



## SERVICE AGREEMENT

Pursuant to this Service Agreement (“Agreement”), The City of La Crosse (“Plan Sponsor”), has engaged HEALICS Inc. (“Provider”), to provide certain services to plan sponsor.

### 1. Effective Date and Term

The effective date of this Agreement is August 1, 2017 (“Effective Date”) and shall be a three year term ending July 31, 2020

### 2. Definitions

- (a) “Agreement” means this Service Agreement, including all appendices and attachments.
- (b) “Health Care Consultant” means the health care professional with whom the Participant may consult about his or her Health Risk Assessment.
- (c) “Health Risk Assessment” (“HRA”) means the assessment under the Plan Sponsor’s voluntary HRA program for Participants, including without limitation, for the individual Participant, a written questionnaire; body measurements; blood draw; blood analysis; health risk analysis based on the written questionnaire, body measurements, and blood analysis; Health Risk Report; and consultation with a Health Care Consultant.
- (d) “Health Risk Questionnaire” means the written questionnaire, in a form approved by Plan Sponsor, with the original produced by Provider and reproduced by Plan Sponsor for Participants, and completed by a Participant as part of the HRA process.
- (e) “Health Risk Report” means the confidential written report produced and evaluated by Provider for an individual Participant.
- (f) “HRA Benchmark Report” means the report produced by Provider for Plan Sponsor (although not requested for this contract period) that identifies each Participant as a member of one of the following groups based on the HRA Wellness Score for that Plan year: Participants with an HRA Wellness Score that meets or exceeds the HRA Wellness Benchmark, and Participants with an HRA Wellness Score below the HRA Wellness Benchmark but who have improved their HRA Wellness Score by a measure, to be set by the Plan Sponsor, since the Participant’s prior year HRA.
- (g) “HRA Group Report” means the aggregate information reports provided online by Provider to Plan Sponsor, including, without limitation, a current group profile; graphic presentations of individual risk factors; comparisons among subgroups of the Plan Sponsor and other groups serviced by Provider; comparisons between Plan Sponsor’s health plans; annual comparisons among the Plan Sponsor’s offices or locations; and annual comparisons of repeat participants among Participants.
- (h) “HRA Wellness Score” means the overall score assigned to a Participant by Provider based on the HRA.
- (i) “HRA Wellness Benchmark” means the numerical HRA Wellness Score provided by Provider in the event the Plan Sponsor chooses to offer a participant bonus based on the HRA Wellness Benchmark.
- (j) “Participant” means an individual that participates in the health assessment process.

