

AGREEMENT

THIS WATER TANK MAINTENANCE SERVICES AGREEMENT (hereinafter called "Agreement") is made as of the 31 day of August, 2017 (the "Effective Date") by and between **City of West Allis** (hereinafter called "Owner") and SEH Design/Build, Inc., with its principal place of business at St. Paul, Minnesota (hereinafter called "SEH D|B").

In consideration of the agreements hereinafter contained, the parties hereto agree as follows:

1. SCOPE OF SERVICES

The Owner retains SEH D|B to furnish the services set forth on the attached Exhibit "A" (referred to as "Services" or "Work"). SEH D|B agrees to perform the services. SEH D|B shall provide all personnel, supervision, services, materials, tools, equipment and supplies and do all things necessary for the Water Tank Services and all materials, equipment and improvements ancillary thereto specified on Exhibit "A" (Sometimes referred to herein as "the Project").

The Project bound by this Agreement is:

The 1,500,000-gallon legged-style water tank, located at 116th and Rogers Street in West Allis, Wisconsin.

The work to be performed under this Agreement shall be done under the review of a professional engineer licensed in the State of Wisconsin, who shall attest that the work will be performed in compliance with all applicable codes and engineering standards.

All procurement and construction shall be in accordance with drawings, specifications or other documents to be prepared by SEH D|B in accordance with design premises, performance requirements and other criteria set forth or referenced in the Exhibits hereto. The work shall be performed as set forth in the Contract Documents, which includes this Agreement and Exhibits, including Exhibit "A" – Schedule and Scope of Services and Exhibit "B" – Compensation Schedule. In the event any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the following order: (i) this Agreement; (ii) Exhibit "A", (iii) Exhibit "B".

2. REPRESENTATIVES

Owner has designated _____ (name), _____ (title) for City of West Allis (the "Owner Representative"), and SEH D|B has designated Mr. Steven Peterson (the "SEH D|B Representative"). The Owner Representative and the SEH D|B Representative shall be available as often as is reasonably necessary for reviewing the Water Tank Services herein, providing required information or decisions, and for authorizing changes therein as may be required.

3. COMPENSATION

SEH D|B shall be paid by the Owner for the services described in paragraph 1 (further described in Exhibit A) in accordance with the amounts designated in Exhibit B for each year of service, inclusive of reimbursable costs.

4. INVOICING

- 4.1 The invoice for the first year fee will be submitted upon completion of the work done in the first year. Invoices for the subsequent fees will be submitted in the anniversary month of this Agreement.
- 4.2 Invoices for change orders shall be separately mailed and billed as outlined in the Change Order.
- 4.3 Amounts more than 30 days past due shall accrue interest at the lesser of 1.5% per month or at the maximum rate allowed by law. If the Owner fails to make timely payment, SEH D|B may suspend work until receipt of payment.
- 4.4 Invoices for services required for the engineering, repair and services required to bring the water tank or appurtenant facilities into compliance with applicable federal, state and local codes shall be separately itemized by SEH D|B and payment shall be spread over a period of not less than three years from the Effective Date.
- 4.5 The maximum payment due from the Owner shall not exceed the total Water Utility Charges and fees collected by the Owner in the ordinary course of business.

5. COMPLETION

SEH D|B has prepared a schedule in the attached Exhibit A that identifies the duration of the contract, including the overall contract length and intermediate project milestones and completion dates. This schedule is subject to adjustment as allowed or required by this Agreement, the Owner, and SEH D|B.

6. SUBCONTRACTING

The subcontracting of any portion of the Work shall not relieve SEH D|B of responsibility for the performance of the Work, as provided hereunder. However, SEH D|B shall have the right to subcontract such portions of the Work as it shall determine to others, including any affiliates of SEH D|B ("Affiliates").

