

## Agreement for Professional Services – Amendment 2

This Agreement is effective as of April 20, 2022, between City of La Crosse (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: River Point District Phase 2 – Demolition Plan for 110 Causeway Boulevard

**Client's Authorized Representative:** Ms. Andrea Trane  
**Address:** 400 La Crosse Street  
La Crosse, WI 54601  
**Telephone:** 608.789.8321 **email:** tranea@cityoflacrosse.org

**Project Manager:** Jeremy Tomesh, PE  
**Address:** 329 Jay Street  
La Crosse, WI 54601  
**Telephone:** 608.498.4947 **email:** jtomesh@sehinc.com

**Scope:** The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 07.14.16), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

This scope of work amends the Agreement for Professional Services, effective July 1, 2021, for the project described as "River Point District Phase II (Street A) – Design and Bidding Services". The purpose of this amendment is to prepare a demolition plan for 110 Causeway Boulevard which is intended to be acquired and demolished as part of Phase II of the River Point District project.

**Task 1:** Hazardous Building Materials Investigation (subconsultant, Braun Intertec, see Exhibit 2)

An asbestos inspection of materials comprising the structure will be conducted in preparation for building demolition. The asbestos inspection will be conducted by an asbestos inspector registered in the State of Wisconsin with the Wisconsin Department of Health. The asbestos inspection will be completed to meet the requirements of ch. NR 447.06 (1) Wisconsin Administrative Code and the Occupational Safety and Health Administration (OSHA) Asbestos Construction Industry Standard (29 CFR 1926.1101). Bulk samples of suspected asbestos containing materials will be collected and subsequently analyzed for percent asbestos using polarizing light microscopy methods. Point counting verification will be performed as necessary on samples at or near 1% asbestos content. The Client should be aware that bulk sampling results in damage to suspect asbestos containing materials being sampled, leaving holes in walls, etc.

A Hazardous Materials Assessment (HMA) will be conducted concurrently with the asbestos inspection. The HMA will provide an inventory of potentially hazardous objects or substances associated with the building so these items can be removed and either recycled, reused, or properly disposed prior to the onset of construction.

*Subtotal: \$2,110*

**Task 2:** Plans and Specifications (See Exhibit 1)

Demolition will include disconnection and/or removal of remaining utilities servicing the structure and complete removal of building structures, concrete, footings and foundations to the extent jointly determined with the Client. Consultant will incorporate demolition of the structures into a project manual that will include a project contract, standard contract conditions, supplementary conditions and technical

specifications. Drawings developed for the project manual may include a demolition and utility disconnection plan, a site filling, and grading and restoration plan. The specifications will include administrative and procedural requirements for salvaging, recycling, and disposing of nonhazardous demolition and construction waste. The specifications will also include provisions for addressing storage tanks, if any, encountered during construction as well as excavation and disposal of contaminated soils, if any, encountered during construction. A copy of the asbestos inspection and hazardous materials assessment report will be included in the Project Manual so contractors can plan for proper handling and disposal of hazardous materials. Other related reports, if any, available from the Client will be referenced in the Project Manual and can be made available to bidders upon request. The project manual can be used to solicit bids from qualified demolition and/or abatement contractors.

*Subtotal: \$7,190*

*Total: \$9,300*

**Schedule:** Complete work within 30 days of receiving full access to 110 Causeway Boulevard.

**Payment:** The estimated fee for this amendment is subject to a not-to-exceed amount of \$9,300 including expenses and equipment, for a new contract total of \$531,370.00. The payment method, basis, frequency and other special conditions are set forth in attached Standard Terms and Conditions (Service Contracts)(SEH 06.21.19).

