

## Agreement for Professional Services

This Agreement is effective as of July 5, 2019, 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: Ebner Coulee LOMR Submittal.

**Client's Authorized Representative:** Mr. Bernard Lenz  
**Address:** 400 La Crosse Street  
La Crosse, WI 54601  
**Telephone:** 608.789.7588      **email:** LenzB@cityoflacrosse.org

**Project Manager:** Brad Woznak  
**Address:** 3535 Vadnais Center Drive  
St Paul, MN 55110  
**Telephone:** 651.490.2125      **email:** bwoznak@sehinc.com

**Scope:** The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached Standard Terms and Conditions (Service Contracts)(SEH 06.21.19), which is incorporated by reference herein and subject to Exhibits attached to this Agreement. See Exhibit 1 for Scope of Services.

**Schedule:** As described in Exhibit 1.

**Payment:** The estimated fee is subject to a not-to-exceed without prior authorization amount of \$148,800 including expenses and equipment. 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 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.

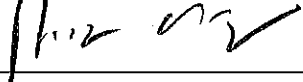
**Other Terms and Conditions:** Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein: None.

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**Short Elliott Hendrickson Inc.**

By:   
 Title: Principal

**City of La Crosse**

By:       *Date:* 8/9/19  
 Title: Utility Manager



Building a Better World  
for All of Us®

July 5, 2019

RE: City of La Crosse  
Ebner Coulee LOMR submittal  
SEH No. 148443 14.00

Mr. Bernard Lenz, PE  
Utilities Manager  
City of La Crosse  
400 La Crosse Street  
La Crosse, WI 54601

Dear Mr. Lenz:

Short Elliott Hendrickson Inc. (SEH) appreciates the opportunity to provide this proposal for continuing professional services for the Ebner Coulee watershed floodplain mapping updates. This proposal outlines our proposed scope of services, based on our understanding of the project.

#### SCOPE OF SERVICES

Our scope of services for completion of the Ebner Coulee Letter of Map Revision project is broken down into three Phases. Phase 1 being the finalization of the Ebner Coulee model calibration and floodplain mapping as described in the August 2018 submittal to the Wisconsin DNR (WiDNR). Phase 2 involves the hydrologic and hydraulic modeling and subsequent floodplain mapping, report preparation, and meetings with the WiDNR for the identified FEMA floodplain (FIRM Panel 55063C0262D) south of Farnam Street and bounded by the railroad tracks on the west, 31<sup>st</sup> Street South on the east and State Road on the south. Phase 3 involves the formal LOMR submittal, and ultimately approval, to first the WiDNR and subsequently FEMA.

#### PHASE 1 – EBNER COULEE MODEL CALIBRATION AND FLOODPLAIN MAPPING

##### Task 1.1. Field Investigations and Topographic Surveys

For this task we propose additional topographic survey in the area near Floral Lane just northwest of the location in which Ebner Coulee exits the confined valley section and enters the channelized raised berm section. This is the area where overtopping occurred during the July 2017 event and high water information is available. The field surveys include a topographic survey of the Ebner Coulee channel, the driveway culverts and bridge crossings.

##### Task 1.2. SRH2D Model Development and 2017 Peak Flow Rate Refinement

This additional survey information will be utilized to develop a refined estimate of the "actual" peak flow rate of the 2017 event based on field estimates. We anticipate accomplishing this by creating a detailed SRH2D model of the area in which the overtopping and flooding occurred due to the plugged culverts. SEH will modify the discharge rates in the model until the computed high water approximates the surveyed high water marks. The high water marks are in a relatively flat area, so the flood extents should be fairly sensitive to flow rate changes and thus more easily calibrated.

#### Task 1.3. Updated Hydrologic/Hydraulic Analysis and Floodplain Mapping

The estimated return period of the 2017 storm will be utilized to create a new calibrated HEC-HMS hydrologic model which can then be utilized to recreate calibrated frequency based events. These discharge rates will serve as the calibrated flow rates for use in the LOMR submittal.