7. OWNER RESPONSIBILITIES

7.1 TELECOMMUNICATIONS

- 7.1.1 Owner recognizes that any telecommunications equipment located on the water tank(s) or appurtenant facilities may interfere with the work contemplated in this Agreement. If requested by SEH D|B, Owner agrees to arrange for the owner of any telecommunications equipment located on the water tank(s) or appurtenant facilities to remove or protect telecommunications equipment during the Work. SEH D|B cannot and will not remove such equipment and the removal of such equipment by the Owner or the owner of such equipment is a condition precedent to SEH D|B's obligations under this Agreement.
- 7.1.2 Owner will also arrange for the reinstallation of the telecommunications equipment after SEH D|B has notified the Owner that rehabilitation work has been completed or that the work has proceeded to the point where such equipment may be reinstalled. SEH D|B shall have no responsibility for the reinstallation of the telecommunications equipment.
- 7.1.3 Owner acknowledges that SEH D|B cannot be responsible for any damage to the telecommunications equipment during the removal and reinstallation of the existing equipment. As a result, Owner will indemnify, defend and hold SEH D|B harmless against any and all claims, damages, suits, disbursements or other costs including reasonable attorneys' fees incurred by SEH D|B as a result of removal and/or reinstallation of the existing telecommunications equipment.
- 7.1.4 Work that results from the proposed or actual installation of future telecommunications or other equipment that is anchored to or otherwise attaches to the tank structure or appurtenances is not included as part of this work. Owner agrees that SEH D|B will have the right to review, approve and inspect all proposed/future telecommunications equipment installations during the term of this

contract. SEH D|B shall be compensated in accordance with its then current hourly rates for such work as an additional service. SEH D|B shall bill Owner for these services through a separate invoice for this work.

7.2 PROJECT INFORMATION

7.2.1 The Owner shall furnish all surveys, record drawings, and other information describing legal limitations, physical conditions, soils and subsurface conditions and utility locations material to the Work. The Owner shall provide SEH D|B with copies of all prior evaluations, studies, reports, or existing documentation regarding the condition of Water Tanks, or any concerns or complaints regarding the condition or operation of the Tank(s) or other work subject to this Agreement. The Owner shall secure and pay for necessary permits, approvals, variances, easements, assessments and charges required for the construction, use or occupancy of the Water Tank. If the Owner becomes aware of any fault or defect in the Project, it shall give prompt notice thereof to SEH D|B.

8. INDEMNIFICATION

To the fullest extent permitted by law, SEH D|B agrees to defend and indemnify the Owner, and its officers, employees, agents, contractors, volunteers and public officials, from and against all claims, damages, losses, and expenses, including attorney fees, attributable to the negligent, or otherwise wrongful act or omission, including breach of a specific contractual duty, of SEH D|B, its employees, agents, contractors, or delegates under this Agreement.

9. INSURANCE

SEH D|B shall secure and maintain such insurance as will protect SEH D|B from claims under the Worker's Compensation Acts, automobile liability, and from claims for bodily injury, death, or property damage which may arise from the performance of services under this Agreement. Such insurance shall be written for amounts not less than:

Commercial General Liability	\$1,000,000 each occurrence/aggregate
Automobile Liability	\$1,000,000 combined single limit
Excess/Umbrella Liability	\$2,000,000 each occurrence/aggregate

The Owner shall be named as an additional insured on the general liability and umbrella policies. The Commercial General Liability policy shall include coverage for premises, operations, personal injury, advertising injury and contractually assumed liability.

SEH D|B or its engineering subconsultant shall secure and maintain a professional liability insurance policy. Said policy shall insure payment of damages for legal liability arising out of the performance of professional services for the Owner, in the insured's capacity as engineer, if such legal liability is caused by a negligent act, error or omission of the insured or any person or organization for which the insured is legally liable. Said policy shall provide minimum limits of \$1,000,000 with a deductible maximum of \$200,000 unless the Owner agrees to a higher deductible.

Before commencing work, SEH D|B shall upon written request, provide the Owner a certificate of insurance evidencing the required insurance coverage in a form acceptable to Owner. The certificate shall provide that such insurance cannot be cancelled until thirty (30) days after the Owner has received written notice of the insurer's intention of cancel this insurance.