This Agreement for Professional Services, attached (Exhibit 3) Standard Terms and Conditions (Service Contracts)(SEH 06.21.19), Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached Standard Terms and Conditions (Service Contracts)(SEH 06.21.19) shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the Standard Terms and Conditions (Service Contracts)(SEH 06.21.19)(including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

**Other Terms and Conditions:** Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:  
None.

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**Short Elliott Hendrickson Inc.**

**City of La Crosse**

By:   
Randy Sanford, PE  
Title: Principal - Client Service Manager

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit 1

**River Point District - Phase 2 Design: Amend 2 (Demolition Plan)**

	PM	STAFF ENV.	SR ENV.	ACCT	SUBS	TASK HOURS	TOTAL COST
					Cost		
CHARGE RATE	\$177.91	\$128.74	\$247.20	\$117.57			
<b>Task 1 - Hazardous Building Materials Investigation (Braun Intertec)</b>							
Proposal QTB157335					\$2,106.46	0	\$2,106.46
							\$2,106.46
<b>Task 2 - Coordination, Project Management, Administration</b>							
Demolition Plans & Spec		40				40	\$5,269.60
QA/QC			3			3	\$750.60
Coordination with Sub		6	1			7	\$1,019.64
Project management	0.5			0.5		1	\$150.74
							\$7,190.58
TOTAL HOURS	0.5	46	4	0.5		51	\$9,297.04
TOTAL COST	\$88.96	\$5,922.04	\$988.80	\$58.79	\$2,106.46		<b>\$9,297.04</b>

**Proposal      \$9,300.00**

April 18, 2022

Proposal QTB157335

Mr. Bruce Olson  
Short Elliot Hendrickson, Inc.  
10 North Bridge Street  
Chippewa Falls, WI 54729

Re: Proposed Services and Cost Estimate  
Pre-Demolition Hazardous Building Materials Inspection  
River Point Project – Commercial Building  
110 Causeway Boulevard  
La Crosse, WI 54603

Dear Mr. Olson:

Braun Intertec Corporation is pleased to present this proposal to provide services and a cost estimate for a Pre-Demolition Hazardous building materials inspection of the commercial structure located at 110 Causeway Boulevard in La Crosse, Wisconsin (Site). This proposed work will be performed in accordance with the terms and conditions in the Braun Intertec General Conditions.

## Scope of Services

The goal of the inspection will be to identify potentially hazardous building materials that require separate handling and/or disposal prior to building demolition. The inspection will be conducted by our experienced and accredited asbestos inspectors. Our representatives will perform the following services:

- Visually examine accessible areas and identify the locations of suspect asbestos-containing materials (ACM), polychlorinated biphenyls (PCBs), mercury, and other miscellaneous hazardous materials.
- Collect and analyze representative bulk samples of materials suspected of containing asbestos. Examples of materials to be collected for analysis include, but are not limited to: floor tile, linoleum flooring, wall and ceiling plaster, suspended and acoustical ceiling tile, sheetrock, thermal system insulation, textured ceiling material and fireproofing.
- Conduct limited LBP testing of potential re-useable components (painted concrete, block or brick) with painted surfaces suspected of containing lead (where applicable). Testing will be accomplished via laboratory analysis (if client plans to recycle materials).
- Assign a hazard rating based on asbestos content with respect to the materials condition, friability, accessibility, and hazard potential.
- Document the various materials current conditions and estimated quantities of ACM based on visual observations.

- Generate a final report, documenting the sample locations, analysis results, conditions, and ACM estimated quantities.

The Braun Intertec personnel conducting the inspection are fully accredited asbestos inspectors, in accordance with state and federal regulations. Asbestos analysis will be performed by a laboratory that is accredited for polarized light microscopy (PLM) asbestos bulk sample analysis by the National Institute of Standards and Technology's (NIST) National Voluntary Laboratory Accreditation Program.

## Cost Estimate

Based on our current understanding of the project requirements and the assumptions stated herein, the above scope of services on a cost-plus (time-and-materials) basis for an estimated fee of **\$ 2,106.46**, which includes one hour of post deliverable consulting time for revisions to the draft report and/or communication with the project team and/or owner. This fee is broken down in the attached Cost Estimate detail sheet. Unit prices for time and expenses are set costs. Other figures such as number of hours to perform the inspection, number of samples, report time, etc. are estimated figures.

