

PERSONAL HEALTH ASSESSMENT SERVICE AGREEMENT

This Personal Health Assessment Service Agreement ("**Agreement**") is entered into by and between Riverside Corporate Wellness, LLC, a Wisconsin limited liability company ("**Riverside**"), and:

"Employer": City of La Crosse

"Employer's Address": 400 La Crosse Street
La Crosse, WI 54601

"Effective Date": August 1, 2017

"Service Start Date": August 1, 2017

In this Agreement, Riverside and Employer may each be singularly referred to as a "**party**" or may be collectively referred to as "**parties**."

RECITALS

WHEREAS, Riverside has developed a Personal Health Assessment program which it offers to certain entities, such as Employer, which desire to offer a Personal Health Assessment program for such entities' eligible employees, retired employees and their spouses;

WHEREAS, Riverside desires to provide its Personal Health Assessment program to Employer subject to the terms and conditions set forth herein; and

WHEREAS, Employer desires to contract with Riverside in order to obtain such Personal Health Assessment program, subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the following words shall have the meanings set forth below:

- (a) "**Agreement**" has the meaning set forth in the introductory paragraph.
- (b) "**Claims**" has the meaning set forth in **Section 6**.
- (c) "**Effective Date**" has the meaning set forth in the introductory paragraph.
- (d) "**Eligible Member**" shall mean City of La Crosse employees, retirees, spouses of such employees or retirees, Under Age 65 Spouse of Retiree over Age 65, who are eligible to participate in the Personal Health Assessment as defined under the City's collective

bargaining agreements, Employee Handbook, Library Manual and/or Medical Benefit Plan Master Plan Document.

- (e) “**Employer**” has the meaning set forth in the introductory paragraph.
- (f) “**Employer’s Address**” has the meaning set forth in the introductory paragraph.
- (g) “**Fees**” has the meaning set forth in **Section 5**.
- (h) “**Force Majeure**” means acts of nature or the public enemy, earthquakes, fire, flood, epidemic, civil insurrection or war, acts of terrorism, inability to procure raw materials, power or supplies, labor shortages or strife, and other conditions (other than financial difficulties) beyond the control of the involved party which delay or prevent the rendition of such party’s performance in accordance with this Agreement.
- (i) “**HIPAA**” has the meaning set forth in **Section 10**.
- (j) “**HITECH**” has the meaning set forth in **Section 10**.
- (k) “**Indemnifying Party**” has the meaning set forth in **Section 6**.
- (l) “**Laws**” means all applicable United States federal, state and local laws, statutes, rules, regulations, guidelines, ordinances and orders.
- (m) “**PHI**” has the meaning set forth in **Section 10**.
- (n) “**Personal Health Assessment**” referred to as “Health Risk Assessment” under Employer’s collective bargaining agreements, Employee Handbook, Library Manual and/or Medical Benefit Plan Master Plan Document, has the meaning set forth in **Exhibit A**.
- (o) “**Regulatory Agency**” means any national, state or local regulatory body or other government authority.
- (p) “**Riverside**” has the meaning set forth in the introductory paragraph.
- (q) “**Service Start Date**” has the meaning set forth in the introductory paragraph.
- (r) “**Service Fees**” has the meaning set forth in **Section 4(a)**.
- (s) “**Services**” shall mean the Personal Health Assessments.
- (t) “**Term**” shall have the meaning set forth in **Section 8(a)**.

2. OBLIGATIONS OF RIVERSIDE.

(a) Commencing on the Service Start Date and until the Term ends, Riverside shall provide, or arrange for the Personal Health Assessments as described at **Exhibit A**.

(b) Riverside represents, warrants and covenants that all entities providing Personal Health Assessments under this Agreement shall at all times during the Term (i) be duly licensed, credentialed, certified and/or registered as required under applicable Laws; (ii) possess the education, skills, training and other qualifications necessary to provide the applicable services; (iii) provide services that meet the applicable standard of care for providers of such services; (iv) meet requirements for all applicable quality standards; and (v) have passed any applicable federal, state or local background checks.

(c) Riverside represents, warrants and covenants that its provision of Services, and its arrangement for the provision of Services, is and at all times during the Term shall be in compliance with all Laws.

3. ELIGIBILITY AND REPORTING. Employer shall issue to Riverside a listing of current eligible Members which may be given by Riverside independent contractors contracted by Riverside to provide certain portions of the Services set forth on **Exhibit A** who have a professional need to know such information. Riverside shall rely on Employer's determination of eligibility to receive Services. Riverside shall not provide Services under this agreement to any individual who is not identified by Employer as an eligible Member.

