

Agreement for Professional Services

This Agreement is effective as of March 10, 2023, 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 III (Marsh Lane, Kraft Street, River Point Court, Steamboat Court, Milwaukee Street, Eagle Rest Road) – Design and Bidding Services**

Client's Authorized Representative: Ms. Andrea Trane

Address: 400 La Crosse Street
La Crosse, WI 54601

Telephone: 608.789.8321 **email:** tranea@cityoflacrosse.org

Client Service Manager Jeremy Tomesh, PE

Project Manager: Torey Leonard, PE

Address: 329 Jay Street
La Crosse, WI 54601

Telephone: 608.498.4019 **email:** tleonard@sehinc.com

Scope:

The Redevelopment Authority has proposed to construct public improvements on the River Point District site by way of a phased approach. Preliminary design work included development of a planned development district document and preliminary street and utility plans. Construction Phase I included placement of fill upon the site to raise the site above the floodplain elevation. This work was complete in November 2021. Construction Phase II includes construction of sanitary sewer, watermain, storm sewer and roadway improvements upon River Bend Road as shown in Exhibit 1. This phase is expected to be complete by late 2023. Phase III includes design and construction of portions Marsh Lane, Kraft Street, River Point Court, Steamboat Court, Milwaukee Street, and Eagle Rest Road as shown in Exhibit 1. Total roadway length of 5,525 feet is assumed. This work is scheduled for construction season 2025.

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 3 – Standard Terms and Conditions.

Phase III (Marsh Lane, Kraft Street, River Point Court, Steamboat Court, Milwaukee Street, and Eagle Rest Road) Design and Bidding Services will include:

1. Storm Water Modelling and Design

- a. Regional Storm Water Management for River Point District was substantially complete with Phase II which included a 1D/2D XPSWMM model of the entire River Point District, and evaluation and design of an underground detention system sized to serve the entire River Point District,
- b. Ensure that the Phase III stormwater management system is consistent with the design assumptions of the Phase II project.
 - i. Confirm and update XPSWMM model
 - ii. Update stormwater management plan as required.
 - iii. Apply for additional DNR permitting as required.
- c. Provide storm sewer plans, details, and specifications.
 - i. StormCAD modeling of storm sewer system
 - ii. Creation of Civil 3D pipe network
 - iii. Creation of plan and profile sheets; updates to construction details

Subtotal = \$98,700

2. Street and General Site Design

- a. Attend up to ten (10) progress meetings in person or via teleconference.
- b. Collect supplemental topographical survey (as needed).
- c. Coordinate with private utility companies (electric, gas, telecommunications, etc)
 - i. Initiate discussion with private utilities companies for site service request.
 - ii. Coordinate with private utilities through street plan development.
 - iii. Identify desired pedestal locations and route common trench thereto.
 - iv. Associated private utilities fees for site development (if required) to be paid by the City.
- d. Finalize roadway design including:
 - i. Vertical profile.
 - ii. Raised intersections.
 - iii. Medians.
 - iv. Curb extensions.
 - v. Sidewalks.
 - vi. Curb ramps meeting ADA standards.
 - vii. Pavement grades (concrete pavement).
 - viii. Pavement marking plan.
 - ix. Construction details.
- e. Prepare traffic control plan.
- f. Prepare erosion control plan.
- g. Prepare grading plan.
- h. Prepare technical specifications.
- i. Complete quantity takeoffs and prepare engineer's estimate.

Subtotal = \$375,700

3. Sanitary Sewer Design

- a. Finalize sanitary sewer design including:
 - i. Connections to new River Bend Road infrastructure.
 - ii. Stubs to future streets.
 - iii. Service laterals to building pads.
 - iv. Construction details.
- b. Prepare technical specifications.
- c. Complete quantity takeoffs and prepare engineer's estimate.

Subtotal = \$33,100

4. Water Main Design

- a. Finalize water main design:
 - i. Connections to new River Bend Road infrastructure.
 - ii. Stubs to future streets.
 - iii. Domestic and fire protection service laterals to building pads.
 - iv. Construction details.
- b. Prepare technical specifications.
- c. Complete quantity takeoffs and prepare engineer's estimate.

Subtotal = \$38,400

5. Street Lighting Design

- a. Street lighting design including:
 - i. Coordinate with engineering department to confirm the preferred lighting equipment style and application for this phase of lighting installation.
 - ii. Coordinate the design of the lighting system and tree locations so that it aligns with the preferred spacing and installation methods outlined by the City. Coordinate with the local electrical utility to facilitate the source of power for the electrical service(s) associated with the proposed lighting system. The plans will consist of lighting unit locations, branch circuitry design, along with descriptions of equipment specified for the project. Specifications and a construction estimate will be included in the final package.
- b. Prepare technical specifications.

- c. Complete quantity takeoffs and prepare engineer's estimate.