Consequently, our estimated costs may be higher or lower, depending on the actual site conditions encountered. The total projected cost will not be exceeded without additional authorization. The terms and conditions under which these services will be provided are detailed in the attached General Conditions, which are part of this proposal.

Note: If the Client would like lead based paint testing of potential reusable components (concrete, block, brick) it appears less than 5 samples would be necessary based on exterior google maps images. Additional laboratory fees would likely be less than \$103.50.

The site work will be performed during our normal work hours of 7:00 a.m. to 5:00 p.m., Monday through Friday. If conditions occur that require us to work outside of these hours or due to circumstances beyond our control or additional requests for meetings, consulting or modifications to the report, we will request additional fees to cover our additional encored costs.

## Schedule

We will require 3-5 working days advanced notice to schedule the proposed scope of work. It is our understanding that an owner's representative will be responsible for scheduling the Site visit during normal business hours of 7:00 a.m. to 5:00 p.m. Monday through Friday. Our proposal also assumes that the on-Site work will be completed in one working day. If conditions occur that require us to work outside of these hours or due to circumstances beyond our control, we will request additional fees to cover our additional overtime costs.

Laboratory turnaround time for the specified asbestos sample analysis is 3-5 working days and lead based paint is 7-10 working days from laboratory receipt. Upon receipt of the laboratory reports, our

written reports will be submitted to you within 10 working days thereafter. Preliminary verbal results will be provided to you if requested.

## **Limitations**

The sampling of materials for asbestos content will be accomplished by destructive means. Damage to the building and associated components are inevitable. Sampling of materials for asbestos content involves the collection of a small piece of that material. Some damage is inevitable. However, every effort will be made to limit cuts and holes to discreet locations. Our representatives will not be responsible for repairing materials damaged during sampling.

In any building, the potential exists for hazardous building materials to be located inside walls, above ceilings, under floors, buried underground, and other inaccessible areas. This inspection will attempt to identify hazardous building materials in these inaccessible areas. However, it is not feasible to inspect 100 percent of these areas. Therefore, Braun Intertec cannot be held responsible for the presence of any such hidden materials. The demolition contractor and other contractors involved in the project should be made aware of the potential for hazardous building materials to be located in inaccessible areas. If previously unidentified suspect hazardous building materials are exposed during their activities, they should be sampled and analyzed for content prior to any disturbance.

Braun Intertec will not be liable for any past, existing, or future damage to the roofing systems, the building structures, or the contents of the building.

In performing its services, Braun Intertec will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession currently practicing in the same locality. No warranty, express or implied, is made.

## General Remarks

The proposed fee is based on the scope of services described and the assumption that our services will be authorized within 30 days and others will not delay us beyond our proposed schedule. Invoices will be submitted monthly and are due on receipt, with interest added to unpaid balances after 30 days. The terms and conditions under which these services will be provided are detailed in the attached General Conditions, which are part of this proposal.

Braun Intertec appreciates the opportunity to present this proposal to you. It is being sent in an electronic version **only**. A hard copy of the proposal will be supplied upon request. **Please return a signed copy of the proposal in its entirety.**

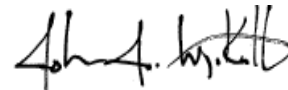
If you have questions regarding the contents of this proposal, please call Nikki Rhodes of John Wyciskalla at 6008.781.7277.

Sincerely,

BRAUN INTERTEC CORPORATION



Nikki M. Rhodes  
Project Scientist



John J. Wyciskalla  
Group Manager – Senior Scientist

Attachments:  
Cost Estimate Detail

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

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The proposal is accepted, and you are authorized to proceed.