10. INDEPENDENT CONTRACTOR

The Owner hereby retains SEH D|B as an independent contractor upon the terms and conditions set forth in this Agreement. SEH D|B is not an employee of the Owner and is free to contract with other entities as provided herein. SEH D|B shall be responsible for selecting the means and methods of performing the work. SEH D|B shall furnish any and all supplies, equipment, and incidentals necessary for SEH D|B's performance under this Agreement. Owner and SEH D|B agree that SEH D|B shall not at any time or in any manner represent that SEH D|B or any of SEH D|B's agents or employees are in any manner agents or employees of the Owner. SEH D|B shall be exclusively responsible under this Agreement for SEH D|B's own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

SEH D|B agrees to comply with all federal, state, and local laws and ordinances applicable to the services begin performed under this Agreement, including all safety standards. SEH D|B shall be solely and completely responsible for conditions of the job site, including the safety of all persons and property during the performance of the services. SEH D|B represents and warrants that it has the requisite training, skills, and experience necessary to provide the services and is appropriately licensed by all applicable agencies and governmental entities to provide such services.

11. CHANGE ORDERS

- 11.1 The Owner may request that SEH D|B perform additional services not originally included in the basic services identified in Exhibit A. No such work may be done until after the Owner has approved the change order in writing. Upon such a request by Owner, SEH D|B will generate a Change Order in writing describing the additionally requested Work and the anticipated compensation for undertaking that Work.
- 11.2 In any emergency affecting the safety of persons or property, SEH D|B shall act, at its discretion, to prevent threatened damage, injury or loss. If the emergency was not the result of SEH D|B's fault, SEH D|B will be entitled to an equitable contract adjustment to compensate SEH D|B for its services.
- 11.3 All Change Orders shall include:
- 11.3.1 A detailed description of the Change Order Work to be performed.
 - 11.3.2 The amount of any adjustment (up or down) to the SEH D|B contract for the Work done pursuant to Change Order.
 - 11.3.3 A modification of the project schedule if necessitated by the Change Order Work.
- 11.4 SEH D|B may request a change order if it believes work outside the scope of services has been requested or is needed. All such change orders must be approved in writing by the Owner before the work is done.

12. TERM AND TERMINATION

- 12.1 Either party may terminate this Agreement prior to the expiration of the 10-year term for material breach of this Agreement, provided such breach is not cured as set forth below.
- 12.2 If either party believes that the other has materially breached the agreement, then the party alleging the breach shall give the other 15 days written notice setting forth the nature of the claimed breach and confirming the intent to terminate. The party claimed to be in breach will then have 15 days to cure the condition which constitutes the alleged material breach of the contract, or demonstrate that no breach exists. If the party in breach fails to correct the breach or demonstrate no breach exists, the agreement will terminate upon two days written notice.
- 12.3 The Owner may, at any time, terminate this Agreement for the Owner's convenience without cause upon 30 days written notice. In the event the Owner terminates this Agreement for convenience, SEH D|B shall:
- 12.3.1 Cease operations as directed by the Owner in its notice;
 - 12.3.2 Take actions as necessary or as the Owner may direct for the protection and preservation of the Work; and

- 12.3.3 Except for work directed to be performed prior to the effective date of the termination for convenience, terminate all existing subcontracts and purchase orders, and enter in to no further subcontracts and purchase orders.
- 12.3.4 Determine the total amount due for services performed prior to the effective date of the termination for convenience.
- 12.4 In the event of termination for convenience by the Owner, SEH D|B shall be entitled to receive payment for all Work satisfactorily performed through the date of termination, including any Change Orders.
- 12.5 In the event of termination for cause prior to the expiration of the term of this Agreement or any Work Order, Owner shall pay to SEH D|B the remaining amount due for the Work satisfactorily performed and all claims shall be resolved as set forth in the applicable Work Order. Such payment shall be due within 30 days of termination. Payments not received by the last day of the month shall be overdue and will accrue interest at a rate of 1.5% per month or the maximum rate allowed by law whichever is less.

13. ASSIGNMENT

Neither party shall assign this Agreement, nor any interest arising herein, nor any claims arising from or related to this Agreement or the Project, without the written consent of the other party. Any assignment in violation of this provision shall be null and void. Notwithstanding the above, SEH D|B reserves the right to assign its right(s) for payments due under this Agreement to a bank, credit union or other lending institution or entity in return for immediate payments, financing of work under this Agreement or other good and valuable consideration, and Owner hereby consents to such assignment.

