

**GROUP BENEFIT AND CLAIMS PROCESSING SERVICES AGREEMENT**

**THIS AGREEMENT** (Agreement) is effective January 1, 2018, ("Effective Date"), between 3PA Administrators (3PA) and the City of La Crosse in its capacity of Plan Sponsor and Plan Administrator, with its principal place of business in the state of Wisconsin.

**RECITALS**

1. Plan Sponsor has adopted an employee benefit plan known as the City of La Crosse Section 125 Cafeteria Plan (the "Plan"), for its employees and their dependents who are eligible to participate in such benefits consistent with the Plan (the "Covered Person");
2. All or portions of the Plan are subject to the Employee Retirement Income Security Act of 1974 ("ERISA");
3. The Plan is a "covered entity" subject to the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");
4. The Plan Sponsor is the Named Fiduciary and Plan Administrator with respect to the Plan as those terms are defined in ERISA, and is the entity capable of acting on behalf of the Plan for purposes of HIPAA; and
5. The Plan Sponsor and Plan Administrator desire that 3PA provide recordkeeping services for the Plan as described in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement along with any attached exhibits and addenda, and other good and valuable consideration, the receipt and legal sufficiency of which the parties acknowledge, the Plan Sponsor, Plan Administrator, and the 3PA agree as follows:

1. **SERVICES BY 3PA.** The Plan Administrator and Plan Sponsor engage 3PA and 3PA consents to provide the services defined in this section for the Plan upon the terms and subject to the conditions of this Agreement. 3PA will use reasonable care and prudence to provide the following recordkeeping and claims processing services for the Plan, subject to the terms and conditions of this Agreement:
  - 1.1. Provide a template plan document based on information supplied by Plan Sponsor describing the benefits and provisions of the Plan for the Plan Sponsor to review and approve.
  - 1.2. Prepare amendments to the plan document requested by the Plan Sponsor or required by changes in the law for review and approval by Plan Sponsor. The authorized representative designated by the Plan Sponsor must submit any requested amendment to 3PA at least 30 days prior to the proposed effective date of the amendment.
  - 1.3. Maintain eligibility records for the Plan based on enrollment and termination information provided by the Plan Administrator and/or Plan Sponsor and, based on such eligibility records, determine initial eligibility for benefits under the Plan.
  - 1.4. Initially adjudicate claims for benefits incurred during the term of this Agreement consistent with the provisions of the Plan document.
  - 1.5. Prepare and distribute payment to Plan Participants for benefits payable under the Plan.
  - 1.6. Generate and distribute to the individual to whom eligible services were provided a statement for claims incurred during the term of this Agreement in its standard format for each claim processed by 3PA.
  - 1.7. Issue and distribute to the individual to whom eligible services were provided a written claim denial in its standard format for benefit claims denied in initial adjudication.
  - 1.8. Provide the Plan Administrator a report of processed claims in its customary format.
  - 1.9. Provide bi-weekly, monthly and quarterly reporting to the Plan Sponsor relative to Plan activity and performance.

- 1.10 Provide its standard Billing Report summarizing the updated eligibility data provided to 3PA, including the effective date of coverage or termination of coverage for each participant added to or terminated from participation in the Plan, ("Billing Reports"). The schedule for the report will be determined by the Plan.
- 1.11 Assist with recovery of any erroneous payment for ineligible services processed under the Plan in excess of \$10 ("Incorrect Payment") that 3PA becomes aware of. 3PA will make two (2) written contacts with the payment recipient to recover the Incorrect Payment. 3PA will take no further action to recover the Incorrect Payment after the two (2) contacts unless the parties agree otherwise. The Plan Administrator will decide whether and how to further pursue recovery of the Incorrect Payment. The Plan will pay all costs incurred to take any further action to pursue recovery of the Incorrect Payment.
- 1.12 Provide a debit card for immediate access to the annual election for each participant. Employee materials will include instructional information on the proper use of the debit cards. When debit card transactions require additional substantiation, 3PA will follow-up by written correspondence to Plan participants. Failure by the participant to provide documentation of such transactions will result in suspension of the debit card.
- 1.13 Respond to inquiries from Plan participants regarding eligibility, benefits and claims processing.
- 1.14 Retain claims information for six years from date of processing unless this Agreement is terminated prior to that period. If the Agreement is terminated and the Plan Sponsor wishes to transfer claims information to a new service provider, the Plan Administrator must submit a written request to that effect no later than 90 days following the date this Agreement is terminated. 3PA is relieved of all responsibility for maintaining claim information once the information is transferred. The Plan Sponsor or Plan will pay the costs involved in compiling and transferring the claims and plan records.
- 1.15 Allow Plan Administrator access to Plan-related documents consistent with HIPAA and other applicable privacy laws.
- 1.16 Inform the Plan Administrator of changes in applicable laws known to 3PA that may affect the Plan.
- 1.17 Prepare information for Form 5500 for review, approval and timely filing by Plan Administrator if the Plan is required to file a Form 5500.
- 1.18 Review all claims paid by the Plan for potential coordination of benefits or payment from other third-party sources. Such claims will be further investigated for possible recovery.
- 1.19 Assist Plan Administrator with conducting annual non-discrimination testing of the Plan.