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Authorizer's Firm

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Authorizer's Signature

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Authorizer's Name (please print or type)

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Authorizer's Title

---

Date

# Project Proposal

QTB157335

River Point Project

**Client:**

Short Elliott Hendrickson, Inc.  
Bruce Olson  
10 N Bridge  
Chippewa Falls, WI 54729

**Work Site Address:**

110 Causeway Blvd  
La Crosse, WI 54603

**Service Description:**

Hazardous Materials Assessment

	Description	Quantity	Units	Unit Price	Extension
<b>Phase 1</b>	<b>Hazardous Building Materials Inspection</b>				
<b>Activity 1.1</b>	<b>Prep and Field Work</b>				<b>\$569.00</b>
321	Licensed Asbestos Inspector	6.00	Hour	94.00	\$564.00
1868	ENV Trip Charge	1.00	Each	5.00	\$5.00
<b>Activity 1.2</b>	<b>Analytical Services</b>				<b>\$362.96</b>
SUB	PLM Analysis (72 hrs TAT)	40.00	Each	9.07	\$362.96
SUB	PLM Analysis (72 hrs TAT) - Point Count (Only if needed)		Each	64.72	\$0.00
SUB	Lead Based Paint Analysis		Each	17.25	\$0.00
SUB1	Laboratory Disposal Fee		Each	17.25	\$0.00
<b>Activity 1.3</b>	<b>Project Management and Reporting</b>				<b>\$1,174.50</b>
360	Project Assistant	0.75	Hour	93.00	\$69.75
363	Project Control Specialist	1.00	Hour	93.00	\$93.00
390	Staff Consultant III	6.00	Hour	116.00	\$696.00
393	Project Consultant II	1.50	Hour	123.00	\$184.50
395	Senior Consultant I	0.75	Hour	175.00	\$131.25
<b>Phase 1 Total:</b>					<b>\$2,106.46</b>

<b>Proposal Total:</b>	<b>\$2,106.46</b>
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## Section 1: Agreement

**1.1** Our agreement with you consists of these General Conditions and the accompanying written proposal or authorization (“Agreement”). This Agreement is the entire agreement between you and us. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

**1.2** The words “you,” “we,” “us,” and “our” include officers, employees, and subcontractors.

**1.3** In the event you use a purchase order or other documentation to authorize our scope of work (“Services”), any conflicting or additional terms are not part of this Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to terminate this Agreement without liability to you or others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

## Section 2: Our Responsibilities

**2.1** We will provide Services specifically described in this Agreement. You agree that we are not responsible for services that are not expressly included in this Agreement. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

**2.2** In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction. If during the one year period following completion of Services it is determined that the above standards have not been met and you have promptly notified us in writing of such failure, we will perform, at our cost, such corrective services as may be necessary, within the original scope in this Agreement, to remedy such deficiency. Remedies set forth in this section constitute your sole and exclusive recourse with respect to the performance or quality of Services.

**2.3** We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and further that site conditions may vary over distance or change over time.

**2.4** Our duties do not include supervising or directing your representatives or contractors or commenting on, overseeing, or providing the means and methods of their services unless expressly set forth in this Agreement. We will not be responsible for the failure of your contractors, and the providing of Services will not relieve others of their responsibilities to you or to others.

**2.5** We will provide a health and safety program for our employees, but we will not be responsible for contractor, owner, project, or site health or safety.

**2.6** You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

**2.7** Unless a fixed fee is indicated, our price is an estimate of our project costs and expenses based on information available to us and our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

## Section 3: Your Responsibilities

**3.1** You will provide us with prior environmental, geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed Services.

**3.2** You will provide access to the site. In the performance of Services some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of damage in the estimated charges.

