

December 16, 2015

Lindy Crawford, City Administrator
City of Tonka Bay
4901 Manitou Road
Tonka Bay, MN 55331

SUBJECT: Comprehensive Plan Update – City of Tonka Bay
 Proposal for Planning Services

Dear Ms. Crawford:

Our thanks to you and the City Council for selecting Sambatek to provide you with professional services to update the Comprehensive Plan for Tonka Bay. As indicated in our proposal letter of September 3rd, we will lead the City through a six step process to amend and update the current comprehensive plan to meet all of the Metropolitan Council's minimum requirements; the City does not wish to incur costs for elements that are supplemental and not required. As proposed, public outreach and participation will only play a minor role in the requested update.

While our proposal for services included a range of hours for each task to account for unknowns and direction from Council for changes and/or additions, the approved budget only acknowledges and accepts our lowest estimated cost for services. In recognition of the City's desire to lock in a confirmed price and eliminate uncertainty, we have updated our scope as follows to identify the specific services that will be provided for the contract amount.

SCOPE OF SERVICES

1. Background Research & Preparation: 12 hours

- Analysis of current 2030 Comp Plan to identify all areas needing changes: 2 hours
- Assess Met Council Standards to find what needs to be added to reach a minimum: 2 hours
- Compile data provided through Met Council & other available resources: 2 hours
- Reach out to City or other entities to obtain other necessary data: 2 hours
- Meeting with City Staff to go through 2030 Comp Plan & see what policies have already been implemented: 4 hours

DELIVERABLE: Sambatek will provide a memo to City staff outlining the new data collected and general outline of changes to be made. City Staff will relay this information to Council and communicate back any requested changes or feedback received.

2. Data Compilation & Analysis: 36 hours

- Put new/updated data into tables: 4 hours
- Put new/updated data into maps (update 35 existing maps & at least 5 new maps): 12 hours
- Analyze new trends/information from data, tables, and maps: 4 hours
- Make changes to content of Plan where updated analysis is needed: 12 hours
- Write new subsections based on Met Council requirements: 4 hours

DELIVERABLES: Sambatek will provide rough-draft updates of the Introduction, Land Use Plan, Housing Plan, Parks & Trails Plan, Economic Competitiveness Plan, Transportation Plan, and Resiliency and Sustainability Plan to City Staff for review and comment. City Staff will relay this information to Council and communicate back any requested changes or feedback received.

3. Wastewater & Comprehensive Sewer Plan and Water Supply Plan: 27 hours

- Meet with City Engineer & Public Utilities Management to obtain needed data: 4 hours
- Sambatek Water Resources staff draft tables and content: 18 hours
- Create maps based on their data: 3 hours
- Insert the Sewer Plan and Water Supply Plan into overall document: 2 hours

DELIVERABLES: Sambatek will provide rough-draft updates of the Wastewater, Water, and Local Water Management Chapters to City Staff for review and comment. City Staff will relay this information to Council and communicate back any requested changes or feedback received.

4. Goals, Policies, & Implementation: 22 hours

- Prepare Information for City's Visioning Session as worked out with City Staff (City Driven process): 6 hours

- Utilize comments from City visioning session & City Council to update the Plan's Goals & Policies: 6 hours
- Analyze current official controls and highlight where changes are needed: 6 hours
- Develop an implementation chapter addressing every section of the Comp Plan: 4 hours

DELIVERABLES: Sambatek will provide information boards and/or PowerPoint slides as requested by City Staff for use at a City driven public meeting. Sambatek will take feedback from City Staff as a result of the meeting, and will update the new plan's goals and policies throughout the document. Sambatek will then review the existing city code and make recommendations on needed changes to zoning as may be needed to comply with proposed comp plan language. Finally, Sambatek will pen a draft implementation chapter for review by City Staff.

5. Document Composition: 20 hours

- Finalize document layout, graphics, formatting, and compilation: 4 hours
- Final document editing: 2 hours
- Project Management & Administrative tasks throughout the project: 14 hours

DELIVERABLE: Sambatek will provide a final draft of the document for review and approval by City Staff. The approved document will then be forwarded to the Metropolitan Council to initiate the review and approval process (step 6).