4. OBLIGATIONS OF EMPLOYER. During the Term, Employer shall:

(a) Deliver to Riverside a listing of current eligible Members in accordance with **Section 3** of this Agreement;

(b) Pay fees for the Services ("**Service Fees**") in accordance with **Section 5** of this Agreement; and

(c) Provide prompt notice to Riverside of any inquiry or communication received by Employer from any Regulatory Agency relating to the Services.

5. COMPENSATION AND BILLING.

(a) During the Term, Riverside shall invoice Employer for all Services, and Employer shall pay to Riverside, compensation as set forth at **Exhibit B** (the "**Fees**").

(b) All Service Fees will be invoiced the month after the Personal Health Assessments are rendered to Employer in accordance with **Section 5(a)** and **Exhibit B**. Invoices will be due for payment by Employer thirty (30) days from the date of invoice. Payment of uncontested invoices for Service Fees will be deemed past due if not received by the due date, unless received after the due date with a timely postmark. If any uncontested amount owed by Employer to Riverside is not paid when due, a late payment charge of 1.5% of the amount past due will apply for each 30-day period or part thereof that the amount remains unpaid. The

parties agree to negotiate in good faith with respect to any disputed Service Fees or other amounts invoiced by Riverside in connection with this Agreement.

6. INDEMNIFICATION. Refer to the Standard Terms and Conditions attached to and made a part of this agreement.

7. TAXES. Each of Riverside and Employer will be responsible for payment of its own obligations, including, without limitation, all federal, state, local and foreign taxes, taxes on or measured by income, estimated income, franchise, withholding, social security, occupation, unemployment, disability and other taxes or government fees and charges.

8. TERM AND TERMINATION.

(a) Unless sooner terminated as herein provided, the term of this Agreement (the "**Term**") shall (i) be for an initial term commencing on the Effective Date and ending three years following the Service Start Date unless either party provides the other party with three (3) months' advance written notice prior to the expiration of this Agreement's then-current Term. Upon receipt of appropriate written and timely notice, this Agreement will terminate at the conclusion of the then-current Term.

(b) This Agreement may also be terminated as follows:

(i) at any time by mutual agreement of the parties;

(ii) in the event of a material breach of this Agreement, the non-breaching party may provide written notice of the breach and terminate this Agreement at any time after a reasonable opportunity to cure the breach. For purposes of this Agreement, a reasonable opportunity to cure is deemed to be ten (10) business days for a monetary default and thirty (30) calendar days for a non-monetary default. If the breaching party, prior to expiration of the cure period, has cured the breach to the reasonable satisfaction of the non-breaching party, this Agreement will remain in effect; or

(iii) by either party, upon written notice following the bankruptcy, insolvency or liquidation of the other party.

(c) Upon termination of this Agreement, any monetary obligation by Employer to Riverside for Services already rendered and delivered shall become immediately due and payable.

(d) The obligations of each party pursuant to **Sections 6, 7**, this Section **8(d)**, **8(e)**, **9, 10, 11, 12, 13** and **14** of this Agreement shall survive the expiration or termination of the Term and six-year survival period.

(e) Notwithstanding any other provision of this Agreement, Employer may immediately terminate this Agreement: (i) upon Riverside's failure to comply with **Sections 2(b), 2(c), 12** or **13** of this Agreement; or (ii) if Riverside is unwilling or unable to provide or arrange for the provision of the Services in a manner that is reasonably satisfactory to Employer.

9. CONFIDENTIALITY. Both parties fully understand the confidential nature of the subject matter of this Agreement and acknowledge that each may, from time to time, encounter confidential information in the normal conduct of services described in this Agreement. Each party agrees to keep strictly confidential and hold in trust all confidential information, and not to disclose or reveal such information to any third party, except within the restrictions of this Agreement. Each party shall ensure that each of its employees or agents who perform services under this Agreement is aware of the confidentiality requirement as established by agreement between the parties and as required by law. Termination of this Agreement shall not eliminate either party's obligation to continue to maintain confidentiality under this **Section 9**.