Subtotal = \$38,400

6. Landscape Architecture Design

- a. Prepare Conceptual Landscape Design
 - i. SEH will prepare a conceptual landscape design which builds off the Phase II landscape architectural design that addresses:
 - 1. Tree species selection, location, and tree pit design
 - 2. Perennial and shrub planting areas
 - 3. Options to increase soil volume for improved tree health and longevity
 - 4. Decorative pavement materials
 - 5. Street theming
- b. Develop final landscape plan and specifications that use Phase II design decisions, construction drawings, and specifications as the basis for design. Drawings will address:
 - i. Tree selection and tree well design
 - ii. Plant selection and planting design that achieves compliance with City code standards while addressing client preferences
 - iii. Areas of seeding or sodding, if applicable.
 - iv. Identification of hard surface materials, planters, mulch, edging, and curbing.
 - v. Decorative pavement, including road terraces, medians, crosswalks, and intersections
 - vi. Areas to remain undisturbed and limits of land disturbance.
 - vii. Coordination with other disciplines
 - 1. Coordinate with civil engineering to specify colored concrete and other decorative concrete treatments for boulevard and raised intersection areas
 - 2. Coordinate planting locations with lighting.
 - 3. Grading plan, including stormwater management files referenced into landscape plan.
 - 4. Landscape plan design to be coordinated with street and site design.

Subtotal = \$47,800

7. Permits Applications.

- a. Prepare and submit WisDNR construction site erosion control Notice of Intent permit application. City to pay permit application fee directly.
- b. Prepare and submit WisDNR Water Main Extension permit application.
- c. Prepare and submit WisDNR Sanitary Sewer Extension permit application.
- d. Schedule for review of permit applications by WisDNR is not within Consultant's control and therefore not included within the schedule set forth below.

Subtotal = \$36,900

8. Bidding Phase Services

- a. Assist the City during bidding phase including preparation of bidding documents, answer contractor questions, and prepare one (1) addendum.
- b. Review bids and provide bid award recommendation.
- c. The City is responsible for all publication costs.

Subtotal = \$19,800

9. Coordination with Development

- a. Coordinate with RDA and City.
- b. Assist in providing site information to perspective developers.

Subtotal = \$9,500

Schedule:

If authorization to proceed is received by June 1, 2023, all of the above tasks will be completed within approximately twelve (12) months of the authorization to proceed. Consultant has no control of review timelines by authorities having jurisdiction, therefore permit issuance is not included in this schedule.

Payment:

The estimated fee is subject to a not-to-exceed amount without prior authorization of **\$698,300.00** including expenses and equipment. Hourly labor rates shall be resubmitted and negotiated for any work extending beyond June 30, 2025. 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.

Not included and assumptions:

The scope does not include design/permitting/bidding for public plaza, design/permitting/bidding for park improvements, video animation, design of site amenities/furnishings, refuse enclosure design, landscape structure design, landscape architecture precedent imagery or renderings, green infrastructure design, wayfinding design, irrigation design, traffic signal communications plan, construction phase services (including contract administration, construction staking and resident project representative), nor any other tasks not specifically listed above. Additional tasks can be provided under a separate contract or contract amendment. Client will pay all permit fees directly to the authorities having jurisdiction. Client will pay all publication fees directly to the publication.

It is assumed that the project will be bid under a single bid package and not split into multiple bids. If split into multiple bids, schedule and fee adjustment will be negotiated under contract amendment.


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.