### 3. Obligations and Activities of Provider:

- (a) *Services to Be Provided:* Provider agrees to provide services relating to Health Risk Assessments. Such HRA services shall be based on and shall employ actuarially sound methods of assessing individual health risks, and shall include, without limitation, the following:
- (1) Health screenings for Participants conducted at the worksite or other selected locations at times specified by Plan Sponsor, including blood drawing, laboratory tests, and physical measurements. In the event Plan Sponsor has employees, spouses, or retirees that it wants tested, and they are not available at scheduled times and dates at the worksite or other selected group testing locations, then Provider shall assist in arranging in-clinic testing for such persons.
  - (2) Provider shall provide Plan Sponsor via email with an original Health Risk Questionnaire, Participant instructions, and laboratory consent form for Plan Sponsor to print according to specifications and distribute as appropriate. Upon receipt of completed Health Risk Questionnaires from examiners and laboratory results from a laboratory, Provider shall enter Health Risk Questionnaire and laboratory results in its database.
  - (3) Provider shall prepare and send an individual printed Health Risk Report for each Participant within four weeks of the later of the Participant's completing the questionnaire and having blood drawn unless Plan Sponsor has requested and authorized personal report delivery. Provider shall come to worksite locations to deliver individual reports in person based on a schedule provided in advance by Plan Sponsor. In the event HRA participants miss their appointments or are not available on scheduled days for in-person delivery, then Provider shall mail personal health risk reports to those individuals and follow up with telephonic report delivery.
  - (4) Provider shall provide personal health consultations for Participants, if requested by Plan Sponsor. Personal health consultations with Health Care Consultants shall be conducted with those eligible Participants who elect to have such consultation, at times and locations set by Plan Sponsor.
  - (5) Provider shall respond to Participant inquiries and requests. Provider shall make itself available during normal working hours to respond to Participant inquiries relating to the HRA and to Participant requests for information and documents, and shall respond to such inquiries and requests within a reasonable time.
  - (6) Provider shall submit a list of individuals that fully participated in the HRA process to Plan Sponsor. Full participation is defined as:
    - 1) Completed and returned HRA questionnaire;
    - 2) Completed biometric testing with fasting; and
    - 3) Attended personal report delivery - or received telephonic report delivery if unable to attend as described in #3 above
  - (7) Provider shall prepare and transmit HRA Benchmark Report to Plan Sponsor if such report is requested in advance by Plan Sponsor.
  - (8) Provider shall transmit the HRA Group Report to Plan Sponsor via online access.
  - (9) Provider shall provide Plan Sponsor with notification of any and all changes in standards relating to its HRAs, including, without limitation, any adjustments to standards based on age and shall provide timely updates to Plan Sponsor regarding such changes.
  - (10) Provider shall work to administer and resolve claims and appeals from Participants relating to HRAs, including, without limitation, any Participant dispute of HRA-related tests and HRA results, and any Participant request for review or adjustment of the Participant's HRA Wellness Score because of a disability, medical condition, or other extenuating circumstance to the extent allowed under the Plan. Provider will apprise Plan Sponsor of any unusual policy-setting situations or unusual policy determinations.
  - (11) Provider shall afford Plan Sponsor a reasonable opportunity to review any generic written communications, including all forms, reports, and questionnaires, sent by Provider to Participants, before such communication is sent to any Participant or Participants.

(b) *Payment for Services:*

(1) Plan Sponsor shall pay all fees properly invoiced by Provider per the attached fee schedule.

(c) *Compliance with Laws and Regulations:* Provider represents and warrants that Provider is fully compliant with all state and Federal laws and regulations. Provider agrees to take all necessary steps to remain fully compliant.

**4. Confidentiality/Prohibited Use and Disclosure Provisions**

- (a) *In General:* Provider agrees to comply with all applicable privacy laws with respect to all HRA information and the name or other identifying information of Plan Sponsor and Participants. Provider shall not disclose any such confidential information to the Plan Sponsor, any third party or any employee if such disclosure would violate any law. Provider agrees not to use any such confidential information for any purpose other than carrying out Provider's obligations under this Agreement or as may be required by law. Provider agrees that it shall require its employees to adhere to and comply with the confidentiality, prohibited use and disclosure provisions stated in this Agreement.
- (b) *Name and Other Identifying Information:* Provider agrees not to use or to sell, lease, assign, disclose, or otherwise transfer to any third party the name or other identifying information of any Participant, except as specifically provided in the Agreement, or as disclosed to Provider's employees, agents, or subcontractors for the limited purpose of carrying out Provider's obligations under the Agreement, or as may be required by law.
- (c) *HRA Information:* Provider agrees not to use or to sell, lease, assign, disclose, or otherwise transfer to any third party any information obtained or generated through Plan Sponsor's HRAs, except as specifically provided in the Agreement, or as disclosed to Provider's employees, agents, or subcontractors for the limited purpose of carrying out Provider's obligations under the Agreement, or as may be required by law.
- (d) *HRA Blood Samples:* Provider agrees not to use or to sell, lease, assign, disclose, or otherwise transfer to any third party any blood samples obtained through the HRAs, except as specifically provided in the Agreement, or as transferred or released to Provider's employees, agents, or subcontractors for the limited purpose of carrying out Provider's obligations under the Agreement, or as may be required by law.
- (e) *Plan Sponsor Information:* Provider agrees not to use or to sell, lease, assign, disclose, or otherwise transfer to any third party the name or other identifying information of the Plan Sponsor, except as specifically provided in the Agreement, or as disclosed to Provider's employees, agents, or subcontractors for the limited purpose of carrying out Provider's obligations under the Agreement, or as may be required by law. HEALICS may disclose the name of Plan Sponsor as a client of HEALICS and Plan Sponsor's average score in any report that shows all Healics clients and their average scores. Any disclosure is not for release to the general public.
- (f) *Unauthorized Tests:* Provider may not conduct a test on Participants unless Plan Sponsor has specifically authorized the test in writing. In particular, Provider may not test Participants for communicable diseases, including but not limited to HIV or sexually transmitted diseases; for illegal drug use; for pregnancy; or to screen for the presence or absence of genetic diseases/disorders or markers for genetic diseases/disorders.
- (g) *Safeguards:* Provider agrees to use appropriate safeguards to prevent use or disclosure of HRA information or the name or other identifying information of Plan Sponsor or Participants, other than use or disclosure as provided for by this Agreement or as may be required by law, but nevertheless shall also use appropriate safeguards when using or disclosing HRA information or the name or other identifying information as provided for by this Agreement or as may be required by law to mitigate breaches of confidentiality.
- (h) *Mitigation:* Provider agrees to mitigate, to the extent practicable, any harmful effect that is known to Provider of a use or disclosure of HRA information or the name or other identifying information by Provider or Provider's employees, agents, or subcontractors in violation of the terms of this Agreement, to notify Plan Sponsor and Participants of any breach of confidentiality of a participant's HRA or other identifying information.
- (i) *Reporting Uses or Disclosures Not Covered by Agreement:* Provider agrees to promptly report to Plan Sponsor any use or disclosure of HRA information or the name or other identifying information of Plan Sponsor or Participants not provided for by this Agreement of which it becomes aware.

