

April 3, 2014

Mr. Bernard Lenz, PE
Assistant City Engineer
City of La Crosse
400 La Crosse St.
La Crosse, WI 54601

Re: REVISED Proposal for Phase 1 of City-Wide Storm Water Management and Capital Improvements Plan
MARS Proposal Number: 485

VIA: Email

Dear Mr. Lenz,

Montgomery Associates: Resource Solutions, LLC (MARS) is delighted that you have selected us to assist you in developing the City-Wide Storm Water Management and Capital Improvements Plan. We understand that, due to budgeting requirements, work for this project will be split into two phases. This letter describes our proposed scope of services, fees, and schedule for Phase 1 of the project, which will continue through December 31, 2014.

INTRODUCTION

Our February 17, 2014 proposal provides technical details regarding the work to be undertaken under this contract. In summary, MARS will develop a set of models representing the various sewersheds in the City of La Crosse using a two-dimensional surface flow model linked to a one-dimensional stormwater system model. Using protocols developed in this project, these models will be used to evaluate various alternatives to reduce flooding within the City and to identify alternatives to incorporate into the City's Capital Plan.

The scope of work described in this document has been revised from that described in our proposal of February 17th to meet schedule and budget requirements the Phase 1 project to be completed in calendar year 2014, as we have discussed by telephone.

The services described in this proposal will be performed according to the revised City of La Crosse Terms and Conditions that you provided to us via email, which are attached to this proposal.

PROPOSED SCOPE OF SERVICES

Services to be conducted by MARS will include the following:

Task 1 – Northern Industrial Park Evaluation. MARS will evaluate the existing stormwater conveyance system for the sewershed including the Northern Industrial Park and develop alternative approaches that can be incorporated into planned construction in the summer of 2014 to address flooding issues. Work for Task 1 will include:

- a) MARS will develop a two-dimensional model of the sewershed using FLO-2D and link that model to a one-dimensional EPA-SWMM model of the storm sewer system. The FLO-2D model will be developed using LiDAR data and other data provided by the City augmented with County 2-foot contour data as needed. The SWMM model will represent all pipes 12-inches in diameter and larger as represented in the City GIS database. Additional pipes and inlets may be included as necessary to drain specific low points. Model performance will be evaluated using observed data provided by the City, including two tailwater conditions.
- b) In cooperation with City staff, MARS will identify performance issues, evaluate sources of flooding and develop alternatives to improve stormwater system performance. MARS will then develop cost estimates for up to five alternatives identified by City staff, including at least one incorporating green infrastructure measures. These alternatives will be incorporated into the SWMM model and the system performance evaluated. Using cost, performance, constructability and other factors MARS will develop a recommended alternative.

Task 2 – Draft report and model for Northern Industrial Park. MARS will develop a draft report summarizing the work conducted in Task 1. Any comments provided by the City will be formally addressed in the final project report, to be produced in a later phase (not a part of this contract). MARS will also provide an executable version of the linked FLO-2D/EPA-SWMM stormwater model of the sewershed for the City's use.

Task 3 – System-wide Analysis. Using a large-scale model and lessons learned from Task 1, MARS will develop a methodology to expand the stormwater analysis to cover the entire citywide system.

- a) MARS will develop a large-scale FLO-2D model of the City to evaluate potential overland flow routes and locations of potential surface connections during flow events.
- b) MARS will overlay known flooding problem areas and the City's stormwater GIS data on the FLO-2D flooding map to identify areas with discrete flooding areas and areas where combined flooding will require modeling of multiple sewersheds together.
- c) Using the general understanding developed from the flooding and mapping exercise, City staff and MARS will jointly develop a prioritization list for the further modeling work.
- d) MARS will work with the City to develop a protocol for comparing alternative projects to reduce flooding. This protocol will likely include consideration of project cost, modeled performance, the schedule of planned improvements, public acceptance/interest and multiple benefits provided, and possibly other factors.

Task 4 – Second Sewershed Evaluation.

- a) Using the information developed in Task 3, City staff and MARS will identify the next sewershed to evaluate.
- b) MARS will conduct an evaluation for the second sewershed in the same way as described in Task 1, with the incorporation of use of the alternative comparison protocol developed in Task 3.