14. WAIVER

Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

15. ENTIRE AGREEMENT

The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

16. CONTROLLING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. All parties to this Agreement consent to and accept the personal jurisdiction of the State of Wisconsin and agree that all claims, disputes or litigation that arises from or relates to this Agreement shall be made in the State of Wisconsin.

17. COPYRIGHT

SEH D|B shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by it for the Project, and it shall hold harmless the Owner from loss or damage resulting there from for use of these documents for the Project. Owner shall not use any designs, drawings or specifications supplied by SEH D|B for any other project without the express written consent of SEH D|B.

18. RECORDS

SEH D|B shall maintain complete and accurate records of time and expense involved in the performance of services.

19. BINDING EFFECT, THIRD PARTIES

Each of the provisions of the Contract Documents shall extend to and shall, as the case may require, bind or inure to the benefit not only of the parties, but also for their respective successors, heirs or assigns, provided this clause shall not permit any assignment by any party of the Contract Documents not otherwise permitted. The parties agree that the Contract Documents are not intended by either party to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation (other than a party or its permitted assignee, or, to the extent applicable, any Affiliates) as a third party beneficiary or otherwise under any theory of law.

20. MISCELLANEOUS

- 20.1 This Agreement states the integrated and complete Agreement between Owner and SEH D|B on this subject and replaces any previous understandings, representations or communications, whether oral or written.
- 20.2 A party’s failure to exercise a right in one or many instances does not waive that right as to any later instance. The course of conduct does not affect a modification or a waiver unless ratified in writing by the party to be bound.
- 20.3 In the event of any litigation between the parties related to this Agreement or its breach, each party will be responsible for its own attorney's fees together with expert's fees and other costs.
- 20.4 The section headings of this Agreement are included for purposes of convenience only and will not affect the construction or interpretation of any provision.
- 20.5 All provisions of this Agreement allocating responsibility between the Owner and SEH D|B will survive the completion of the Work or termination of this Agreement.
- 20.6 Any provision or part of this Agreement adjudicated to be void or unenforceable under any law will be deemed deleted, such deletion to apply only with respect to the jurisdiction in which such adjudication is made, and all remaining provisions will continue to be valid and binding upon the parties. The parties agree that this Agreement will be reformed to replace the deleted provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the deleted provision.
- 20.7 SEH D|B warrants and guarantees to the Owner that all material and work will be in accordance with the contract documents and will not be defective. SEH D|B shall provide a manufacturer’s warranty on paint of at least ten years in a form acceptable to the Owner.
- 20.8 In the hiring of employees or subcontractors to perform work under this Agreement, SEH D|B shall not discriminate against any person by reason of any characteristic protected by state or federal law.
- 20.9 All notices and other communications under this Agreement must be in writing and must be addressed as follows:

Notice to Owner: City of West Allis
 West Allis, Wisconsin
 Attn: _____
 6300 West McGeoch Avenue
 West Allis, WI 53219

Notice to SEH D|B SEH Design/Build, Inc.
 Attn: Steven L. Peterson, SEH D|B President
 3535 Vadnais Center Drive
 St. Paul, MN 55110

IN WITNESS WHEREOF, the parties hereto through their respective authorized representatives have executed this Agreement as of the day and year first written above.

OWNER

BY: _____
City of West Allis

BY: _____

Dated: _____

SEH DESIGN|BUILD, INC.

BY: Steven L. Peterson
Steven L. Peterson, President

Its: President

Dated: 08-31-2017

EXHIBIT A

SCHEDULE OF SERVICES

1,500,000-GALLON LEGGED TANK 116 th & ROGERS CITY OF WEST ALLIS WEST ALLIS, WISCONSIN	MAINTENANCE PLAN YEAR				
	1	2	3	4	5
	2017	2018	2019	2020	2021
VISUAL SURVEY					
Coating Observation (Exterior)	●	●	●	●	
(Wet/Dry Interior)	●	●	●	●	
Accessory Observation	●	●	●	●	
Summary Statement	●	●	●	●	
GENERAL MAINTENANCE					
Pressure Wash (Exterior)					●
(Wet Interior)					●
Spot Coating Repairs (Exterior)					●
(Wet/Dry Interior)					●
Minor Accessory Repairs					●
Quality Assurance Inspections					●
ENGINEERING EVALUATION					
Coating Testing (Exterior) and Analysis					●
(Wet/Dry Interior)					●
Five-year AWWA Inspection					●
Tank Accessories Inspection					●
Report with Recommendations					●