Utilizing the updated peak flow rates, the coupled 1D/2D HEC-RAS hydraulic model will be utilized to estimate the proposed flood inundation mapping resulting from the various frequency events. Due to the regulatory framework, we will develop a fully 1-dimensional HEC-RAS model that replicates the 1D/2D HEC-RAS results for the LOMR submittal.

#### Task 1.4. Updated Letter Report

SEH will update the previous technical letter report to summarize the additional analysis and results from this phase of the study which will be provided as background in support of the Letter of Map Revision Submittal.

#### Task 1.5. Presentation at Floodplain Committee Meeting

The SEH Project Manager/Engineer of Record will attend and present the results of this analysis at a Flood Task Force Committee Meeting.

### PHASE 2 – FLOODPLAIN ANALYSIS FOR AREA SOUTH OF FARNAM

An initial review of the Flood Insurance Study lists a combination of unsteady hydraulic UNET modeling, HEC-1 modeling, along with rating curves and weir equations utilized to estimate the flood levels in the proposed study area (designated as a pond in the original study). In addition due to limited topographic data available at the time of the initial study, approximate methods were utilized to estimate available stage-storage information.

As part of this study, we propose to develop an updated hydrologic and hydraulic model for the contributing drainage area south of Farnam Street utilizing available LIDAR topographic information and storm sewer base mapping. Due to the fact that flooding in this study area is caused by a combination of surface and subsurface (storm sewer system) drainage, we propose to utilize XPSWMM to perform the hydrologic and hydraulic calculations for this area.

Given the complexity of the flooding in this area, we propose to follow a similar study process to that utilized for the upstream channelized portion of Ebner Coulee. A summary of the tasks is described below.

#### Task 2.1. Data Collection and Review

The first step in this phase will be to perform an in depth review of the available LIDAR topographic mapping, existing GIS City storm sewer data, and original hydrologic modeling (1979) used to produce the effective FIRM for this area. Per the City recommendations, it is assumed that the existing storm sewer base mapping is complete and accurate and no field surveys necessary to complete this task. SEH staff will work with the City to ensure we have the most recent and up to date storm sewer base mapping for the area. This information along with available LIDAR information will serve as the basis from which the XPSWMM model will be developed and floodplain mapping generated.

#### Task 2.2. XPSWMM Model Development

SEH will develop a 1D/2D xpswmm model for the study area. These models will incorporate City provided GIS storm sewer data of the existing stormwater drainage systems and LIDAR topographic data to simulate surface flows and flooded area. To keep an appropriate level of detail, the models will include the main conveyances (pipes, channels, etc.) and will not incorporate individual inlets and associated

storm leads. The inflow hydrograph into the large storm sewer inlet upstream of Farnam Street will be taken from the 1D/2D HEC-RAS model and input into the XPSWMM to evaluate the impact to the storm sewer conveyance system downstream of Farnam Street. If it is determined that flow over Farnam Street occurs, this will also be input into XPSWMM utilizing the overtopping hydrograph. If it is believed that insufficient inlet capacity is causing flooding issues in the area, additional detail can be added to the model to capture this. SEH will discuss this approach with the WIDNR to ensure the State's overview and concurrence of the methodology used in support of a Letter of Map Revision submittal.

#### Task 2.3. XPSWMM Modeling and Mapping of Historic Events and Calibration

Utilizing the results from the historic rainfall-runoff analysis completed previously for the channelized portion of Ebner Coulee upstream, we will input the estimated historic rainfall hyetographs into the XPSWMM program to estimate the peak runoff rates and extents of the resulting flooded area for each of the historic events. We will develop figures to depict the expected inundation areas for each of the historic rainfall events. Similar to the methodology employed for the channelized portion of Ebner Coulee, we propose to review available high water information from the July 2017 event and work with the City as necessary to conduct additional resident surveys to gather flooding and high water information for this area. SEH will modify the hydrologic parameters in the model until the computed high water approximates the estimated high water marks.

