current WisDOT Structure Inspection Manual and the AASHTO Movable Bridge Inspection, Evaluation and Maintenance Manual.

RESPONSIBILITIES OF OWNER

The City of Sheboygan will provide traffic control during the bridge inspection.

The City of Sheboygan will provide a bridge operator to operate the bridge during the movable inspection. Consultant to provide City of a Sheboygan a minimum two-week notice of when the bridge will need to be operated.

Owner shall give authorization to WisDOT for Consultant to access the HSIS system to process the new inspection reports.

Exhibit B - Fee

H&H proposes a total lump sum cost of \$39,500.00 for the inspection of the South 8th Street Bascule Bridge (B-59-0154) in accordance with NBI and WisDOT procedures and requirements. This cost includes H&H's project management, inspection preparation, routine inspection, NSTM inspection, structural movable inspection, mechanical movable inspection, hydraulic movable inspection, electrical movable inspection, and inspection report entry into WisDOT's HSI System. This cost includes all labor and direct expenses, assuming WisDOT's reach-all vehicle is available for our use during the one-day routine/NSTM portion of the inspection. This cost also includes one one-hour follow-up conference call with the City of Sheboygan to discuss the most significant findings of the inspection.

CITY OF SHEBOYGAN STANDARD CONTRACT TERMS
GENERAL SERVICE AGREEMENT
(NON-CONSTRUCTION)

1. **STANDARD OF CARE.** Contracting Party agrees that the performance of services pursuant to the terms and conditions of this Agreement shall be performed in a manner consistent with the degree and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services. Upon notice to Contracting Party, Contracting Party will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care. Contracting Party agrees to follow all applicable federal, state, and local laws, regulations, and ordinances, and all provisions of this Agreement.
2. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.
3. **SCOPE OF WORK.** Contracting Party agrees to provide all labor, materials, equipment, transportation, appliances, and services necessary to complete all work identified or reasonably inferred from the Scope of Work document attached and/or incorporated into the Agreement. Contracting Party shall be responsible for obtaining all applicable permits and paying applicable permit fees prior to commencement. The scope of work set forth in this Agreement is based on facts known at the time of Agreement execution. As the project progresses, if facts are discovered that suggest a change of scope is warranted, the parties shall provide a written amendment to the Agreement before such change is recognized.
4. **MEANS AND METHODS.** Contracting Party shall be solely responsible for all means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under this Agreement. Contracting Party must employ, as much as possible, such methods and means in carrying out the work as will minimize disruption to City operations. Unless specifically included as a service to be provided under this Agreement, the City specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.
5. **APPROPRIATION OF FUNDS.** Notwithstanding any other provision of the Agreement and pursuant to Wis. Stat. § 65.06(1), if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty. The City agrees that it will make its best effort to obtain sufficient funds for the Agreement to meet its obligations hereunder in full.
6. **SCHEDULE OF PAYMENTS.** The City shall remit payment to Contractor within not less than thirty (30) days of itemized invoice receipt. Such itemization shall include labor costs, the Contracting Party's direct expenses, including subcontractor costs, the hours worked by Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The City shall not make payment for any unauthorized work or expenses. The City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of defective work; evidence indicating the probable filing of claims by other parties against Contract that may adversely affect the City; failure of Contractor to make payments due to subcontractors, material supplies, or employees; damage to the City or a third party from acts arising out of this Contract. The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

Partial payment made under this Agreement is not evidence of the proper performance by Contractor either in whole or in part, and no payment made by the City shall be construed to be an acceptance of defective or improper work.
7. **TAXES, SOCIAL SECURITY, INSURANCE, AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the Contracting Party's sole responsibility. The City is a tax-exempt entity and as such, shall not be required to pay sales tax by execution of a contract.
8. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement, insurance coverage, as applicable, consistent with that set forth in Exhibit A.
9. **INDEMNIFICATION & HOLD HARMLESS.** To the extent authorized by law, Contractor hereby agrees to indemnify, defend, and hold harmless the City of Sheboygan, its elected and appointed officials, officers, employees, agents, representatives, and