3PA will rely on the information provided by or on behalf of the Plan Administrator or Plan Sponsor in performing its duties under this Agreement. 3PA does not have any duty to question or verify the completeness or accuracy of any such information.

**2. SERVICES AND RESPONSIBILITIES 3PA WILL NOT PERFORM UNDER THIS AGREEMENT.** 3PA will not perform the following services or responsibilities under this Agreement:

- 2.1 Plan Fiduciary or Plan Administrator services.
- 2.2 Audit services, nor payment of audit fees.
- 2.3 Actuarial services, nor payment of actuarial fees.
- 2.4 Investment services, nor payment of investment fees.
- 2.5 Consulting services, nor payment of consulting fees.
- 2.6 Legal services, nor payment of legal fees.
- 2.7 Assuming responsibility for any misrepresentation, error or omission by the agent, broker or anyone not employed by 3PA.
- 2.8 Payment of Plan expenses, including postage and printing costs for any special Plan mailings.
- 2.9 Any payment or eligibility decisions, contract provisions or any representation determined by the stop loss carrier.
- 2.10 Plan design, including the terms or validity of the Plan or authority or control respecting the management of the Plan, authority or responsibility in connection with administration of the Plan.

- 2.11 Responsibility for any act or omission or breach of duty by Plan Sponsor or Plan Administrator.
  - 2.12 As an insurer, underwriter, or guarantor with respect to any benefits payable under the Plan. 3PA generally provides reimbursement processing services only and does not assume any financial risk or obligation with respect to claims for benefits payable by under the Plan.
- 3. PLAN ADMINISTRATOR RESPONSIBILITIES.** The Plan Administrator has sole authority and responsibility for the following obligations:
- 3.1 The control and management of the operation of the Plan, including administering and interpreting the provisions of the Plan and making all determinations under the Plan. 3PA has the authority to act on behalf of Plan Administrator in connection with the Plan, but only as expressly stated in this Agreement or as mutually agreed in writing by Plan Administrator and 3PA.
  - 3.2 Ensure compliance with COBRA including adopting COBRA policies and procedures; perform required nondiscrimination testing; amend the Plans as necessary to ensure ongoing compliance with applicable law; file any required tax or governmental returns (including Form 5500 returns) relating to the Plans; determine if and when a valid election change has occurred; handle Participant claim appeals; execute and retain required Plan and claims documentation; and take all other steps necessary to maintain and operate the Plans in compliance with applicable provisions of the Plans, ERISA, HIPAA, the Code and other applicable federal and state laws.
  - 3.3 Determine the legal and tax status of the Plan. Plan Sponsor and Plan Administrator acknowledge that 3PA may provide legal opinion from outside counsel.
  - 3.4 Provide 3PA with all relevant Plan information, including but not limited to, the Plan documents and any Plan amendments along with the Plan policies and procedures. Plan Sponsor will notify 3PA of any changes to the Plan at least thirty (30) days before the effective date of such changes.
  - 3.5 Notify 3PA in writing of any additions or terminations of individuals eligible for benefit under the Plan. Retroactive termination notices may result in a loss to the Plan if claims have already been processed and paid. 3PA will make attempts to recover any such payments. Credit for administrative fees cannot be extended beyond 90 days.
  - 3.6 Verify the accuracy of its Billing Reports, Form 5500 information and other reports provided by 3PA and notifying 3PA in writing of any discrepancies within 5 business days of receipt of such information from 3PA. 3PA will not have any liability or obligation for benefits paid, to credit Plan Sponsor or the Plan for any claims expenses or administrative fees incurred or paid to 3PA if Plan Administrator fails to notify 3PA in writing of Billing Report discrepancies within 5 business days of receipt of the report.
  - 3.7 Make all final determinations as to an individual's entitlement to Plan benefits, including any determination upon appeal of a denied claim for Plan benefits.
  - 3.8 Furnish information to 3PA that 3PA determines necessary to perform 3PA's functions under this Agreement, including information concerning the Plan and the eligibility of individuals to participate in and receive Plan benefits and relevant medical records. Such information will be provided to 3PA in the time and in the manner agreed to by Plan Sponsor, Plan Administrator and 3PA. 3PA will have no responsibility with regard to benefits paid in error due to Plan Sponsor's and/or Plan Administrator's failure to provided 3PA updated information within 10 days of the date of a change or receipt of notice or report.
  - 3.9 Assist in facilitating the smooth operation of the Plan.
  - 3.10 Assist in implementing and transitioning the plan to 3PA.
  - 3.11 Establish a bank account and hold in the account sufficient funds for payment of all claims for benefits pursuant to the Plan as well as other Plan expenses. The Plan Administrator and Plan Sponsor will fund claims in intervals to enable 3PA to disburse payment of processed claims in compliance with HIPAA claims regulations. 3PA will not release claim payments until it receives funding. 3PA does not insure or underwrite the liability of Plan Sponsor and/or Plan Administrator under the Plan. Except for expenses specifically assumed by 3PA in this Agreement, Plan Sponsor and Plan Administrator are responsible for all expenses incident to