EXHIBIT A
SCOPE OF SERVICES

Tank Name:	1,500,000-Gallon Legged-Style Tank City of West Allis, Wisconsin
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Years: 2017 to 2020

1.	<p>Yearly Visual Surveys:</p> <ul style="list-style-type: none"> • Full tank inspection (wet interior does not have to be drained). • Summary Report.
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Year: 2021

1.	<p>Exterior:</p> <ul style="list-style-type: none"> • Pressure-wash exterior surfaces to remove contaminants, mildew, and scale. • Power-tool clean all failed/corroded areas on the exterior surfaces to an equivalent of an SSPC-SP3 Power Tool Cleaning condition. • Apply one coat of epoxy, and one coat of urethane with UV-protection to exposed/prepared areas.
2.	<p>Wet Interior:</p> <ul style="list-style-type: none"> • Pressure-wash all wet interior surfaces to remove contaminants and staining. • Power tool clean all failed/corroded areas on wet interior surfaces to an equivalent of an SSPC-SP11 Power Tool Cleaning to Bare Metal condition. • Apply two coats of epoxy to all prepared areas in accordance with ANSI/NSF Standard 61. • Disinfect tank wet interior per AWWA C652.
3.	<p>Dry Interior:</p> <ul style="list-style-type: none"> • Power tool clean all rusted/corroded areas on the dry interior surfaces to an equivalent of an SSPC-SP3 Power Tool Cleaning condition. • Apply two coats of epoxy coating (AWWA D102 Inside Paint System No. 1) to all prepared areas.
4.	<p>Engineering Evaluation:</p> <ul style="list-style-type: none"> • Inspection of the exterior, wet interior, dry interior, and valve vault coating systems. • Wet interior will be drained to coincide with the wet interior pressure wash and coating repairs. • Tank accessories inspection. • Preparation of a report with recommendations.

116th Rogers

EXHIBIT B
COMPENSATION SCHEDULE

In return for the services rendered in Exhibit A, the Owner agrees to compensate SEH D|B in accordance with the following schedule of payments. The first payment shall be invoiced upon completion of the work tasks identified in 2017.

Each additional annual payment shall be invoiced on the anniversary date of the year-one work completion.

	<input type="checkbox"/> Five-Year Variable Payment
2017	\$7,500
2018	\$7,500
2019	\$7,500
2020	\$7,500
2021	\$67,000
Totals:	\$97,000

Performance and Payment Bonds are not required for Water Tank Maintenance Service Agreements and are not included in the Compensation Schedule.

AGREEMENT

THIS WATER TANK MAINTENANCE SERVICES AGREEMENT (hereinafter called "Agreement") is made as of the 31 day of August, 2017 (the "Effective Date") by and between **City of West Allis** (hereinafter called "Owner") and SEH Design/Build, Inc., with its principal place of business at St. Paul, Minnesota (hereinafter called "SEH D|B").

In consideration of the agreements hereinafter contained, the parties hereto agree as follows:

1. SCOPE OF SERVICES

The Owner retains SEH D|B to furnish the services set forth on the attached Exhibit "A" (referred to as "Services" or "Work"). SEH D|B agrees to perform the services. SEH D|B shall provide all personnel, supervision, services, materials, tools, equipment and supplies and do all things necessary for the Water Tank Services and all materials, equipment and improvements ancillary thereto specified on Exhibit "A" (Sometimes referred to herein as "the Project").

The Project bound by this Agreement is:

The 1,500,000-gallon pedestal-style water tank, located at 84th and National Avenue in West Allis, Wisconsin.

