

**AGREEMENT FOR SANITARY SEWAGE CONVEYANCE AND TREATMENT
BETWEEN
THE CITY OF LA CROSSE, WISCONSIN,
AND
THE CITY OF LA CRESCENT, MINNESOTA**

RECITALS

- A. Wisconsin Statutes § 66.0301 provides that Wisconsin municipalities, as defined in the statute, may contract with each other for the receipt or furnishing of services, or the joint exercise of any power or duty required or authorized by law.
- B. Wisconsin Statutes § 66.0303 provides that Wisconsin municipalities may also contract with municipalities of other states for the receipt or furnishing of services, or the joint exercise of any power or duty required or authorized by law.
- C. Minnesota Statutes § 471.59, subd. 10, provides that a governmental unit may enter into an agreement with another governmental unit to perform on behalf of that unit any service or function which the governmental unit providing the service or function is authorized to provide for itself.
- D. The City of La Crosse ("La Crosse"), a Wisconsin municipal corporation, and the City of La Crescent ("La Crescent"), a Minnesota municipal corporation, are municipalities located in or adjacent to La Crosse County, Wisconsin (hereafter referred to as "the greater La Crosse region").
- E. La Crosse and La Crescent recognize that the advancement of the greater La Crosse region can best be accomplished through cooperation, collaboration, and coordination among the governmental bodies located in the greater La Crosse region, including La Crosse and La Crescent.
- G. La Crescent owns and operates a sanitary sewer collection system that provides sewer service within a designated area. La Crescent currently conveys its untreated sanitary sewage to the sewage system owned by La Crosse for purposes of treatment and disposal.
- H. La Crescent would like to expand the area in which it provides sanitary sewer service and would like to obtain treatment from La Crosse for this expanded service area, but to do so it must obtain La Crosse's consent to discharge sewage from this larger service area to La Crosse.
- I. La Crosse is concerned that the provision and further expansion of sewer treatment and disposal service in La Crescent will increase development in La Crescent, increase the demand on other regional facilities and services available in and funded by La Crosse,

and exacerbate what La Crosse sees as a funding inequity with respect to the provision of regional facilities and services.

- J. La Crosse's willingness to consent to the expansion of La Crescent's sewer service area is conditioned on La Crescent's agreement to pay sewer rates determined based on the methodology set forth herein and to accept La Crosse's appropriation of excess sewer revenues to La Crosse's general fund.

AGREEMENT

In consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt of which is acknowledged, La Crosse and La Crescent covenant and agree as follows.

ARTICLE 1 DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings unless the context requires otherwise.

- 1.1 "Agreement" means this Intergovernmental Cooperation Agreement between the City of La Crosse, Wisconsin and the City of La Crescent, Minnesota, as may be amended or restated from time to time.
- 1.2 "Barron Island Force Main" means the force main owned by La Crosse that extends under the Mississippi River from the Junction Point on Barron Island to Riverside Park.
- 1.3 "Junction Point" means the point shown on Exhibit 1.4 as MH-13 where the La Crescent Force Main connects to the Barron Island Force Main.
- 1.4 "La Crescent" means the City of La Crescent, a body corporate and politic of the State of Minnesota, with a principal address of 315 Main Street, La Crescent, MN 55947, and its successors and assigns.
- 1.5 "La Crescent Customers" means the La Crescent Sewer Utility customers located within La Crescent's municipal limits.
- 1.6 "La Crescent Force Main" means the force main, including MH-13 as shown on Exhibit 1.4, owned by La Crescent that extends between the La Crescent Lift Station and the Junction Point.
- 1.7 "La Crescent Lift Station" means the lift station owned by La Crescent and located at the southeast corner of the junction of Highway 61 and South Chestnut Street in La Crescent

where sanitary sewage originating within La Crescent enters the La Crescent Force Main for conveyance to the La Crosse Sewer System.