**3.3** You agree to provide us, in a timely manner, with information that you have regarding buried objects at the site. We will not be responsible for locating buried objects at the site. *You agree to hold us harmless, defend, and indemnify us from claims, damages, losses, penalties and expenses (including attorney fees) involving buried objects that were not properly marked or identified or of which you had knowledge but did not timely call to our attention or correctly show on the plans you or others furnished to us.*

**3.4** You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials present on any work site or in a sample provided to us. You agree to provide us with information in your possession or control relating to such materials or samples. If we observe or suspect the presence of contaminants not anticipated in this Agreement, we may terminate Services without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

**3.5** Neither this Agreement nor the providing of Services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous substances. *You agree to hold us harmless, defend, and indemnify us from any claims, damages, penalties or losses resulting from the storage, removal, hauling or disposal of such substances.*

**3.6** Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless expressly set forth otherwise in this Agreement.

**3.7** You agree to make all disclosures required by law. In the event you do not own the project site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. *You agree to hold us harmless, defend, and indemnify us from claims, damages, penalties, or losses and expenses, including attorney fees, related to failures to make disclosures, disclosures made by us that are required by law, and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.*

## Section 4: Reports and Records

**4.1** Unless you request otherwise, we will provide our report in an electronic format.

**4.2** Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property. We hereby grant you a license to use the reports and related information we provide only for the related project and for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. *You agree to indemnify, defend, and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use.*

**4.3** If you do not pay for Services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

**4.4** Samples and field data remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleansed of contaminants are and continue to be your property. They may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

**4.5** Electronic data, reports, photographs, samples, and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

## Section 5: Compensation

**5.1** You will pay for Services as stated in this Agreement. If such payment references our Schedule of Charges, the invoicing will be based upon the most current schedule. An estimated amount is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

**5.2** You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices upon receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

**5.3** If you direct us to invoice a third party, we may do so, but you agree to be responsible for our compensation unless the third party is creditworthy (in our sole opinion) and provides written acceptance of all terms of this Agreement.

**5.4** Your obligation to pay for Services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of any lawsuit, your successful completion of any project, receipt of payment from a third party, or any other event. No retainage will be withheld.

**5.5** If you do not pay us in accordance with this Agreement, you agree to reimburse all costs and expenses for collection of the moneys invoiced, including but not limited to attorney fees and staff time.

**5.6** You agree to compensate us in accordance with our Schedule of Charges if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

**5.7** If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work changes, or if changed labor conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice, the schedule will be extended for each day of delay, and we will be compensated for costs and expenses incurred in accordance with our Schedule of Charges.

**5.8** If you fail to pay us in accordance with this Agreement, we may consider the default a total breach of this Agreement and, at our option, terminate our duties without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

**5.9** In consideration of our providing insurance to cover claims made by you, you hereby waive any right to offset fees otherwise due us.

## Section 6: Disputes, Damage, and Risk Allocation

**6.1** Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s)

attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

**6.2** *Notwithstanding anything to the contrary in this Agreement, neither party hereto shall be responsible or held liable to the other for punitive, indirect, incidental, or consequential damages, or liability for loss of use, loss of business opportunity, loss of profit or revenue, loss of product or output, or business interruption.*

**6.3** You and we agree that any action in relation to an alleged breach of our standard of care or this Agreement shall be commenced within one year of the date of the breach or of the date of substantial completion of Services, whichever is earlier, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute. We will not be liable unless you have notified us within 30 days of the date of such breach and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services. Should you fail to meet the conditions above, you agree to fully release us from any liability for such allegation.

**6.4** *For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the fee paid for Services or \$50,000, whichever is greater. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of this Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken.* This increased fee is not the purchase of insurance.

**6.5** *You agree to indemnify us from all liability to others in excess of the risk allocation stated herein and to insure this obligation. In addition, all indemnities and limitations of liability set forth in this Agreement apply however the same may arise, whether in contract, tort, statute, equity or other theory of law, including, but not limited to, the breach of any legal duty or the fault, negligence, or strict liability of either party.*

**6.6** This Agreement shall be governed, construed, and enforced in accordance with the laws of the state in which our servicing office is located, without regard to its conflict of law rules. The laws of the state of our servicing office will govern all disputes, and all claims shall be heard in the state or federal courts for that state. Each of us waives trial by jury.