The work to be performed under this Agreement shall be done under the review of a professional engineer licensed in the State of Wisconsin, who shall attest that the work will be performed in compliance with all applicable codes and engineering standards.

All procurement and construction shall be in accordance with drawings, specifications or other documents to be prepared by SEH D|B in accordance with design premises, performance requirements and other criteria set forth or referenced in the Exhibits hereto. The work shall be performed as set forth in the Contract Documents, which includes this Agreement and Exhibits, including Exhibit "A" – Schedule and Scope of Services and Exhibit "B" – Compensation Schedule. In the event any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the following order: (i) this Agreement; (ii) Exhibit "A", (iii) Exhibit "B".

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Owner has designated _____ (name), _____ (title) for City of West Allis (the "Owner Representative"), and SEH D|B has designated Mr. Steven L. Peterson (the "SEH D|B Representative"). The Owner Representative and the SEH D|B Representative shall be available as often as is reasonably necessary for reviewing the Water Tank Services herein, providing required information or decisions, and for authorizing changes therein as may be required.

3. COMPENSATION

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4. INVOICING

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- 4.2 Invoices for change orders shall be separately mailed and billed as outlined in the Change Order.
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- 4.4 Invoices for services required for the engineering, repair and services required to bring the water tank or appurtenant facilities into compliance with applicable federal, state and local codes shall be separately itemized by SEH D|B and payment shall be spread over a period of not less than three years from the Effective Date.
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- 7.1.1 Owner recognizes that any telecommunications equipment located on the water tank(s) or appurtenant facilities may interfere with the work contemplated in this Agreement. If requested by SEH D|B, Owner agrees to arrange for the owner of any telecommunications equipment located on the water tank(s) or appurtenant facilities to remove or protect telecommunications equipment during the Work. SEH D|B cannot and will not remove such equipment and the removal of such equipment by the Owner or the owner of such equipment is a condition precedent to SEH D|B's obligations under this Agreement.
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- 7.1.4 Work that results from the proposed or actual installation of future telecommunications or other equipment that is anchored to or otherwise attaches to the tank structure or appurtenances is not included as part of this work. Owner agrees that SEH D|B will have the right to review, approve and inspect all proposed/future telecommunications equipment installations during the term of this

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8. INDEMNIFICATION

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SEH D|B agrees to comply with all federal, state, and local laws and ordinances applicable to the services begin performed under this Agreement, including all safety standards. SEH D|B shall be solely and completely responsible for conditions of the job site, including the safety of all persons and property during the performance of the services. SEH D|B represents and warrants that it has the requisite training, skills, and experience necessary to provide the services and is appropriately licensed by all applicable agencies and governmental entities to provide such services.

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- 11.4 SEH D|B may request a change order if it believes work outside the scope of services has been requested or is needed. All such change orders must be approved in writing by the Owner before the work is done.

12. TERM AND TERMINATION

- 12.1 Either party may terminate this Agreement prior to the expiration of the 10-year term for material breach of this Agreement, provided such breach is not cured as set forth below.
- 12.2 If either party believes that the other has materially breached the agreement, then the party alleging the breach shall give the other 15 days written notice setting forth the nature of the claimed breach and confirming the intent to terminate. The party claimed to be in breach will then have 15 days to cure the condition which constitutes the alleged material breach of the contract, or demonstrate that no breach exists. If the party in breach fails to correct the breach or demonstrate no breach exists, the agreement will terminate upon two days written notice.
- 12.3 The Owner may, at any time, terminate this Agreement for the Owner's convenience without cause upon 30 days written notice. In the event the Owner terminates this Agreement for convenience, SEH D|B shall:
 - 12.3.1 Cease operations as directed by the Owner in its notice;
 - 12.3.2 Take actions as necessary or as the Owner may direct for the protection and preservation of the Work; and

- 12.3.3 Except for work directed to be performed prior to the effective date of the termination for convenience, terminate all existing subcontracts and purchase orders, and enter in to no further subcontracts and purchase orders.
- 12.3.4 Determine the total amount due for services performed prior to the effective date of the termination for convenience.
- 12.4 In the event of termination for convenience by the Owner, SEH D|B shall be entitled to receive payment for all Work satisfactorily performed through the date of termination, including any Change Orders.
- 12.5 In the event of termination for cause prior to the expiration of the term of this Agreement or any Work Order, Owner shall pay to SEH D|B the remaining amount due for the Work satisfactorily performed and all claims shall be resolved as set forth in the applicable Work Order. Such payment shall be due within 30 days of termination. Payments not received by the last day of the month shall be overdue and will accrue interest at a rate of 1.5% per month or the maximum rate allowed by law whichever is less.