- 1.8 “La Crescent Meter” means the wastewater meter located at the La Crescent Lift Station that measures the volume of sanitary sewage carried by the La Crescent Sewer System to the La Crosse Sewer System.
- 1.9 “La Crescent Service Area” means the area shown on Exhibit 3.1, as may be modified by the Parties from time to time.
- 1.10 “La Crescent Sewer System” means the sanitary sewer system owned and operated by La Crescent.
- 1.11 “La Crosse” means the City of La Crosse, a Wisconsin municipal corporation, with a principal address of 400 La Crosse Street, La Crosse, WI 54601, and its sewer utility.
- 1.12 “La Crosse Customers” means the La Crosse Sewer Utility customers located within La Crosse’s municipal limits.
- 1.13 “La Crosse Sewer Connection Fee Ordinance” means Section 46-82 of La Crosse’s Code of Ordinances, as may be revised from time to time in accordance with Section 6.7. A current copy of the ordinance is attached hereto as Exhibit O-1.
- 1.14 “La Crosse Sewer System” means the sanitary sewer system owned and operated by La Crosse.
- 1.15 “La Crosse Sewer Utility” means the sewer utility operated by La Crosse.
- 1.16 “La Crosse WWTP” means the Isle La Plume wastewater treatment plant owned and operated by La Crosse.
- 1.17 “La Crosse’s Code of Ordinances” means La Crosse’s code of ordinances in effect as of the date of this Agreement, and all amendments thereto subsequently adopted by the La Crosse Common Council.
- 1.18 “La Crosse’s Sewer Utility Reserve Policy” means the reserve policy in effect as of the date of this Agreement, and all amendments thereto subsequently adopted by the La Crosse Common Council for operating, debt, equipment replacement fund, and capital improvement fund reserves consistent with prudent utility practice.
- 1.19 “Party” means La Crosse and La Crescent individually. “Parties” mean La Crosse and La Crescent jointly.

- 1.20 "REC" means residential equivalent connection. One REC represents the estimated average volume of wastewater discharged by an average residential user to the La Crosse Sewer System.
- 1.21 "ROI" means return on investment.
- 1.22 "Significant Industrial Users" has the meaning given to that term in La Crosse's Code of Ordinances, related to wastewater.
- 1.23 "TAC" means the Technical Advisory Committee established under Article 14.
- 1.24 "Undesignated Reserve Funds" means those funds of the La Crosse Sewer Utility that are in excess of the amounts required under La Crosse's Sewer Utility Reserve Policy.
- 1.25 "Wholesale Volumetric Rate" means La Crosse's volumetric rate to La Crescent as determined in accordance with Article 5 of this Agreement.

ARTICLE 2
AUTHORIZED DISCHARGE

- 2.1 **Discharge to La Crosse Sewer System Authorized.** During the term of this Agreement, La Crescent is authorized to and shall discharge sewage from the La Crescent Service Area only to the La Crosse Sewer System and shall not obtain sanitary sewage treatment and disposal service from a source other than La Crosse, unless La Crosse refuses or is unable to provide sanitary sewage treatment and disposal service.
- 2.2 **Connection Points to La Crosse Sewer System.** La Crescent is authorized to discharge sewage from the La Crescent Sewer System to the La Crosse Sewer System at the following connection points:
- a. Junction Point on Barron Island.

La Crescent is not authorized to discharge sewage originating within La Crescent to the La Crosse Sewer System at any other point unless this Agreement is amended to authorize such discharge.

- 2.3 **No Obligation to Serve Beyond this Agreement.**
- 2.3.1 The Parties agree that La Crosse's obligation to provide La Crescent with sanitary sewage treatment and disposal service is strictly limited to the provisions of this Agreement and that La Crosse has no obligation to provide La Crescent with service beyond the provisions of this Agreement. La Crescent agrees that it shall not allege, contend or argue in any future proceeding that La Crosse has an obligation to provide sanitary sewer service to La Crescent beyond the express provisions of this Agreement.