6. Comments & Submission: 26 hours

- Submit draft to Metropolitan Council for Informal Review (30 days): 4 hours
- Make changes based on Metropolitan Council comments: 4 hours
- Submit draft to Adjacent Communities for review (6 months): 4 hours
- Make changes based on Adjacent Communities comments: 4 hours
- Local Public Hearing on draft of Comprehensive Plan, preparation & presentation (City Driven process): 8 hours
- Creation of City Council ordinance authorizing the plan to be submitted to the Metropolitan Council for review: 2 hours

DELIVERABLES: Sambatek will provide information boards and/or PowerPoint slides as requested by City Staff for use at the public hearing. Sambatek will provide the final ordinance language needed to authorize the final plan be submitted to the Metropolitan Council for final review.

FINAL DELIVERABLES:

Final Comprehensive Plan Document – in digital (Word and .pdf) and printed form (one copy). The document will be organized as follows:

- ▶ Chapter 1: The Community
- ▶ Chapter 2: Land Use Plan
- ▶ Chapter 3: Housing Plan
- ▶ Chapter 4: Parks & Trails Plan
- ▶ Chapter 5: Economic Competitiveness Plan
- ▶ Chapter 6: Transportation Plan
- ▶ Chapter 7: Wastewater & Comprehensive Sewer Plan
- ▶ Chapter 8: Water Supply Plan
- ▶ Chapter 9: Local Water Management Plan
- ▶ Chapter 10: Resiliency and Sustainability Plan
- ▶ Chapter 11: Plan Implementation

ADDITIONAL SERVICES

If in the course of the update process the City decides that further study or attention is needed on a particular issue or area, our team at Sambatek would be happy to take on any or all of those services during the project; all additional services will be undertaken only at the City Council's direction.

Additional Services will be billed at our standard hourly rates according to the attached fee schedule.

COMPENSATION FOR SERVICES

Compensation for the services noted above will be completed for a lump sum fee of \$15,000 to be billed in quarters through the duration of the project.

We appreciate this opportunity to provide our professional services. Sambatek, Inc. has the experience, resources and expertise required to help the City of Tonka Bay achieve your goals for the City. With our commitment to service, quality and client advocacy, we look forward to continuing a successful relationship.

Sincerely,
Sambatek, Inc.

A handwritten signature in black ink, appearing to read "Ben GA". The signature is fluid and cursive, with the first name "Ben" and the initials "GA" clearly distinguishable.

Ben Gozola, AICP
Client Service Manager, Planning

**GENERAL AGREEMENT BETWEEN SAMBATEK, INC.
AND OWNER FOR PROFESSIONAL SERVICES**

The Agreement (~~%Agreement+~~) is made as of December 16, 2015 by and between City of Tonka Bay, 4901 Manitou Road, Tonka Bay, MN 55331 (hereinafter referred to as ~~%Owner+~~), and Sambatek (Sambatek, Inc.) 12800 Whitewater Drive, Suite 300, Minnetonka, MN 55343, 763-476-6010, Fax 763-476-8532, (~~%Sambatek+~~) to provide professional Planning (~~%Services+~~) by Sambatek in connection with the following Project: Comprehensive Plan Update . City of Tonka Bay, MN

SCOPE AND DESCRIPTION OF SERVICES (“SCOPE OF SERVICES”)

Please see proposal letter dated Decemeber 16, 2015.

PERIOD OF SERVICE

The Services described under Scope of Services shall be completed within * calendar days of Owner's written approval to proceed, or as indicated under Scope of Services concerning completion of various phases of the work. All services provided by Sambatek will be performed as expeditiously as is consistent with professional skill and care and the orderly progression of the project. Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results form any cause beyond its reasonable control and without negligence

COMPENSATION

Sambatek shall be paid for Services provided in accordance with the following method, plus reimbursable expenses (if applicable) described as but not limited to, print and plotting charges, Fed Ex, UPS, messenger delivery charges, and mileage, plus all taxes (including sales taxes), fees, imposts, or stamps required by state, federal, municipal, or other government agencies in the providing of Services, if applicable: Lump sum in the amount of \$15,000, plus reimbursable expenses marked up 10%. This amount excludes services denoted as hourly under the compensation for services section of the attached proposal.