13. ASSIGNMENT

Neither party shall assign this Agreement, nor any interest arising herein, nor any claims arising from or related to this Agreement or the Project, without the written consent of the other party. Any assignment in violation of this provision shall be null and void. Notwithstanding the above, SEH D|B reserves the right to assign its right(s) for payments due under this Agreement to a bank, credit union or other lending institution or entity in return for immediate payments, financing of work under this Agreement or other good and valuable consideration, and Owner hereby consents to such assignment.

14. WAIVER

Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

15. ENTIRE AGREEMENT

The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

16. CONTROLLING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. All parties to this Agreement consent to and accept the personal jurisdiction of the State of Wisconsin and agree that all claims, disputes or litigation that arises from or relates to this Agreement shall be made in the State of Wisconsin.

17. COPYRIGHT

SEH D|B shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by it for the Project, and it shall hold harmless the Owner from loss or damage resulting there from for use of these documents for the Project. Owner shall not use any designs, drawings or specifications supplied by SEH D|B for any other project without the express written consent of SEH D|B.

18. RECORDS

SEH D|B shall maintain complete and accurate records of time and expense involved in the performance of services.

19. BINDING EFFECT, THIRD PARTIES

Each of the provisions of the Contract Documents shall extend to and shall, as the case may require, bind or inure to the benefit not only of the parties, but also for their respective successors, heirs or assigns, provided this clause shall not permit any assignment by any party of the Contract Documents not otherwise permitted. The parties agree that the Contract Documents are not intended by either party to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation (other than a party or its permitted assignee, or, to the extent applicable, any Affiliates) as a third party beneficiary or otherwise under any theory of law.

20. MISCELLANEOUS

- 20.1 This Agreement states the integrated and complete Agreement between Owner and SEH D|B on this subject and replaces any previous understandings, representations or communications, whether oral or written.
- 20.2 A party's failure to exercise a right in one or many instances does not waive that right as to any later instance. The course of conduct does not affect a modification or a waiver unless ratified in writing by the party to be bound.
- 20.3 In the event of any litigation between the parties related to this Agreement or its breach, each party will be responsible for its own attorney's fees together with expert's fees and other costs.
- 20.4 The section headings of this Agreement are included for purposes of convenience only and will not affect the construction or interpretation of any provision.
- 20.5 All provisions of this Agreement allocating responsibility between the Owner and SEH D|B will survive the completion of the Work or termination of this Agreement.
- 20.6 Any provision or part of this Agreement adjudicated to be void or unenforceable under any law will be deemed deleted, such deletion to apply only with respect to the jurisdiction in which such adjudication is made, and all remaining provisions will continue to be valid and binding upon the parties. The parties agree that this Agreement will be reformed to replace the deleted provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the deleted provision.
- 20.7 SEH D|B warrants and guarantees to the Owner that all material and work will be in accordance with the contract documents and will not be defective. SEH D|B shall provide a manufacturer's warranty on paint of at least ten years in a form acceptable to the Owner.
- 20.8 In the hiring of employees or subcontractors to perform work under this Agreement, SEH D|B shall not discriminate against any person by reason of any characteristic protected by state or federal law.
- 20.9 All notices and other communications under this Agreement must be in writing and must be addressed as follows:

Notice to Owner: City of West Allis
 West Allis, Wisconsin
 Attn: _____
 6300 West McGeoch Avenue
 West Allis, WI 53219

Notice to SEH D|B SEH Design/Build, Inc.
 Attn: Steven L. Peterson, SEH D|B President
 3535 Vadnais Center Drive
 St. Paul, MN 55110

IN WITNESS WHEREOF, the parties hereto through their respective authorized representatives have executed this Agreement as of the day and year first written above.