- (j) *Use of Agents or Subcontractors:* Provider agrees to ensure that any agent, including a subcontractor, who may obtain HRA information or the name or other identifying information of Plan Sponsor or Participants, agrees to the same restrictions and conditions that apply under this Agreement to Provider with respect to such information. Any such agreement with an agent or subcontractor shall be in writing. Provider further agrees to promptly disclose to Plan Sponsor the identity of any subcontractor or other agent who routinely provides and/or receives HRA information or the name or other identifying information of Plan Sponsor or Participants upon request for such information by Plan Sponsor.

## 5. Indemnification

Provider agrees to indemnify, defend, and hold harmless Plan Sponsor and its officers, directors, employees, and agents from any loss, cost, claim, or penalty, including reasonable attorney fees, against Plan Sponsor or its officers, directors, or employees arising in connection with Provider's obligations or provision of services under the Agreement, including, but not limited to, any harm caused to Participants, from any improper uses and/or disclosures of HRA information, or of the name or other identifying information of any Participant, or of the name or other identifying information of Plan Sponsor, or improper administration of blood drawing. This indemnification shall survive termination of this Agreement.

## 6. Termination

- (a) *Term:* The initial term of this Agreement shall be the period commencing on the effective date and ending three years from the effective date.
- (b) *Termination upon Notice:*
- (1) Plan Sponsor may terminate this Agreement at any time by providing written notice to Provider. Such termination shall be effective 60 days following such notice of termination.
  - (2) Provider may terminate this Agreement at any time by providing written notice to Plan Sponsor. Such termination shall be effective 60 days following such notice of termination.
- (c) *Termination at Dissolution/Bankruptcy of Provider:* Provider shall immediately notify Plan Sponsor if Provider ceases to do business in Wisconsin or files for bankruptcy. This Agreement shall terminate without notice if Provider ceases to do business in Wisconsin or files for bankruptcy. At such time, the Agreement immediately terminates, and Provider must, at Plan Sponsor's option, either:
- (1) Provide for the maintenance of all medical records by another person or entity. The transfer of medical records by Provider to another person or entity must be approved by Plan Sponsor in writing before the medical records are transferred. Provider must provide written notice to each Participant whose medical records will be transferred, describing where and by whom the medical records will be maintained.
  - (2) Transfer all medical records to another person or entity as directed by Plan Sponsor. The transfer of medical records by Provider to another person or entity must be approved by Plan Sponsor in writing before the medical records are transferred. Provider must provide written notice to each Participant whose medical records will be transferred, describing where and by whom the medical records will be maintained.
  - (3) Provide for the deletion or destruction of all medical records. The deletion or destruction of the medical records by Provider must be approved by Plan Sponsor in writing before the records are deleted or destroyed, and Provider must provide Plan Sponsor with a written description of the procedures that will be followed for deletion and/or destruction of medical records in accordance with applicable laws.
  - (4) "Records" under this Section shall include, without limitation, all books, medical records, and other documents, including electronic medical records, relating to the HRA, Plan Sponsor, and Participants.
- (d) *Termination for Cause:* Upon Plan Sponsor's determination that there has been a material breach or material violation of this Agreement by Provider, Plan Sponsor shall provide a reasonable opportunity for Provider to cure the breach or end the violation, as applicable, and terminate this Agreement if Provider does not cure the breach or end the violation within an agreed upon time.