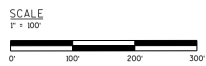
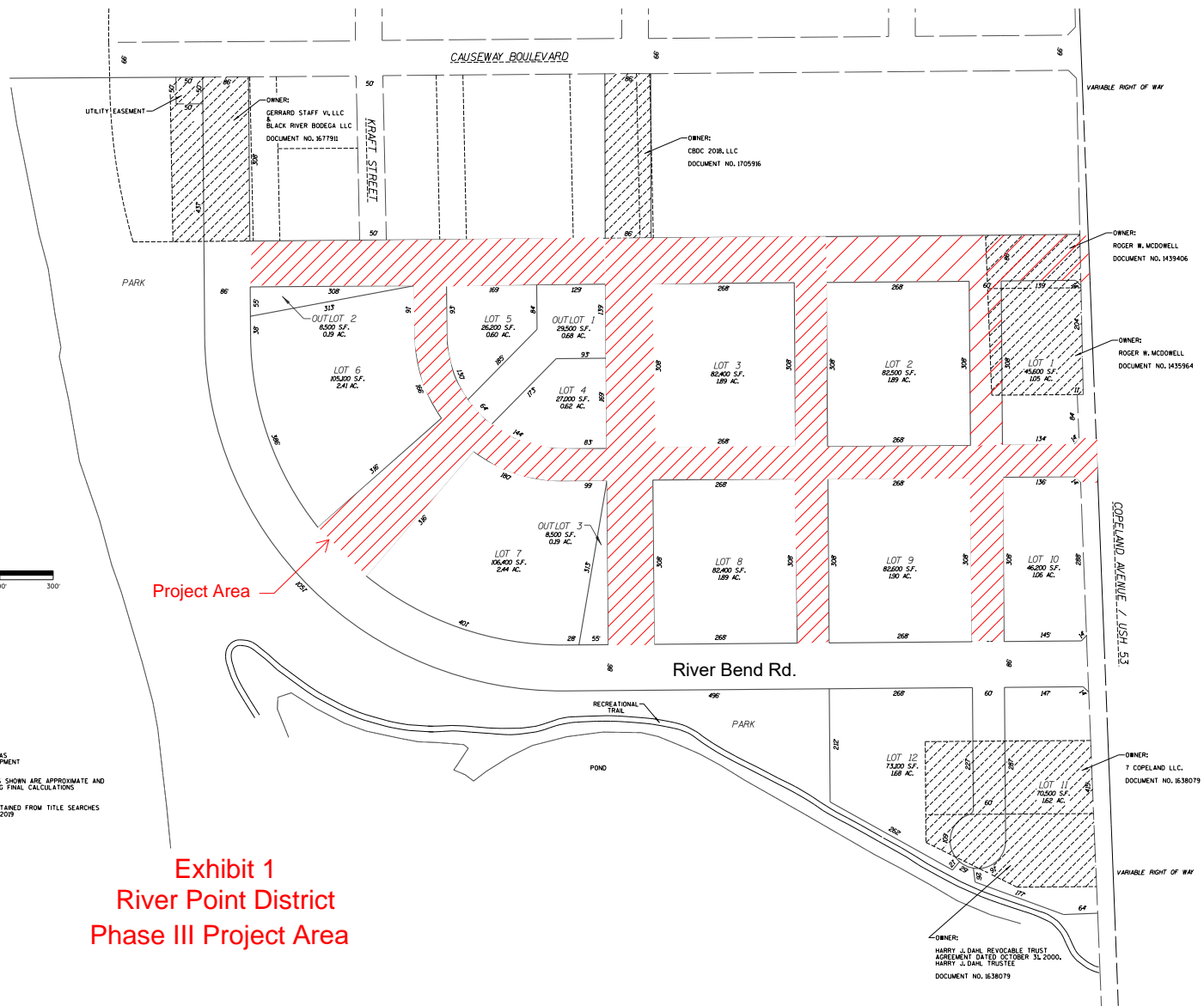
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Short Elliott Hendrickson Inc.

City of La Crosse

By: 
Jeremy Tomesh, PE
Title: Principal | Client Service Manager

By: _____
Title: _____



NOTES

- AREAS OWNED BY OTHERS AS PART OF PLANNED DEVELOPMENT
- ALL AREAS AND DIMENSIONS SHOWN ARE APPROXIMATE AND SUBJECT TO CHANGE DURING FINAL CALCULATIONS
- OWNERSHIP INFORMATION OBTAINED FROM TITLE SEARCHES COMPLETED IN SEPTEMBER, 2019

**Exhibit 1
River Point District
Phase III Project Area**



	CHARGE RATE		CSM	PM	SR. PROJ ENG	SR. PROJ ENG	SR. PROJ ENG	SR. PROJ ENG	PROJ ENG	CIVIL TECH	SR. ENV	LA	LA	WATER RES	WATER RES.	PROJ ENG	CIVIL TECH	LIGHTING SR DES.	LIGHTING DESIGN	LIGHTING TECH	OFFICE SURVEY	FIELD SURVEY	ADMIN	ADMIN	ACCT	MILEAGE	Vehicle	TOTAL STATION	TASK HOURS	TOTAL COST		
			\$245.61	\$184.89	\$250.56	\$206.84	\$206.98	\$169.88	\$135.62	\$118.34	\$233.25	\$157.49	\$155.16	\$125.99	\$170.59	\$154.17	\$109.07	\$289.61	\$172.96	\$132.33	\$173.67	\$171.05	\$93.17	\$134.73	\$139.37	\$0.62	\$4.90	\$45.00				
Task 8 - Bidding																																
Project Management	8	12			12																									36	\$7,213.84	\$19,800
Bidding	4	12			24																		12	24						76	\$12,516.84	\$19,730.68
Task 9 - Coordination with Development																																
Coordination with RDA & City	8	8			8																									24	\$5,098.72	\$9,500
Assist in providing information to potential developers					12				16																					28	\$4,375.52	\$9,474.24
TOTAL HOURS	156	444	118	768	68	406	410	262	96	188	84	28	156	104	496	18	102	98	16	16	20	94	18	1560	24	24	4054	\$697,782.48				
TOTAL COST	\$38,315.16	\$82,091.16	\$29,566.08	\$158,853.12	\$14,074.64	\$68,971.28	\$55,604.20	\$31,005.08	\$22,392.00	\$29,608.12	\$13,033.44	\$3,527.72	\$26,612.04	\$16,033.68	\$47,554.52	\$5,212.98	\$17,641.92	\$12,968.34	\$2,778.72	\$2,736.80	\$1,863.40	\$12,664.62	\$2,508.66	\$967.20	\$117.60	\$1,080.00			\$697,782.48	\$697,782.48		

Proposal **\$698,300.00**

EXHIBIT 3

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*