10. HIPAA COMPLIANCE. The parties agree to comply with the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations, including but not limited to the Security Rule and Privacy Rule (collectively, "**HIPAA**") and the Health Information Technology for Economic and Clinical Health ("**HITECH**") Act. The parties agree to handle, disclose and use Protected Health Information (as herein defined) in accordance with HIPAA and HITECH. For the purposes of this Section, "**PHI**" shall have the meaning ascribed to it at 45 CFR §164.501 as such section from time to time may be amended. Riverside agrees to comply with all laws and regulations issued by any Government Authority pertaining to the confidentiality, privacy, data security, data accuracy and completeness and/or transmission of personal, health, enrollment, financial and consumer information and/or medical records (including prescription records) of actual or prospective Members, including, but not limited to, the confidentiality and security provisions at 42 CFR §423.136. Riverside understands and agrees that any PHI or other personal information accessed by or disclosed to it or created by it during the course of performing this Agreement must be maintained in strictest confidence and safeguarded from disclosures which are unauthorized and impermissible under applicable laws and regulations. Riverside agrees not to disclose to Employer, or otherwise disclose, use or exploit any PHI, other personal information for any purpose or under any circumstance, except (i) as absolutely necessary to perform its obligations under this Agreement and (ii) in compliance with all laws and regulations regarding the confidentiality, privacy, data security and/or transmission of such information including, but not limited to, HIPAA. If applicable, Riverside shall require any service providers that create, receive, maintain, or transmit PHI on its behalf to agree in writing to the same restrictions, conditions, and requirements that apply to Riverside with respect to such information, in accordance with 45 CFR 164.502(c)(1)(i) and 164.308(b)(1).

11. INSURANCE. Riverside and Employer shall each maintain at all times during the Term, each at their own cost, insurance coverage as outlined in **Exhibit C** of this Agreement attached hereto and incorporated herein.

12. DOCUMENT RETENTION. Documents created or maintained by Riverside in performance of Services shall be maintained by Riverside for such periods as are required to comply with applicable Laws.

13. COMPLIANCE WITH LAWS AND REGULATIONS. The parties will comply with all applicable Laws in performance of their duties and obligations under this Agreement. Any non-compliance with Laws which inhibits or makes this Agreement void,

voidable, or unconscionable, shall be deemed, at the option of either party by written notice, to terminate the Agreement.

14. MISCELLANEOUS.

(a) Amendment; Entire Agreement. This Agreement and the attached Exhibits (including the Terms and Conditions set forth on **Exhibit D**) constitute the entire understanding of the parties with respect to the subject matter hereof, and supersede any and all previous or contemporaneous agreements, statements and understandings, whether written or oral. The terms and conditions of this Agreement shall prevail over any contradictory terms or conditions contained in any purchase order, acceptance, acknowledgment, standard forms used by the parties in performing this Agreement or other correspondence. This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing executed by Riverside and Employer. The Recitals ("Whereas" section) are an integral part of this Contract and are incorporated herein by reference.

(b) Assignment. This Agreement shall inure to the benefit of the parties and their permitted successors and assigns. The rights and obligations under this Agreement may not be assigned or delegated to a third party by either party, by operation of law or otherwise, without obtaining the prior written consent of the other party.

(c) Force Majeure. Each party to this Agreement will be relieved from the performance of its obligations under this Agreement to the extent performance is delayed or prevented by Force Majeure, and such relief will continue for so long as the condition constituting the Force Majeure prevails; provided, however, that if such Force Majeure continues for more than thirty (30) consecutive days, either party hereto may elect to terminate this Agreement by giving written notice to the other party.

(d) Notice. Any notice provided for in this Agreement shall be given in writing and shall be deemed given to a party at the earlier of: (i) by personal delivery to the address for that party to which notices are to be addressed (in which case such notice shall be deemed given on the date of delivery), (ii) by submitting the same for overnight prepaid delivery with a recognized national courier service (in which case such notice shall be deemed given on the business day following the date of consignment with the courier service), or (iii) by facsimile or electronic transmission, provided that the party providing notice obtains confirmation of receipt of such notice (in which case such notice shall be deemed given on the date on which such notice is sent):

If to Employer:

City of La Crosse
400 La Crosse Street
La Crosse, WI 54601
Attn: Director of Human Resources
Facsimile: (608) 789-7598

If to Riverside:

Riverside Corporate Wellness, LLC
332 Front Street South
La Crosse, WI 54601
Attn: Teresa Pulvermacher
Facsimile: (608) 782-5032
Phone: (608) 782-5029 ext. 3439
Email: tpulvermacher@rcwlacrosse.com

(e) Independent Contractors. The status of Riverside will be that of independent contractor, and none of Riverside's personnel will be deemed employees or agents of Employer. None of the terms set forth in this Agreement will be construed as creating a partnership, joint venture, agency, master-servant, employment, trust, or any other relationship between Employer and Riverside or any of their employees. Riverside and its personnel are not eligible for, nor may they participate in, any employee benefit plans of Employer. Riverside is solely responsible for paying any and all taxes (including social security, employment and income) required by any federal, state or local law or regulation pertaining to Riverside's personnel relating to this Agreement and for making all required contributions to benefit plans pertaining to Riverside's personnel. Riverside will indemnify, defend, and hold Employer, its directors, officers, employees and agents harmless against any claim or liability (including penalties) resulting from Riverside's failure to pay such taxes or contributions, or Riverside's failure to file any such tax forms. This engagement is nonexclusive and nothing in this Agreement will in any way restrict Employer's right to engage others to render the same or similar services.