- 2.3.2 Section 2.3.1 shall not be construed to limit any statutory rights under Wisconsin law that La Crescent may have to obtain sewage treatment from the La Crosse WWTP at the termination of this Agreement.

ARTICLE 3
LIMITS ON DISCHARGE

- 3.1 **Service Area Limit.** La Crescent shall only discharge wastewater generated from areas that are within both (i) La Crescent's municipal boundaries, and (ii) the La Crescent Service Area to the La Crosse Sewer System shown on Exhibit 3.1.
- 3.2 **Discharge Limits.** Flow from the La Crescent Sewer System shall not exceed the discharge limits established in Exhibit 3.2.
- 3.3 **Strength of Wastewater.**
- 3.3.1 ***Discharge Not to Exceed Domestic Strength.*** The sewage discharged from the La Crescent Sewer System to the La Crosse Sewer System shall not exceed domestic strength as defined by La Crosse's Code of Ordinances for La Crosse Customers.
- 3.3.2 ***Sampling.*** La Crescent shall sample and analyze sewage flow from La Crescent and provide this information to La Crosse. Samples shall be analyzed for the following constituents: BOD, TSS, NH₃-N, phosphorus, and metals (Cadmium, Chromium, Copper, Lead, Manganese, Nickel, Silver, Zinc, and low level Mercury). Once composite testing is available, samples shall be taken on a flow-proportional, composite basis. Sampling shall occur two (2) times a year over five (5) consecutive days in June and five (5) consecutive days in October. La Crosse may require that fixed sample frequency be increased based on sample data. La Crosse may also require La Crescent to conduct additional sampling to determine compliance with discharge limits or for the purpose of current or future regulatory compliance. La Crosse shall also have access to the La Crescent Sewer System for sampling purposes and shall have the right to conduct its own sampling of the sewage discharged from the La Crescent Sewer System to the La Crosse Sewer System.
- 3.3.3 ***Right to Require Pretreatment.*** Based on sampling data from La Crescent's flow, La Crosse reserves the right to require La Crescent to install pretreatment to reduce future loadings to the La Crosse Sewer System to meet the requirements of subsection 3.3.1.
- 3.3.4 ***Compliance with La Crosse Ordinances.*** All wastewater from the La Crescent Sewer System entering the La Crosse Sewer System shall be subject to all provisions of La Crosse's Code of Ordinances pertaining to sewers and sewerage that are applicable to La Crosse Customers.

3.4 Prohibition on Certain Discharges.

3.4.1 *Trucked Waste.* No septic tank waste, seepage pit wastes, grease-trap wastes, or any trucked liquid wastes shall be deposited into the La Crescent Sewer System by persons engaged in the business of cleaning, pumping or hauling of the same. All trucked wastewater shall be disposed of in accordance with applicable State, Federal and local regulations.

3.4.2 *Clear Water.* La Crescent shall not permit clear water discharge from drain tile, rainwater, any surface water conduits, or any other clear water source to be connected with or discharged into the La Crescent Sewer System.

3.4.3 *Wastewater from Other Entities.* La Crescent shall not carry or transport wastewater from any property outside of the La Crescent municipal boundaries.

3.5 Requirements for Significant Industrial Users. La Crosse may require Significant Industrial Users, including Significant Industrial Users in La Crescent, to obtain discharge permits, and to comply with the provisions of those discharge permits, including payment of fees to the La Crosse Sewer Utility. Permit fees and laboratory analysis fees charged to Significant Industrial Users in La Crescent shall be the same as those charged to comparable Significant Industrial Users in La Crosse, plus a 50% surcharge on the permit fee. Service to any such Significant Industrial User shall require prior approval from the La Crosse Sewer Utility.

3.6 Exceeding Limits on Discharge.

3.6.1 *Notification of Unauthorized Discharge.* La Crescent shall notify La Crosse immediately of the occurrence of any discharge in violation of this Article 3, the details of the discharge, and the action taken or proposed to be taken by La Crescent with respect thereto.