OWNER

SEH DESIGN|BUILD, INC.

BY: _____
City of West Allis

BY: Steven L. Peterson
Steven L. Peterson, President

BY: _____

Its: President

Dated: _____

Dated: 08-31-2017

EXHIBIT A

SCHEDULE OF SERVICES

1,500,000-GALLON PEDESTAL TANK 84 TH & NATIONAL CITY OF WEST ALLIS WEST ALLIS, WISCONSIN	MAINTENANCE PLAN YEAR				
	1	2	3	4	5
	2017*	2018	2019	2020	2021
VISUAL SURVEY					
Coating Observation (Exterior)		●	●	●	
(Wet/Dry Interior)		●	●	●	
Accessory Observation		●	●	●	
Summary Statement		●	●	●	
GENERAL MAINTENANCE					
Pressure Wash (Exterior)					●
(Wet Interior)					●
Spot Coating Repairs (Exterior)					●
(Wet/Dry Interior)					●
Minor Accessory Repairs	●				●
Quality Assurance Inspections					●
ENGINEERING EVALUATION					
Coating Testing (Exterior)					●
and Analysis (Wet/Dry Interior)					●
Five-year AWWA Inspection					●
Tank Accessories Inspection					●
Report with Recommendations					●
<p><i>*2017 Visual Survey services are included in the 2013-2017 contract. Replacement of the ladder rail with a safety cable is included in the extension agreement, with work to be completed in 2017 or 2018.</i></p>					

EXHIBIT A
SCOPE OF SERVICES

Tank Name:	1,500,000-Gallon Pedestal-Style Tank City of West Allis, Wisconsin
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Year: 2017 or 2018	
1.	Accessory Modification: <ul style="list-style-type: none"> • Replace climbing rail with safety climb cable on the dry interior ladders.

Years: 2018 to 2020	
1.	Yearly Visual Surveys: <ul style="list-style-type: none"> • Full tank inspection (wet interior does not have to be drained). • Summary Report.

Year: 2021	
1.	Exterior: <ul style="list-style-type: none"> • Pressure-wash exterior surfaces to remove contaminants, mildew, and scale. • Power-tool clean all failed/corroded areas on the exterior surfaces to an equivalent of an SSPC-SP3 Power Tool Cleaning condition. • Apply one coat of epoxy, and one coat of urethane with UV-protection to exposed/prepared areas.
2.	Wet Interior: <ul style="list-style-type: none"> • Pressure-wash all wet interior surfaces to remove contaminants and staining. • Power tool clean all failed/corroded areas on wet interior surfaces to an equivalent of an SSPC-SP11 Power Tool Cleaning to Bare Metal condition. • Apply two coats of epoxy to all prepared areas in accordance with ANSI/NSF Standard 61. • Disinfect tank wet interior per AWWA C652.
3.	Dry Interior: <ul style="list-style-type: none"> • Power tool clean all rusted/corroded areas on the dry interior surfaces to an equivalent of an SSPC-SP3 Power Tool Cleaning condition. • Apply two coats of epoxy coating (AWWA D102 Inside Paint System No. 1) to all prepared areas.

Year: 2021

4.

Engineering Evaluation:

- Inspection of the exterior, wet interior, dry interior, and valve vault coating systems.
- Wet interior will be drained to coincide with the wet interior pressure wash and coating repairs.
- Tank accessories inspection.
- Preparation of a report with recommendations.

04/National

EXHIBIT B
COMPENSATION SCHEDULE

In return for the services rendered in Exhibit A, the Owner agrees to compensate SEH D|B in accordance with the following schedule of payments. The first payment shall be invoiced upon completion of the work tasks identified in 2017.

Each additional annual payment shall be invoiced on the anniversary date of the year-one work completion.

	<input type="checkbox"/> Five-Year Variable Payment
2017	\$8,000
2018	\$7,600
2019	\$7,600
2020	\$7,600
2021	\$67,000
Totals:	\$97,800

Performance and Payment Bonds are not required for Water Tank Maintenance Service Agreements and are not included in the Compensation Schedule.