the Plan and will allocate funds for monthly administrative fees by the 20<sup>th</sup> day of the month following each Billing Statement.

- 3.12 Appoint in writing an intermediary between the Plan Administrator and 3PA who will be responsible for Plan decisions in regard to appeal determinations, subrogation settlements or other fiduciary determinations.
- 3.13 3PA will rely on the information provided by or on behalf of the Plan Administrator or Plan Sponsor in performing its duties under this Agreement. 3PA does not have any duty to question or verify the completeness or accuracy of any such information.

- 4. **COMPENSATION TO 3PA.** Plan Sponsor and/or Plan Administrator will pay 3PA as compensation for the services it performs under this Agreement the applicable fees shown in Exhibit A. The Plan will pay all costs related to any special printed materials such as plan documents, plus any shipping costs. All fees are payable monthly and are due by the 20th day of each calendar month. Fees are based upon the number of Covered Employees as shown on the date the billing notice is prepared. 3PA may in its sole discretion assess a penalty equal to 3% of the administrative fee due for payments more than 30 days past due.

When the Plan Sponsor or Plan Administrator submits a termination notice for a covered employee to 3PA more than three months beyond the termination date, there will be no credit for administrative fees beyond three months.

Administrative fees shown in Exhibit A are guaranteed for the 3 year contract period beginning on the effective date of this Agreement.

- 5. **COMPLIANCE WITH HIPAA PRIVACY AND SECURITY RULES.** Capitalized terms used in this Section (not otherwise defined in this Agreement) will have the same meaning as defined in 45 C.F.R. §§ 160.103, 164.103, 164.304, and 164.501. The provisions of this section will apply upon the relevant HIPAA applicability dates with regard to Plan for which 3PA provides services. 3PA recognizes that for purposes of the privacy and security rules under HIPAA it is considered a "Business Associate" with regard to Plan for which provides services.

5.1. General Responsibilities as a "Business Associate." 3PA will:

- 5.1.1. Not use or further disclose Personal Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- 5.1.2. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
- 5.1.3. Mitigate, to the extent practicable, any harmful effect that is known to 3PA of a use or disclosure of PHI by 3PA in violation of the terms of this Agreement.
- 5.1.4. Report to Plan Administrator any use or disclosure of PHI not provided for by this Agreement.
- 5.1.5. Ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by 3PA on behalf of Plan agrees to the same restrictions and conditions that apply throughout this Agreement to 3PA with respect to such information.
- 5.1.6. Provide access, at the request of Plan Administrator, and in the time and manner designated by Plan Administrator, to PHI in a Designated Record Set, to Plan Sponsor or, as directed by Employer, to an Individual in order to meet the requirements of 45 C.F.R. § 164.524.
- 5.1.7. Make any amendment(s) to PHI in a Designated Record Set that Plan Administrator directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Plan Administrator or an Individual, and in the time and manner designated by Employer.
- 5.1.8. Make internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by 3PA on behalf of Plan available to Plan Administrator, or at the request of Plan Administrator, to the Secretary of Health and Human Services ("Secretary"), in the time and manner designated by Plan Administrator or the Secretary, for purposes of the Secretary determining Plan's compliance with the privacy rules under HIPAA.