- (e) *Effect of Termination:* Termination of this Agreement shall not terminate the rights or obligations of either Party arising out of a period prior to such termination. The indemnity, confidentiality, and privacy provisions of this Agreement shall survive its termination.

**7. Miscellaneous:**

(a) *Amendment:*

(1) Provider agrees to take such action to amend this Agreement from time to time as Plan Sponsor may determine is necessary or desirable for Plan Sponsor to comply with the requirements of any Federal or state law or regulation. Failure of Provider to take such action shall be deemed a material breach of this Agreement by Provider.

(2) Any amendment to the Agreement must be in writing and signed by an authorized representative of each party to the Agreement.

(b) *Notice:* All notices, requests, and communications to the parties shall be in writing (including facsimile or similar writing) and shall be given to the parties at their respective addresses identified in this Agreement or to such other address or facsimile number as either party may hereafter specify by notice to the other party. Each such notice, request, or communication shall be effective upon receipt, provided that if the day of receipt is not a business day, then the notice shall be deemed to have been received on the next succeeding business day.

(c) *Interpretation:* This Agreement and the parties' rights and obligations shall be governed and construed pursuant to the laws of the State of Wisconsin, and Provider consents to be subject to the jurisdiction of La Crosse County or Federal courts located in Wisconsin.

(d) *Assignment:* Provider may not assign this Agreement except with Plan Sponsor's prior written approval.

(e) *Entire Agreement:* This Agreement constitutes the entire agreement between the parties pertaining to its subject matter (the HRA service agreement between the parties), and supersedes all prior and contemporaneous agreements, understandings, and discussions, whether oral or written, in connection with the subject matter.

(f) *Counterparts:* This document may be signed in counterpart.

(g) *Independent Contractors:* Provider, its employees, agents and representatives and volunteers shall be independent contractors and shall in no way be deemed as a result of this Agreement to be the employees of the Plan Sponsor. Provider, its employees, agents, representatives and volunteers are not entitled to any of the benefits that the Plan Sponsor provides for its employees.

**Plan Sponsor:**

The City of La Crosse  
400 La Crosse Street  
La Crosse, WI 54601

Fax: 608-789-7598

By: \_\_\_\_\_  
Timothy Kabat, Mayor

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Teri Lehrke, City Clerk

Date Signed: \_\_\_\_\_

**Provider:**

Healics Incorporated  
8919 W. Heather Avenue  
Milwaukee, WI 53224

Telephone: 414-375-1600  
Fax: 414-375-1639

By: \_\_\_\_\_  
Michael Naparalla/Patti Plough  
President

Date Signed: \_\_\_\_\_



**City of La Crosse**  
**2017, 2018, 2019 Healics Fee Schedule – Venipuncture**

*Please check all boxes that apply to your program*

**HEALTH RISK ASSESSMENTS**

**\$65.00 per participant (\*)**

**Advance Planning**

A Healics representative will meet with Employer to discuss health risk assessment (HRA) strategies. Customized questionnaires, participant instructions and lab consents will be provided to Employer via our online document library. Paper copies will be mailed to each screening location. Distribution of these forms to eligible persons is also the responsibility of the Employer. Sign-up sheets for the health screen will be provided to Employer via our online scheduling system.

**Health Screens**

Participants complete printed questionnaires and bring them to their health screening appointment. An examiner records their measurements and draws a blood sample by venipuncture. Participants are scheduled every 10 minutes if one examiner will be present, every 6 minutes if two examiners will be present.