#### Task 2.4. Floodplain Mapping

The calibrated XPSWMM model will be executed for the frequency based events to develop the high water elevations associated with the 10-percent, 2-percent, 1-percent, and 0.2-percent Annual Chance events. If desired, SEH will develop a HEC-HMS model calibrated to the results of the XPSWMM to move forward into the Letter of Map Revision submittal as the proposed effective model for the area.

The XPSWMM model will be used to determine if above ground flooding is expected to occur in the area. If flooding does occur, it will be mapped using the constant high-water elevations developed by the XPSWMM model.

#### Task 2.5. Summary Technical Letter / Preparation of Review Submittal to the Wisconsin DNR

SEH will provide a technical letter report summarizing the results of the analyses performed and a request for review and comment by the Wisconsin DNR against their requirements for State overview and concurrence in support of the Letter of Map Revision Submittal.

#### Task 2.6. Council Factsheet

The results of this task will be highlighted in a factsheet, similar to that prepared for the previous Ebner Coulee Study, which will utilize figures and graphics to convey the results to the City Council and City Committees. This will be a results and impacts focused document focused on the expected differences between the current FIRM and a new FIRM if moved forward into a LOMR.

#### Task 2.7. Presentation at Floodplain Committee Meeting

The SEH Project Manager/Engineer of Record will attend and present the results of this analysis at a Flood Task Force Committee Meeting.

### PHASE 3 LOMR SUBMITTAL

SEH will prepare the Application/Certification forms for the LOMR. This task includes compilation of the Technical Support Data Notebook and floodplain and floodway mapping. This task also includes time to respond to both Wisconsin DNR and FEMA comments. It is difficult to determine the amount of effort required responding to FEMA comments until they are formally received. Response efforts required to

Mr. Bernard Lenz, PE  
July 5, 2019  
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obtain FEMA approval beyond the assumed effort will be considered beyond the scope of the initial agreement and will be discussed with the City prior to performing the required work.

#### SCHEDULE

SEH will begin work as soon as authorized by the City with the estimated project schedule as outlined below. The schedule is dictated by the time required to receive the BNSF Temporary Occupancy Permit for surveying the Ebner Coulee channel along the BNSF railroad, WiDNR review timeline, FEMA review timeline, and the FEMA standard 6 month period from the issuance of the Letter of Final Determination for approval of the LOMR to the LOMR becoming effective.

- |  |                 |
|--|-----------------|
| • Completion of Phase 1 Field Investigations:                  | August 30, 2019 |
| • Completion of Phase 1 / Presentation to Floodplain Committee | October 2019    |
| • Completion of Phase 2 / Presentation to Floodplain Committee | December 2019   |
| • LOMR Submittal to WiDNR                                      | January 2020    |
| • LOMR Submittal to FEMA                                       | March 2020      |
| • Approval of LOMR   | November 2020   |
| • LOMR Becomes Effective                                       | May 2021        |

#### FEES

Our fees will be based on an hourly not-to-exceed amount of \$148,800, including mileage, equipment, and expenses.

We appreciate the opportunity to work with the City of La Crosse. If you have any questions, please feel free to contact me at 651.490.2125 or via e-mail at [bwoznak@sehinc.com](mailto:bwoznak@sehinc.com).

Sincerely,

SHORT ELLIOTT HENDRICKSON INC.



Brad Woznak  
Senior Water Resources Engineer

btw

Attachment

c: Randy Sanford - SEH

## 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	Copy to:	Attn. City Attorney
	City of La Crosse		City of La Crosse
	400 La Crosse Street		400 La Crosse Street
	La Crosse, WI 54601		La Crosse, WI 54601

To SEH: Attn. Bruce Olson  
SEH  
10 N Bridge Street  
Chippewa Falls, WI 54729

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*