- 5.1.9. Document such disclosures of PHI and information related to such disclosures as would be required for Plan Administrator to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
  - 5.1.10. Provide to Plan Administrator or an Individual, in the time and manner designated by Plan Administrator, information collected in accordance with Section 3.1(m) to permit Plan Administrator to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
  - 5.1.11. Comply with the requirements in 45 C.F.R Part 162 if 3PA conducts Standard Transactions with or on behalf of a Health FSA. 3PA will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 C.F.R. Part 162.
  - 5.1.12. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that 3PA creates, receives, maintains, or transmits on behalf of the Plan.
  - 5.1.13. Ensure that any agent, including a subcontractor, to whom it provides electronic PHI created, received, maintained, or transmitted on behalf of the Plan agrees to implement reasonable and appropriate safeguards to protect such electronic PHI.
  - 5.1.14. Report to Plan Administrator any unauthorized access, use, disclosure, modification, or destruction of information or interference with information system operations which affect electronic PHI created, received, maintained, or transmitted on behalf of the Sponsoring Employer of which 3PA becomes aware.
  - 5.2. Permitted Uses and Disclosures by 3PA. 3PA may use and disclose any PHI on behalf of, or to provide services to the Plan and Plan Administrator, as specified in this Agreement; for the proper management and administration of 3PA; to carry out the legal responsibilities of 3PA; and to provide data aggregation services to Plan Administrator. Notwithstanding the foregoing, such use and disclosure of PHI may not violate the privacy rules of HIPAA.
  - 5.3. Amendment to Comply with Privacy and Security Rules. 3PA agrees to amend this Section as is necessary from time to time to comply with the requirements of the privacy and security rules.
  - 5.4. Policies of Plan Sponsor and Plan Administrator. Plan Sponsor and Plan Administrator will establish appropriate procedures for internal handling of PHI to assure it is properly held in confidence and that PHI is not used in making employment related decisions.
6. **CONFIDENTIAL DATA**. Plan Sponsor and Plan Administrator recognize that they each own Data. 3PA may, in fulfilling its responsibilities under this Agreement, obtain Data on behalf of Plan Sponsor and/or Plan Administrator. Data received by 3PA on behalf of Plan Sponsor and/or Plan Administrator in fulfilling its responsibilities under this Agreement remains the property of each respectively. Each grants 3PA a worldwide, non-exclusive, irrevocable and royalty free license to use such Data. 3PA will limit its use of such Data in accordance with the terms and conditions of this Agreement. It is the understanding of the parties that the Data will include only Data resulting from services carried out under this Agreement and will not include any other Data. Data for purposes of this Agreement includes all electronic or hard copy of records and information including, but is not limited to patient records, physician and provider notes and billings and all claims.
7. **OWNERSHIP RIGHTS IN MATERIALS**. All products, forms, procedures and other materials (the "Materials") utilized or made available by 3PA to Plan Administrator in connection with any service performed under this Agreement are the sole property of 3PA, and neither the Plan Administrator nor the Plan Sponsor will acquire any right, title or interest in the Materials by use of such materials. Neither the Plan Administrator nor the Plan Sponsor will license, market, copy, modify, sell or transfer any of the Materials, in whole or in part. Upon 3PA's request, Plan Administrator and Plan Sponsor will promptly return all Materials to 3PA following the termination of this Agreement. The provisions of this Section will survive the termination of this Agreement.

8. **DISCLAIMER.** Plan Sponsor and Plan Administrator each acknowledge that it should consult with legal counsel regarding the aspects of the Plan. Any correspondence provided by 3PA regarding the Plan is for informational purposes only and is not legal advice. 3PA may however, provide legal opinion from outside legal counsel.
9. **TERM AND TERMINATION.** The term of this Agreement will commence on the Effective Date and will continue for 36 months. This Agreement will automatically renew on each anniversary date of this Agreement if it has not been terminated by the parties consistent with this section. Either party may terminate any or all of its obligations under this Agreement effective immediately by delivering written notice of termination to the other party if the other party:
- 9.1. Is rendered bankrupt or becomes insolvent; or
  - 9.2. Commits a material breach of its duties which is not cured within 30 days following written notice of such breach from the non-breaching party; or
  - 9.3. The enactment of any law or the promulgation of any regulation makes it illegal to continue the Agreement.
- In the event of termination for reasons other than bankruptcy or insolvency of the Plan Sponsor, upon agreement by the parties, 3PA may continue to process the Plan's claims that were incurred prior to the date of termination, but received after that date for up to 3 calendar months following termination. Fees for such services are shown in Exhibit A of this Agreement and are payable by in advance.
10. **NOTICE.** Any notice required by this Agreement will be sent by first class mail, facsimile, e-mail or personally delivered using the contact information provided in this section:

**3PAdministrators, Inc.**  
P.O. Box 247  
2850 Midwest Drive, Suite 106  
Onalaska, WI 54650  
[info@3pa.com](mailto:info@3pa.com)  
Phone: 608-779-3000 or 888-540-0094  
Fax: 608-779-3009 or 877-540-0094

**City of La Crosse**  
**Department of Human Resources**  
400 La Crosse Street  
La Crosse, WI 54601  
Phone: 608-789-7595  
Fax: 608-789-7598

11. **ASSIGNMENT/SUCCESSORS.** The parties to this Agreement may not assign this Agreement or any rights under this Agreement to any other person without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the successors of the parties.
12. **RELATIONSHIP OF THE PARTIES.** 3PA is and will remain an independent contractor with respect to the services being performed under this Agreement and will not be an employee of the Plan Administrator or Plan Sponsor for any purpose. Nor will 3PA be a partner, engaged in a joint venture or governed by any legal relationship other than that of independent contractor with Plan Administrator or Plan Sponsor.
13. **INDEMNIFICATION.** 3PA will indemnify and hold Plan Sponsor and Plan Administrator harmless from and against any and all costs, claims, demands, liabilities and damages arising out of any negligence or breach of this Agreement by 3PA, its employees and representatives in connection with its obligations under this Agreement.

The provisions of this section will survive the termination of this Agreement

14. **SEVERABILITY.** The terms and conditions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more provisions of this Agreement will not affect the validity and enforceability of the other provisions.
15. **AMENDMENT.** This Agreement will not be subject to any amendment or alteration except as may be agreed to in writing by both parties. However, if this Agreement or any portion will be determined to be in violation of any statute and/or regulation under state or federal law, the parties agree to amend the Agreement to conform to such statute and/or regulation unless it is clearly unreasonable to do so or such amendment would significantly alter the terms of the Agreement.
16. **CONSTRUCTION.** This Agreement will be governed by and construed in accordance with the internal laws of the state of Wisconsin to the extent such laws are not preempted by applicable federal law.
17. **FORCE MAJEURE.** Any failure or delay in the performance by 3PA of its obligations hereunder will not be a breach of this Agreement if such failure or delay arises out of or results primarily from fire, storm, flood, earthquake or other acts of God, explosions, wars, insurrections, strikes, work stoppages or slowdowns, epidemic or quarantine restrictions, unforeseen equipment failure, interruption of transportation facilities and any other cause that is beyond the reasonable control of 3PA and which by the exercise of reasonable diligence 3PA is unable to prevent. Existence of such cause of delay or failure will extend the term of performance on the part of 3PA to such extent as may be necessary.

IN WITNESS WHEREOF, the parties have executed this Agreement by the signature of their respective, duly authorized representatives as of the Effective Date.

CITY OF LA CROSSE

*Valerie Fenske*  
SIGNATURE  
Valerie Fenske  
PRINTED NAME  
Director of Finance  
TITLE

3PADMINISTRATORS

*Nancy Fee*  
SIGNATURE  
Nancy Fee  
PRINTED NAME  
Vice President, Principal  
TITLE

**EXHIBIT A: SCHEDULE OF FEES  
CITY OF LA CROSSE**

Plan Set-Up Fee (one-time charge)	Waived
Includes: Plan programming, loading eligibility and Plan document*	
Annual Renewal Fee	\$300.00
Includes: Enrollment forms Loading annual elections Updating eligibility Plan document updates	
Per Employee, Per Month Administration Fee	\$3.25
Includes: Flexible Spending Account Debit card Web access to view claims, payments and account balances Online enrollment in year 2 Reimbursement processing Payments to participants Customer service Reporting	
Run-out Services for Current Flex Plan	Included in PEPM
Run-out Services at Termination	If requested by Plan Sponsor, 3PA will process run-out claims for up to 3 months following termination of this Agreement at the rates in effect on the date of termination. Fees will be payable monthly upon receipt of Billing Report.

\*Printing and shipping charges are billed separately.

**Fees are guaranteed for the three year contract period.**



Signature, as the authorized representative of  
the Plan Sponsor and Plan Administrator



## 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 instances, 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

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