Billings will be submitted monthly and Owner agrees to pay all bills within 30 days of receiving same. In the event that Owner defaults in payment, Owner agrees to pay interest on delinquent bills at the maximum rate allowed by law. Owner also agrees to reimburse Sambatek for all costs involved with collection of delinquent amounts including, but not limited to, attorney's fees.

Owner hereby acknowledges that sufficient funds are currently available and assigned to pay for the cost of Services contemplated by the Agreement. Sambatek has the right, at its sole discretion, to stop work and withhold work product or Services, if payments have not been received within 30 days of invoicing date.

If Owner fails to make payments to Sambatek in accordance with the Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Sambatek's option, cause for suspension of performance of Services under the Agreement. If Sambatek elects to suspend Services, prior to suspension of Services, Sambatek shall give seven days' written notice to Owner. In the event of a suspension of Services, Sambatek shall have no liability to Owner for delay or damage caused Owner because of such suspension of Services. Before resuming Services, Sambatek shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of Sambatek's Services. Sambatek's fees for the remaining Services and the time schedules shall be equitably adjusted.

If the Services are suspended by Owner for more than 30 consecutive days, Sambatek shall be compensated for Services performed prior to notice of such suspension. When the Services are resumed, Sambatek shall be compensated for expenses incurred in the interruption and resumption of Services. Sambatek's fees for the remaining Services and the time schedules shall be equitably adjusted.

In the event of termination not the fault of Sambatek, Sambatek shall be compensated for Services performed prior to termination, together with Reimbursable Expenses then due.

CHANGE ORDERS

In the event the Scope of Services changes, Owner agrees to issue a written Change Order (~~%Change Order+~~). If a written Change Order is not issued and Sambatek is caused to expand the Scope of Services by any of the following: 1) verbal request or order by Owner or his/her agent; or 2) a requirement imposed by a regulatory or review authority, compensation for the expanded Scope of Services shall be on an hourly basis according to the attached Rate Schedule (~~%Rate Schedule+~~).

OWNER'S RESPONSIBILITIES

The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project, including objectives, schedule, constraints and criteria, space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents submitted by Sambatek in order to avoid unreasonable delay in the orderly and sequential progress of the services. The Owner shall furnish the services of other consultants when such services are requested by Sambatek and are reasonably required by the scope of the Project.

INDEMNIFICATION

Client and consultant agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys fees, to the extent such claims, losses, damages or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the Client and consultant, they shall be borne by each party in proportion to its negligence

LIABILITY LIMITATION

The Owner agrees, to the fullest extent permitted by law, to limit the liability of Sambatek, Inc. and its subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys fees and costs and expert witness fees and costs, so that the total aggregate liability of Sambatek, Inc. and its subconsultants to all those named shall not exceed Sambatek, Inc's total fee for services rendered on this project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

Sambatek, Inc. and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages including either party's termination.

The only warranty or guarantee made by Sambatek in connection with services performed is that such services are performed with the care and skill ordinarily exercised by reputable members of the profession practicing under similar conditions in the State of Minnesota. No other warranty, expressed or implied is made or intended by rendering of consulting services.

NOTICE OF INTENT TO FILE LIEN

A company supplying labor or materials for improvement to your real estate may enforce a lien against your property if that company is not paid for the contributions of labor or materials. These rights include the professional design, engineering and fieldwork provided by our company. Following is the statutory notice of our intent to file a lien.

- (A) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.
- (B) UNDER MINNESOTA LAW YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.

DISPUTE RESOLUTION MEDIATION

Sambatek and client agree to try and resolve any disputes arising out of this agreement or services performed through mutual good faith negotiations for a period of 30 days prior to exercising any other provision of this Agreement.

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of Sambatek's services, Sambatek may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Owner and Sambatek shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

TERMINATION

The Agreement may be terminated by either party in the event of substantial failure to perform in accordance with terms hereof. Such termination shall be effective after giving seven days' written notice. Owner agrees to pay Sambatek for all Services provided up to the effective date of termination.