3.6.2 *Moratorium on Additional Extensions or Connections.* If La Crescent exceeds a discharge limit in violation of Section 3.2 or subsection 3.3.1, La Crescent shall allow no additional sewer main extensions or customer connections to the La Crescent Sewer System until La Crescent satisfactorily demonstrates to La Crosse that modifications have been made to La Crescent Sewer System facilities or operations to prevent La Crescent from exceeding the discharge limits in the future. This moratorium is not triggered by a discharge authorized by La Crosse under subsection 3.6.3.

3.6.3 *Authorization and Acceptance of Discharges in Excess of Discharge Limits.* La Crosse may authorize and accept an unauthorized discharge from La Crescent for a limited period if La Crosse reasonably believes that no serious harm or adverse effects will result. Any such discharge must be authorized by La Crosse in advance of the discharge and must be for a limited period. La Crescent may orally request such authorization,

and La Crosse's Utility Manager may grant such authorization orally. La Crosse's Utility Manager will confirm an oral authorization, including the duration of the authorization, with the La Crosse Public Works Committee. If the La Crosse Public Works Committee objects to the authorization, the Utility Manager will convey such objection, in writing, to La Crescent and La Crescent shall immediately cease the discharge.

- 3.6.4 *Payment of Costs for Exceeding Discharge Limits.* If La Crescent discharges sewage from the La Crescent Sewer System to the La Crosse Sewer System in excess of the discharge limits of this Article 3, La Crosse shall charge La Crescent for any fine, penalty or forfeiture incurred by La Crosse, and may charge La Crescent for any cost incurred by La Crosse (including without limitation, for employees, equipment or materials) as a result of such discharge. La Crosse shall provide a fully itemized invoice to La Crescent and the invoice shall be due as provided in Section 5.7. The receipt of authorization under subsection 3.6.3 does not eliminate La Crescent's obligation to make the payment required by this subsection 3.6.4.

ARTICLE 4 MEASUREMENT OF FLOW

- 4.1 Flow Measurement. The volume of flow from the La Crescent Sewer System discharging into the La Crosse Sewer System shall be measured at the La Crescent Meter.
- 4.2 La Crescent Meter. La Crescent shall furnish the La Crescent Meter, at its cost, to accurately measure the flow that the La Crescent Sewer System conveys to the La Crosse Sewer System. La Crescent shall maintain, service, repair, and replace the La Crescent Meter at its cost. If the La Crescent Meter is replaced or modified, meter installation or modification plans must be submitted to the La Crosse Sewer Utility for review and approval.
- 4.3 Calibration of La Crescent Meter. The La Crescent Meter shall be calibrated by a competent technician not less than once annually. La Crescent shall pay all expenses related to the calibration. La Crescent shall provide La Crosse with notice of the calibration, at least two (2) working days prior to the time of calibration, so that La Crosse may have a representative present during the calibration. La Crescent shall provide La Crosse with documentation of the technician's credentials and the results of such annual calibration within ten (10) days after the completion of the calibration.
- 4.4 Failure to Maintain La Crescent Meter. In the event La Crescent fails to maintain the La Crescent Meter in good and accurate working condition or fails to have the annual calibration performed, La Crosse may maintain and calibrate such meter, and charge the expenses related to such maintenance and calibration to La Crescent, which expense La Crescent agrees to pay. If replacement of the La Crescent Meter is prudent and La Crescent fails to replace the La Crescent Meter, La Crosse may replace such meter, and charge the expense related to such meter replacement to La Crescent, which expense La

Crescent agrees to pay. La Crosse shall bill its costs for meter maintenance, calibration, and replacement to La Crescent and the bill shall be due as provided in Section 5.7.