**6.7** No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual officers or employees.

## Section 7: General Indemnification

**7.1** *We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.*

**7.2** To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

**7.3** You agree to indemnify us against losses and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by you or by others on your behalf.

## Section 8: Miscellaneous Provisions

**8.1** We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our negligence.

**8.2** You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

**8.3** Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

**8.4** This Agreement may be terminated early only in writing. You will compensate us for fees earned for performance completed and expenses incurred up to the time of termination.

**8.5** If any provision of this Agreement is held invalid or unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

**8.6** No waiver of any right or privilege of either party will occur upon such party's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach.

## Exhibit 3

19-1018

Resolution approving Agreement for Professional Services and revised terms and conditions for the Floodplain Re-Mapping of Ebner Coulee by the consultant Short Elliott Hendrickson Inc. (SEH).

### RESOLUTION

WHEREAS, the 2019 CIP #288 approved the re-mapping project for Ebner Coulee and provide \$150,000 in funding for the work; and

WHEREAS, the Floodplain Advisory Committee approved and directed the hiring of Short Elliott Hendrickson INC. (SEH) for this project in Resolution #18-1234; and

WHEREAS, SEH would not agree to the City's Standard Terms and Conditions; and

WHEREAS, the City Attorney and Utilities Manager worked with SEH to develop mutually agreeable revised Standard Terms and Conditions.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the Agreement for Professional Services with revised Standard Terms and Conditions and dates is hereby approved.

BE IT FURTHER RESOLVED that additional contracts may use this revised Terms and Conditions in the future.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to sign the Agreement.

BE IT FURTHER RESOLVED that the Director of Finance, Utilities Manager and Director of Engineering and Public Works are hereby authorized and directed to take all necessary steps to implement this resolution.

## STANDARD TERMS AND CONDITIONS (Service Contracts)

(SEH 06.21.19)

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this document titled "Standard Terms and Conditions (Service Contracts)" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.

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

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

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

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

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingences set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices, unless lump sum, must be itemized to identify labor costs and the Contracting Party's direct expenses, including subcontractor and supplier costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work

completed as a percentage of the work to be performed. If payment is by lump sum, then only the percent complete will be invoiced. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement. Without prejudice to any other right or remedy it may have, La Crosse reserves the right to setoff at any time any amount owing to it by Contracting Party against any amount payable by La Crosse to Contracting Party.

7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

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

9. **TERMINATION FOR CONVENIENCE.** Either Party may terminate this Agreement for convenience at any time and for any reason by giving sixty (60) days written notice to the other Party of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually performed and accepted by La Crosse 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 La Crosse.

10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of other persons or property. Except as otherwise provided in this



Agreement, Contracting Party disclaims any authority or responsibility for general job site safety, or the safety of third-parties or their property.

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

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

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

a. *Worker's Compensation and Employers Liability Insurance.* Contracting Party shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Contracting Party shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employer's liability of one hundred thousand dollars (\$100,000.00) per each accident, one hundred thousand dollars (\$100,000.00) per each employee and five hundred thousand dollars (\$500,000.00) total policy limit.

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

- i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:
  1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
  2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).
- ii. Contracting Party shall maintain limits no less than the following:
  1. General Liability. Two million dollars (\$2,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
  2. Automobile Liability. Two million dollars (\$2,000,000.00) for bodily injury and property damage per occurrence covering all vehicles to be used in relationship to the Agreement.

3. Umbrella Liability. Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.

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

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

- i. La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of Contracting Party; products and completed operations of Contracting Party; premises occupied or used by Contracting Party; and vehicles owned, leased, hired or borrowed by Contracting Party. The coverage shall contain no special limitations on the scope of protection afforded to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers' compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of La Crosse.
- ii. For any claims related to this Agreement, Contracting Party's insurance shall be primary insurance with respect to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by La Crosse, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
- iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to La Crosse, its elected and appointed officers, employees or authorized representatives or volunteers.
- iv. Contracting Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v. Coverage shall not be canceled by the insurance carrier or the Contracting Party, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to La Crosse.