(\*) Charges for the health screens are as follows:

- \$65/person for 15 or more participants per session on-site.
- \$75/person for 11-14 participants per session on-site.
- \$105/person for 4-10 participants per session on-site.
- \$165/person for 1-3 participants per session on-site.
- \$165/person for at home screening (Employer could be charged travel expenses – i.e. airfare, car rental, mileage, hotel, food, etc. – for home screenings at locations in excess of 40 miles from examiner office).
- \$115/person for individual in-clinic testing with a kit – Healics will bill \$50 at the time a blood-draw kit is sent to participant and remaining \$65 when screening is completed. Kits are non-refundable once shipped from the Healics office.
- A charge of \$15/gap in schedule will be added if there are more than five gaps per session.
- A charge of \$10/person will be added for health screens scheduled on Saturday/Sunday.
- A charge of \$10/person will be added for health screens scheduled between 7pm and 4:30am.

**BLOOD TESTS**

Blood samples are sent to a national laboratory and are tested for nicotine, lipid panel, glucose, GGT (liver function) and blood chemistries. The laboratory transmits results electronically to Healics.

**Optional Blood Tests**

- PSA (Prostate Specific Antigen) - a charge of \$25/participant for optional PSA (prostate specific antigen) test - males only at specified age or older as determined by Employer.
- Thyroid - a charge of \$30/participant for optional Thyroid test.
- Hemoglobin A1c (Diabetic Specific Glucose Test) - a charge of \$30/participant for optional Hemoglobin A1c test.

Additional blood tests are available and quoted upon request.

**INDIVIDUAL REPORTS**

Health Risk Reports are mailed to a participant's home address. Participants are asked to bring their report with them if Employer requests Personal Report Delivery or Personal One-on-One Coaching (see pricing on next page).

**GROUP REPORTS**

Employers with 25 or more participants will have online access to the aggregate group reports that indicate the company's overall risks and wellness program interests.

**ADDITIONAL FEES/SERVICES**

- Privacy stations (for biometric screening) – quote provided upon request.

**Deposit**

A non-refundable 35% deposit required upon acceptance of services (based on total projected participation; Invoiced upon receipt of fee schedule).

**Cancellation Fee**

If Employer cancels a biometric screening, RD or coaching session or any portion of the scheduled event for any reason more than 14 days prior to the event, they will be charged a fee equal to 35% of the cost of the service based on the estimated number of participants. If Employer cancels a biometric screening, RD or coaching session or any portion of the scheduled event for any reason less than 14 days prior to the event date, 100% of the total contracted amount is due based on estimated participation.



Healics Fee Schedule cont'd

PERSONAL REPORT DELIVERY

**\$20 per participant (\*)**

(Billed per the total number of HRA participants)

**WI/MN Report Delivery**

A Healics Advisor will deliver the health risk results in person at the worksite for WI/MN locations with 11 or more participants. Telephonic report delivery will be provided for any location with less than 11 participants.

**(\*) Out of Area Report Delivery (outside WI/MN)**

A Healics Advisor will deliver the health risk results in person at the worksite for any locations in the USA with 11 or more participants. Telephonic report delivery will be provided for any location with less than 11 participants at \$20/person.

(\*) Out of area charges for the in person report deliveries are as follows:

- \$20/person for 161 or more participants per location on-site.
- \$25/person for 129-160 participants per location on-site.
- \$30/person for 97-128 participants per location on-site.
- \$40/person for 65-96 participants per location on-site.
- \$60/person for 33-64 participants per location on-site.
- \$120/person for 11-32 participants per location on-site.

**Additional Fees (all locations)**

- A charge of \$15/gap in schedule will be added if there are more than five gaps per session.
- A charge of \$15/no show per session and per last minute appointment cancellation per session.
- A charge of \$10/person will be added for sessions scheduled on Saturday/Sunday.

**Telephonic Report Delivery**

A Healics Advisor will deliver the health risk results telephonically for all participants at any location for \$20/person.

PERSONAL ONE-ON-ONE COACHING

**\$36 per session (\*)**

(Billed per the total number of HRA participants if only doing report delivery/coaching session)

Our coaches are Certified Wellness Coaches and are employed by Healics. They use a technique called "Motivational Interviewing" which has been described as collaborative, evocative, and respectful of client independence. This coaching style is meant to help motivate the participant to change and improve their health. Coaching sessions are stratified by risk category based on HRA results – the first session includes the HRA report delivery.