authorized volunteers from and against any and all suits, actions, legal or administrative proceedings, claims, demands, da
liabilities, interest, defense costs, attorneys' fees, costs, and expenses of whatsoever kind or nature in any manner directly or
indirectly caused, occasioned, or contributed to in whole or in part or claimed or alleged to be caused, occasioned, or contributed
to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Contractor or its agents or
anyone acting under its direction or control or on its behalf arising out of, or in connection with, or relating to this Agreement.
Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful
misconduct of the City of Sheboygan, its elected and appointed officials, officers, employees, agents, representatives, or authorized
volunteers. Nothing in this Agreement shall be construed as the City of Sheboygan waiving its statutory limitation and/or immunities
as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or
expiration of this Agreement.

- 10. TERMINATION FOR CAUSE. If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, the City of Sheboygan shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of the City, become the property of the City. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to the City for damages sustained by the City by virtue of this Agreement by the Contracting Party, and the City may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to the City from the Contracting Party is determined.
- 11. TERMINATION FOR CONVENIENCE. The City may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by the City pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by the City.
- 12. USE OF CITY PROPERTY. Any property belonging to the City being provided for use by the Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations, or additions shall be made to the property unless otherwise authorized by this Agreement.
- 13. INDEPENDENT CONTRACTOR. The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint ventures, or partners.
- 14. JURY TRIAL WAIVER. The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
- 15. SEVERABILITY. The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.
- 16. ASSIGNMENT, SUBLET, AND TRANSFER. Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of the City. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.
- 17. NO WAIVER. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

18. **GOOD STANDING.** Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.
19. **CONFLICTS OF INTEREST.** Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to the City.
20. **IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE.** Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The City Administrator, or in their absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days.
21. **ACCESS TO RECORDS & OPEN RECORDS LAWS.** Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. The City, or any of its duly authorized representatives, shall have access, at no cost to the City, to such books, records, documents, papers or any records, including electronic records, of Contracting Party which are pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. Contracting Party understands that the City is bound by the Wisconsin Public Records Law and, as such, this Agreement is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of Final Payment under the Agreement.
22. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.
23. **SURVIVAL.** All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

Exhibit D - Insurance Requirements

CITY OF SHEBOYGAN INSURANCE REQUIREMENTS GENERAL SERVICE AGREEMENT (NON-CONSTRUCTION)

The Service Provider shall not commence work until proof of insurance required has been provided in writing to the applicable department before the contract or purchase order is considered for approval by the City of Sheboygan.

It is hereby agreed and understood that the insurance required by the City of Sheboygan is primary and non-contributing coverage and that any insurance or self-insurance maintained by the City of Sheboygan, its officers, council members, agents, employees or authorized volunteers will not contribute to coverage of any loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, in the contract or listed below whichever is longer.

1. COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:

Each Occurrence limit		
\$1,000,000		
Personal and Advertising Injury limit		\$1,000,000
General aggregate limit (other than Products-Completed Operations) per project		
\$2,000,000		
Products-Completed Operations aggregate		\$2,000,000
Fire Damage limit — any one fire		\$50,000
Medical Expense limit — any one person		\$5,000

2. BUSINESS AUTOMOBILE COVERAGE. Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1- “Any Auto” basis.

3. WORKERS COMPENSATION AND EMPLOYERS LIABILITY – as required by Wisconsin State Statute or any Workers Compensation Statutes of a different state. Also, if applicable to the work coverage must include Maritime (Jones Act) or Longshore & Harbor Worker’s Compensation Act coverage.

Must carry coverage for Statutory Workers Compensation and an Employers Liability with limits of:

- \$100,000 Each Accident
- \$500,000 Disease Policy Limit
- \$100,000 Disease – Each Employee

Employer’s Liability limits must be sufficient to meet umbrella liability insurance requirements

4. UMBRELLA LIABILITY providing coverage at least as broad as all the underlying liability policies with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$25,000. The umbrella must be primary and non-contributory to any insurance or self-insurance carried by City of Sheboygan.