- vi. Such liability insurance shall indemnify La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Contracting Party for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
- vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
- viii. All of the insurance shall be provided on policy forms and through companies satisfactory to La Crosse, and shall have a minimum AM Best's rating of A- VIII.

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

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

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

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

14. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees, authorized representatives and volunteers ("La Crosse Indemnitees") from and against third party tort suits, actions, legal or administrative proceedings, claims, costs and expenses (including, without limitation, reasonable attorney and professional fees) to the extent caused by the negligent acts, errors or omissions of Contracting Party, its subcontractors or of anyone acting under its direction or control or on its behalf in the performance of this Agreement. Contracting Party's defense obligation shall not apply to professional liability claims. The aforesaid indemnity and hold harmless

agreement shall not be applicable to any liability to the extent caused by La Crosse, its elected and appointed officials, officers, employees or authorized representatives, consultants, contractors or volunteers in the performance of this Agreement. Contracting Party's obligation to indemnify, defend and hold harmless shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees, authorized representatives or volunteers.

Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of La Crosse or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80, or other applicable law. To the extent that indemnification is available and enforceable against La Crosse, (a) La Crosse or its insurer shall not be liable in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law; and (b) La Crosse's obligations under this Agreement are further conditioned upon the following: (i) the indemnified party shall promptly notify La Crosse in writing of any such claims, demands, liabilities, damages, costs and expenses within ten (10) days of discovery; (ii) La Crosse shall have sole control of, and the indemnified party shall reasonably cooperate in all respects, in the defense of the claims, demands, liabilities, damages, costs and expenses and all related settlement negotiations; and (iii) the indemnified party shall not make any admission or disclosure or otherwise take any action prejudicial to La Crosse except as required by law.

Neither party shall be liable for indirect, special, exemplary, consequential or incidental damages, including, without limitation, any damages for lost profits, revenue or business interruption. The parties represent that, as of the effective date, neither party has any notice or knowledge of any claims, demands, liabilities, damages, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement.

This indemnity provision shall survive the termination or expiration of this Agreement.

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

16. Intentionally omitted.

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

employees. The parties shall not be considered joint agents, joint venturers, or partners.

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

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

20. **NOTIFICATION.** Parties shall:

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

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

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

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

22. **ASSIGNMENT, SUBLET, AND TRANSFER.** A Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of the other Party. This Agreement shall be binding on the heirs, successors, and permitted assigns of each party hereto. A Party shall provide not less than forty-five (45) days advance written notice of

request to assign, sublet or transfer any services provided under this Agreement. The decision to allow an assignment by Contracting Party rests solely with La Crosse, in its discretion

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

24. **SUBCONTRACTING.** None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

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

26. **NON-DISCRIMINATION.** Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.



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

28. GOVERNMENTAL APPROVALS. Contracting Party acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Contracting Party further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. La Crosse cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis. .

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

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

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

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

notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

33. NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Attn. City Clerk City of La Crosse 400 La Crosse Street La Crosse, WI 54601	Copy to:	Attn. City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
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To SEH:	Attn. Bruce Olson SEH 10 N Bridge Street Chippewa Falls, WI 54729
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34. Intentionally omitted.

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

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



Law. In the event that Contracting Party decides not to retain its records for a period of seven (7) years, then it shall provide written notice to La Crosse whereupon La Crosse shall take custody of said records assuming such records are not already maintained by La Crosse. This provision shall survive the termination of this Agreement.

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

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

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

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

41. GOOD STANDING. Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

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

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

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

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

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

47. RELIANCE. Contracting Party has the right to reasonably rely on information provided by or through La Crosse.

*Revised:*  
06.21.19