ASSUMPTIONS AND CONDITIONS

We have assumed the following regarding the scope of our services:

1. GIS databases provided by the City will be adequate to characterize the stormwater systems to be modeled
2. LiDAR data provided by the City will be adequate to represent the sewersheds within the City and County 2-foot contour information provided by the City will be adequate to represent contributing areas outside the City.
3. Model performance will be evaluated as supported by existing data either provided by or identified by the City. Where there is insufficient data to evaluate model performance MARS will use professional judgment to evaluate model performance.
4. Work on Task 1 will be initiated at your written direction to proceed, prior to the formal execution of this agreement by the City. We will bill the City for services after the City authorization is received.
5. MARS will engage the services of Gresham Smith & Partners (GS&P), Riada Engineering (Riada), and La Crosse Engineering (LAX) to perform as-needed services in support of this project. The respective roles of these firms will be:
 - a. GS&P – technical assistance with stormwater modeling, assistance with prioritization protocol, stormwater design and cost estimating assistance,
 - b. Riada – technical assistance with FLO-2D model, and
 - c. LAX – as needed local office support and data acquisition
 - d. These firms will have subcontract agreements directly with MARS and in total are expected to perform less than 30% of the work by fee.

CONTRACT, FEES AND SCHEDULE

The services described in this proposal will be performed according to the revised City of La Crosse Terms and Conditions that you provided to us via email, which are attached to this proposal for reference.

The Phase 1 services described in this proposal will be performed for a fixed fee of \$130,000. Progress invoicing will be issued to the City on a monthly basis. Additional work may be conducted at your specific authorization and would be invoiced according to the rates and procedure described on the attached rate sheet.

These services will be completed by December 31, 2014. Assuming that we receive prompt authorization to proceed, the schedule for specific deliverables is as follows:

- Task 1 complete by May 30, 2014
- Task 2 complete by June 30, 2014
- Task 3 complete by July 30, 2014
- Task 4 complete by December 31, 2014

Receipt of written authorization to proceed will allow us to begin work to meet the schedule described above. We understand that formal execution of the Terms and Conditions Agreement will occur in May 2014.

Thanks very much for the opportunity to provide this proposal. Please contact either one of us at 608-839-4422 or 414-380-1044 with any questions.

Montgomery Associates: *Resource Solutions, LLC*



Michael Schwar, PE
Principal Engineer

Enclosure: 2014 Fee Schedule
 Services Agreement
 Terms and Conditions

2014 FEE SCHEDULE

Montgomery Associates: Resource Solutions, LLC

Professional Services

Principal-in-Charge	\$160 / hour
Principal Engineer	\$135/hour
Senior Engineer	\$120 / hour
Project Engineer 2	\$105 / hour
Project Engineer 1	\$100 / hour
Staff Engineer 2	\$85 / hour
Staff Engineer 1	\$80 / hour
Support staff	\$50 / hour

For direct preparation or testimony as an expert witness, hourly rates will be subject to a 30% surcharge with a \$1,000 nonrefundable prepaid retainer.

Reimbursable Expenses

Vehicle use:	Current IRS Rate
All other reimbursable expenses:	Cost + 10%

Invoicing

Monthly invoicing, with detail provided on in-house professional services.

Documentation provided for subcontracted services fees; subconsultant services billed at cost plus 10%

Documentation for reimbursable expenses provided if charges exceed \$500.

Scope, payment and contract terms as defined in the proposal and Professional Services Agreement


Address for all correspondence:

Montgomery Associates: Resource Solutions, LLC
119 South Main Street
Cottage Grove, WI 53527
Telephone: 608-839-4422; Fax: 608-839-3322

Services Agreement

Montgomery Associates: Resource Solutions, LLC (Consultant) will perform services according to the terms and conditions of this Agreement with the City of La Crosse (Client). The Consultant shall perform the services described in the attached Proposal dated April 3, 2014 (Proposal), in consideration of the fee and payment terms stated in the Proposal. Additional services requested by the Client, but not described in the Proposal, shall be paid according to hourly rates specified in the Rate Sheet attached. The Terms and Conditions supplied by the City of La Crosse, attached, apply to the Agreement.

The above Agreement, attached Terms and Conditions, and referenced Proposal scope of services and fees are agreed upon:

Consultant:  Date April 3, 2014 Client: _____ Date _____

Robert J Montgomery, PE, Principal _____

Montgomery Associates: Resource Solutions, LLC

119 South Main Street, Cottage Grove, WI 53527

STANDARD TERMS AND CONDITIONS

Supplied by the City of La Crosse for use in the Phase 1 Stormwater Management Plan Services Agreement with Montgomery Associates: Resource Solutions, LLC

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 arising from completion of the Agreement hereunder and in any manner directly caused or contributed to in whole or in part, by reason of any omission, fault, or negligent act 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.

1. **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.

2. **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

3. **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:
April 2014