MISCELLANEOUS

DOCUMENT OWNERSHIP

The documents prepared by Sambatek for this Project are instruments of Sambatek's service for use solely with respect to this Project and, unless otherwise provided, Sambatek shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of Sambatek's documents for the Owner's information, reference and use in connection with the Project. Sambatek's documents shall not be used by the Owner or others on other projects, for additions to this project or for completion of this Project by others, unless Sambatek is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to Sambatek. In consideration of such use, Owner shall indemnify and hold harmless Sambatek, its directors, officers, agents and employees from any and all claims arising out of the reuse or misuse of such documents, excepting only the negligent acts, errors or omissions of Sambatek, its directors, officers, agents or employees.

CLAIMS FOR CONSEQUENTIAL DAMAGES

Sambatek and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the termination clause.

CAPTIONS

The captions used in the Agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of the Agreement or any part hereof.

INTERPRETATION AND SEVERABILITY

Each provision of the Agreement is severable from the others. Should any provision of the Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of the Agreement. Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable.

ASSIGNMENT

The Owner and Sambatek, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor Sambatek shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. Sambatek shall execute all consents reasonably required to facilitate such assignment.

TEAM RELATIONSHIP

The Owner and Sambatek agree to work together on the basis of trust, good faith and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner.

ENTIRE AGREEMENT

The terms and conditions set forth herein constitute the entire understanding of the parties relating to the Services to be provided by Sambatek. Any modifications or revision of any provisions hereof or any additional provisions contained in any acknowledgment or other form is hereby expressly objected to by Sambatek and shall not operate to modify the Agreement, and Sambatek's agreement hereto is expressly conditioned on and limited to the provisions hereof. Nothing in the Agreement shall create any relationship between, or confer any benefit upon, any person other than the parties executing the Agreement. Only a written instrument signed by both parties may amend the Agreement.

GOVERNING LAW

The Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Minnesota, excluding its conflict of laws.

EXECUTION

In witness whereof, the parties hereto have made and executed the Agreement as of the day and year first above written.

OWNER: CITY OF TONKA BAY

SAMBATEK, INC.



Corey Bergman, Director of Public Services

Printed Name

Date

Minnetonka Office Hourly Fee Schedule (Effective 1/1/2016)

Client Service Manager	\$180.00/Hour
Senior Project Manager	\$155.00/Hour
Project Manager	\$145.00/Hour
Engineer V	\$180.00/Hour
Engineer IV	\$150.00/Hour
Engineer III	\$135.00/Hour
Engineer II	\$125.00/Hour
Engineer I	\$115.00/Hour
Planner IV	\$150.00/Hour
Planner III	\$130.00/Hour
Planner II	\$120.00/Hour
Planner I	\$110.00/Hour
Landscape Architect IV	\$150.00/Hour
Landscape Architect III	\$130.00/Hour
Landscape Architect II	\$120.00/Hour
Landscape Architect I	\$110.00/Hour
Senior Survey Manager	\$150.00/Hour
Survey Manager	\$135.00/Hour
Surveyor III	\$130.00/Hour
Surveyor II	\$120.00/Hour
Surveyor I	\$110.00/Hour
Environmental Scientist IV	\$130.00/Hour
Environmental Scientist III	\$125.00/Hour
Environmental Scientist II	\$120.00/Hour
Environmental Scientist I	\$105.00/Hour
CAD Tech IV	\$130.00/Hour
CAD Tech III	\$125.00/Hour
CAD Tech II	\$115.00/Hour
CAD Tech I	\$105.00/Hour
Field Tech IV	\$130.00/Hour
Field Tech III	\$125.00/Hour
Field Tech II	\$115.00/Hour
Field Tech I	\$105.00/Hour
Administration	\$75.00/Hour
One-person Survey Crew	\$130.00/Hour
Two-person Survey Crew	\$220.00/Hour
Special Equipment	Additional @ actual cost plus 10%
Reimbursables	Additional @ actual cost plus 10%
Mileage	Per Federal guideline (IRS)

**Subject to change.