- 5. **AIRCRAFT LIABILITY**, if the project work includes the use of, or operation of any aircraft or helicopter, then Aircraft Liability insurance must be in force with a limit of \$5,000,000 per occurrence for Bodily Injury and Property Damage including Passenger liability and including liability for any slung cargo.
- 6. **UNMANNED AIRCRAFT LIABILITY** – if the project work includes the use of, or operation of any unmanned aircraft then unmanned aircraft liability insurance must be carried with a limit of \$1,000,000 per occurrence for bodily injury liability, property damage liability and invasion of privacy liability.
- 7. **WATERCRAFT LIABILITY** – if the project work includes the use or operation of any watercraft, watercraft liability insurance must be carried with a limit of \$1,000,000 per occurrence for bodily injury liability and property damage liability .
- 8. **SERVICE PROVIDER'S EQUIPMENT OR PROPERTY** – The Service Provider is responsible for loss and coverage for these exposures. The City of Sheboygan will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the work being performed by the Service Provider or are to be built, installed, or erected by the Service Provider. This includes but not limited to property owned, leased, rented, borrowed, or otherwise in the care, custody or control of the Service Provider.
- 9. **PRODUCTS - COMPLETED OPERATIONS LIABILITY** - Products – Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work
- 10. **LIQUOR LIABILITY** – If the services rendered involve providing alcohol for consumption by others, liquor liability insurance must be carried with a limit of \$1,000,000 per occurrence.

INSURANCE REQUIREMENTS FOR ALL SUBSERVICE PROVIDERS

All subservice providers shall be required to obtain the above coverages as applicable. This insurance shall be as broad and with the same limits and coverages (including waivers of subrogation) as those required per Contractor requirements.

APPLICABLE REQUIREMENTS AND PROVISIONS FOR LIABILITY INSURANCE OF SERVICE PROVIDER & SUBSERVICE PROVIDERS

- A. **Primary and Non-contributory requirement** – all insurance must be primary and non-contributory to any insurance or self-insurance carried by the City of Sheboygan.
- B. **Acceptability of Insurers** – Insurance is to be placed with insurers who have an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VII, and who are authorized as an admitted insurance company in the state of Wisconsin.
- C. **Additional Insured Requirements** – The following must be named as additional insureds on all Liability Policies for liability arising out of service work- the City of Sheboygan, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be as broad as ISO form CG 20 26 07 04 and also include Products – Completed Operations additional insured coverage as broad as ISO form CG 20 37 07 04 or their equivalents for a minimum of 3 years after acceptance of work. This does not apply to Workers Compensation Policies and Professional Liability Policies.
- D. **Waivers of Subrogation** - All contractor and subcontractor liability, workers compensation, and property policies, as required herein, must be endorsed with a waiver of subrogation in favor of the City of Sheboygan, its officers, council members, agents, employees, and authorized volunteers.
- E. **Deductibles and Self-Insured Retentions** – Any deductible or self-insured retention in the contractor’s policy must be declared to the City of Sheboygan and satisfied by the contractor.
- F. **Evidence of Insurance** – Prior to execution of the agreement, the Service Provider shall file with the City of Sheboygan a certificate of insurance (Acord Form or equivalent for all coverages) signed by the insurer's representative evidencing the coverage required by this agreement. In addition, form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or its equivalent on the Commercial General Liability coverage.

- G. Limits and Coverage- The insurance requirements under this Agreement shall be the greater of the minimum and coverage specified herein, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits. No representation is made that the minimum insurance requirements stated hereinabove are sufficient to cover the obligations of Contractor under this Agreement.

- H. Claims Made Coverage – If any coverage is maintained on a claims-made basis, the following shall apply:
 - I. The retroactive date must be shown and must be before the date of the contract or the beginning of the contract services.
 - II. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three years after completion of the contract services.
 - III. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract, Contractor must purchase an extended reporting period for a minimum of three years after completion of the contracted services.

- I. Cancellation/Non-Renewal – No policy of insurance required to be maintained hereunder shall be cancelled, non-renewed, or voided without 30 days prior written notice to the City of Sheboygan except where cancelation is due to the non-payment of premiums, in which event, 10-days prior written notice shall be provided.