- 4.5 Access to La Crescent Meter. La Crosse shall have access to the La Crescent Meter, upon request, for purposes of periodically inspecting the meter.
- 4.6 Reading of La Crescent Meter. La Crescent shall download meter readings at least weekly. Meter readings shall be sent to La Crosse monthly within seven (7) days after the end of the month and shall include total monthly flow, total daily flow, and daily maximum and minimum flow as measured on a time interval of 15-minutes or less. If La Crosse chooses, it may read the La Crescent Meter itself. La Crosse shall have regular access to the La Crescent Meter for purposes of reading the meter. If the La Crescent Meter does not contain equipment enabling the collection of the required data on a time interval of 15-minutes or less, such equipment shall be installed by La Crescent at its cost within twelve (12) months of the effective date of this Agreement.
- 4.7 Metering Disputes. In the event that either La Crosse or La Crescent believes that the sewage flow has been inaccurately metered resulting in over billing or under billing under Article 5, the objecting Party shall give notice to the other Party in writing of its objection. The Parties shall cooperate to determine the existence and extent of the alleged meter inaccuracy and the overbilling or underbilling. If a meter is determined to be inaccurate, an adjustment shall be made in charges for such meter inaccuracies extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half of the time elapsed since the last date of calibration. If the Parties are unable to agree upon the adjustment to be made in charges for meter inaccuracies, the Parties shall resolve the dispute in accordance with Article 13.
- 4.8 Retention of Meter Reading Data. All meter reading raw data shall be retained by La Crescent for three (3) years. If the La Crescent Meter does not contain equipment enabling the electronic downloading and retention of meter readings, such equipment shall be installed by La Crescent at its cost within twelve (12) months of the effective date of this Agreement.

ARTICLE 5

LA CROSSE RATES; BILLING

- 5.1 2020 and 2021 Wholesale Volumetric Rate. The Wholesale Volumetric Rate to La Crescent for 2020 and 2021 will be \$ 1,970.00 per million gallons.
- 5.2 Wholesale Volumetric Rate Beginning in 2022. The Wholesale Volumetric Rate for 2022 will be established based on a rate study that determines the revenue requirement for the La Crosse Sewer Utility using the utility-basis approach. Under the utility-basis approach, the revenue requirement for the La Crosse Sewer Utility shall include

operation and maintenance expenses, depreciation expense and a return on rate base. La Crosse shall not include in its revenue requirement a rate of return for contracted wholesale customers that is higher than the greater of (i) the benchmark rate of return established by the Public Service Commission of Wisconsin for municipal water utilities; or (ii) the rate of return charged to La Crosse Customers for the La Crosse WWTP. La Crosse also agrees that it shall not include in its revenue requirement a rate of return for contracted wholesale customers that is more than 2% higher than the rate of return charged to La Crosse Customers for the La Crosse WWTP. La Crosse may charge La Crosse Customers a different rate of return on the La Crosse collection system than it charges on the La Crosse WWTP. The Wholesale Volumetric Rate established under this Section will remain in effect until changed in accordance with Section 5.3 or 5.4.

- 5.3 **Rate Changes.** La Crosse may revise the Wholesale Volumetric Rate established for La Crescent under Section 5.2 only after preparing a new rate study that follows the methodology described in Section 5.2. This Section does not apply to cost of living rate adjustments covered by Section 5.4.
- 5.4 **Cost of Living Adjustments.** Cost of living rate adjustments may be made without completing a new rate study if the same percentage increase is applied to both the volumetric rate charged to La Crosse Customers and the Wholesale Volumetric Rate. Cost of living increases, if made, shall not be greater than the nearest whole percent above the increase in the Consumer Price Index (CPI), All Urban Consumers, U.S. city average. The CPI shall be based on the increase over the period from June to June, with the rate increase being effective January 1 of the year following the June to June period.
- 5.5 **Sewer Charges.** La Crosse's sewer charges to La Crescent shall equal:
- a. the flow measured by the La Crescent Meter;
 - b. multiplied by the Wholesale Volumetric Rate;
 - c. with the invoice for January service adjusted as provided in Section 8.1, if applicable.
- 5.6 **Billing.** La Crosse will bill La Crescent quarterly on or about the tenth (10th) day of the month following the end of the quarter for the cost of sewage handling and treatment. La Crosse may elect to bill La Crescent monthly after providing La Crescent with one (1) year's written notice of its intent to change to monthly billing.
- 5.7 **Due Date.** Invoices shall be due and payable within forty-five (45) days of the date of the invoice. If an invoice is not fully paid within forty-five (45) days, the unpaid balance shall be subject to interest at the rate of one and one-half percent (1.5%) per month.