(f) Governing Law; Construction. This Agreement shall be governed by the internal laws of the state of Wisconsin, and shall be construed without giving effect to any rule of construction concerning the party responsible for the drafting of this Agreement.

(g) Cooperation. Employer and Riverside will reasonably cooperate in good faith in all matters relating to the provision and receipt of and payment for the Services.

(h) Nonwaiver. The failure of any party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to enforce such provision nor shall any waiver by any party of any breach of any provision(s) be taken or held to constitute a waiver of any succeeding breach or waiver of the provision itself.

(i) Severability. If any provision or provisions of this Agreement is held to be invalid or unenforceable, the parties will work together in good faith to amend such provision so as to be valid, operative and enforceable to the maximum extent permitted by law or equity while most nearly preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remaining provisions of this Agreement and, to that extent, the provisions of this Agreement shall be deemed to be severable.

(j) Headings. The headings of this Agreement are inserted for convenience only and shall not be considered in construction of the provisions hereof.

(k) Counterparts. The Agreement may be executed in two or more counterparts, each and all of which are deemed an original and all of which together constitutes one and the same instrument.

(l) Limited Enforcement. This Agreement is intended solely for the benefit of the parties, and there is no intention, express or otherwise, to create rights or interests for any party or persons other than Riverside and Employer.

(m) Communications and Branding. Each party must obtain the other party's approval for the use of the other party's name, symbol, brand, trademark or service marks in materials. Nothing in this Agreement shall limit Riverside from branding, marketing, licensing, trademarking or otherwise protecting or profiting from its corporate wellness program through which it provides Services to Employer, including without limitation Riverside's "Corporate Wellness Home Model"; any such branding, marketing, licensing, trademarking or other mechanism shall not include Employer's symbol, brand, name, trademark or service mark without Employer's prior written approval.

(n) Non-Discrimination. In the implementation of this Agreement, the parties shall not discriminate against any person by reason of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, age or any basis prohibited by applicable Laws.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties execute this Agreement to be effective as of the Effective Date.

By: _____
Printed Name / Title: _____

RIVERSIDE CORPORATE WELLNESS, LLC

By: _____
Printed Name / Title: _____

EXHIBIT A

Personal Health Assessment Program SERVICES

“Personal Health Assessment Program” shall mean those services set forth below:

- Health assessments (on-line and/or paper) & personal reports;
- Biometric screenings conducted on Employer designated sites & personal biometric measurement reports; and
- Online scheduling.
- Employer Aggregate Report

EXHIBIT B

FEES

1. Fees as stated below payable by Employer in accordance with Section 7 of the Agreement.
2. The fees below shall increase by an amount equal to 2% of the then-current rates on the one-year anniversary of the Effective Date, and each anniversary date of the Effective Date thereafter.

Screening	Cost
Total cholesterol Triglycerides High density lipoproteins (HDL) Low density lipoproteins (LDL) Glucose Height, Weight, BMI calculation Blood pressure and review of results, day of the biometric screening	\$57.00 Per Person Per Year
Personal Health Assessment – Online Access	\$6.00 Per Person Per Year
Personal Health Assessment – Paper Completion	\$9.00 Per Person Per Year

EXHIBIT C

INSURANCE

RIVERSIDE'S INSURANCE REQUIREMENTS

Riverside shall, at its sole expense, obtain and maintain continuously during the Term of this Agreement:

(a) Commercial General Liability insurance coverage with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate and a Three Million Dollar (\$3,000,000) Umbrella. Riverside may insure all or any part of its obligations through a program of self-insurance.

(b) All risk property insurance covering buildings, improvements & betterments, contents, machinery & equipment and supplies that are the property of Riverside, at 100% of replacement value.

(c) Any other insurance coverage required by applicable Laws.

(c) Riverside will furnish Employer with a copy of a certificate(s) evidencing such coverage upon reasonable written request.

EXHIBIT D

TERMS AND CONDITIONS

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 carry out 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~~Except as set forth in the Preventative Care Services Agreement, 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: April 2017