**WI/MN One-on-One Coaching**

A Healics coach will hold sessions at the worksite for WI/MN locations with 11 or more participants. Telephonic coaching will be provided for any location with less than 11 participants.

**(\*) Out of Area One-on-One Coaching (outside WI/MN)**

A Healics coach will hold sessions at the worksite for any locations in the USA with 11 or more participants. Telephonic coaching will be provided for any location with less than 11 participants at \$36/session.

(\*) Out of area charges for the coaching sessions are as follows:

- \$36/session for 141 or more participants per location on-site.
- \$41/session for 101-140 participants per location on-site.
- \$46/session for 81-100 participants per location on-site.
- \$53/session for 61-80 participants per location on-site.
- \$60/session for 41-60 participants per location on-site.
- \$75/session for 21-40 participants per location on-site.
- \$120/session for 11-20 participants per location on-site.

**Additional Fees (all locations)**

- A charge of \$15/gap in schedule will be added if there are more than five gaps per session when scheduled by employer.
- \$36 will be charged per no show per session. \$15 will be charged per last minute appointment cancellation per session.
- A charge of \$10/person will be added for sessions scheduled on Saturday/Sunday.

**Telephonic Coaching**

Telephonic coaching will be provided by a Healics certified wellness coach for all participants at any location for \$36/session.

Sponsor Employer: \_\_\_\_\_

Provider: Healics Inc.

Signed: \_\_\_\_\_

Signed: Michael Naparalla, President/CEO Sales & Marketing

Date: \_\_\_\_\_

Date: 2017, 2018, 2019



## STANDARD TERMS AND CONDITIONS

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 section titled "Standard Terms and Conditions" 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 performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

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 shall be authorized or permitted under state and local law to perform the services.

4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, 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, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, 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, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingencies 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 must be itemized to include labor costs and the Contracting Party's direct expenses, including subcontractor 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. 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.

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 any cause, 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, 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, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be 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 this Agreement by the Contracting Party, 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.

9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date 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 and satisfactorily performed 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 persons or property.

11. **DELAYS.** 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. **OPINIONS OF COST.** Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.

13. **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.

14. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- 1) Commercial General Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;
- 3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;
- 4) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate; and
- 5) To the extent that Contracting Party employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.

On the certificate of insurance, La Crosse shall be named as an additional insured on any General Liability Insurance, Automobile Insurance, and Umbrella Liability Insurance. The certificate must state the following: The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insureds. Prior to execution of the Agreement, Contracting Party shall file with La Crosse, a certificate of insurance 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. Contracting Party shall provide La Crosse with a thirty (30) day notice prior to termination or cancellation of the policy. La Crosse reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.

15. **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 or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Contracting Party, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on La Crosse. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Contracting Party shall reimburse La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contracting Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

16. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.

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.** Contracting Party shall:

- (1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.
- (2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.
- (3) Notify La Crosse, 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 Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting 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.** Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of La Crosse. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

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 shall not engage in any political activities while in performance of any and all services and work under this Agreement.

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. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of La Crosse, granting approvals or conditions attendant with such approval, the specific action of La Crosse shall be deemed controlling. 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 time is of the essence, and modification or deviation from such schedules shall occur only upon approval of La Crosse. 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.

32. **TIME COMPUTATION.** Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

33. **NOTICES.** Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one

(1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Attn. City Clerk City of La Crosse 400 La Crosse Street La Crosse, WI 54601	Copy to:	Attn. City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
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Contracting party shall identify in writing and provide to La Crosse the contact person and address for notices under this Agreement.

34. **INCORPORATION OF PROCEEDINGS AND EXHIBITS.** All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by La Crosse, including but not limited to adopted or approved plans or specifications on file with La Crosse, and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Contracting Party whether or not herein enumerated.

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 this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions.

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. Additionally, Contracting Party agrees to indemnify and hold harmless La Crosse, its elected and appointed officials, officers, employees, and authorized representatives for 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 parties 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 any and all applicable federal, state and local laws, regulations and ordinances.

40. **FORCE MAJEURE.** La Crosse shall not be responsible to Contracting Party 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 for any reason.

Revised: July 2011