ARTICLE 6

CONNECTIONS TO LA CRESCENT SEWER SYSTEM; REGULATIONS ON USE

- 6.1 **Sewer Main Extensions within La Crescent.** Sewer main extensions may be made by La Crescent within La Crescent's municipal boundaries, provided such main extensions are also within the La Crescent Service Area shown on Exhibit 3.1.
- 6.2 **La Crosse Approval of Plans.** All plans for sewer main extensions, new lift stations or new forcemains within La Crescent, and any major sewer, forcemain, or lift station replacement or renovation within La Crescent must be submitted to the La Crosse Sewer Utility and the La Crosse City Engineer, and be approved by the La Crosse City Engineer. The La Crosse Sewer Utility shall promptly notify La Crescent in writing of the La Crosse City Engineer's approval or disapproval and the reason for any disapproval. Any disapproval must be based upon a reasonable determination of the lack of sufficient contracted capacity for flow, load, or strength, the lack of sufficient downstream capacity in La Crosse's collection system, or other substantial engineering consideration related to La Crescent's proposed construction or extension.
- 6.3 **Plumbing.** All plumbing on or connecting to the La Crescent Sewer System shall be installed in compliance with the Minnesota State Plumbing Code. La Crescent shall have a qualified building official who shall inspect all connections to the mains, keep records of all connections by measurements from manholes and inspect all inside plumbing. La Crosse reserves the right to inspect all mains, connections, premises and records in order to ascertain compliance with all contracts, agreements, rules, and regulations, and accuracy of such records.
- 6.4 **Application of La Crosse's Code of Ordinances.** La Crescent shall by ordinance require all La Crescent Customers, including industrial and commercial users, to conform and comply with the provisions of La Crosse's Code of Ordinances related to wastewater and sewerage that are applicable to La Crosse Customers in order to protect the La Crosse Sewer System, and to comply with all applicable governmental laws, orders, or directives. All La Crescent Customers shall be subject to all La Crosse ordinances related to wastewater and sewerage that are applicable to La Crosse Customers, along with the provisions of all applicable governmental laws, orders and directives pertaining to wastewater.
- 6.5 **Authority to Inspect.** La Crosse shall have the same right to enter and inspect the premises of La Crescent Sewer System users as it has under Chapter 46 of La Crosse's Code of Ordinances to enter and inspect the premises of La Crosse Customers.
- 6.6 **Enforcement.** If La Crosse determines from any such inspection or survey under Section 6.5 that any wastewater entering the La Crescent Sewer System is in apparent violation of La Crosse's Code of Ordinances, the user and La Crescent shall be notified in writing of such condition and be requested to cease and desist within a period of forty-five (45) days after receipt of such notice, except where the discharge, as determined by the La

Crosse Public Works Committee or their designated representative, poses an immediate threat to the La Crosse Sewer System, in which case the user and La Crescent shall be requested to immediately halt the discharge causing or contributing to the immediate threat. If there is a failure on the part of the user and/or La Crescent to take corrective action within said forty-five (45) days or shorter period, La Crosse shall have the right to take any and all lawful measures, including court action for equitable or injunctive relief, forfeitures under La Crosse's Code of Ordinances, and termination of service or the right to use the La Crosse Sewer System.

6.7 Sewer Connection Fee.

6.7.1 *Connection Fee for New Connections.* La Crescent shall pay La Crosse a sewer connection fee for each property that connects to the La Crescent Sewer System after the effective date of this Agreement. Such Sewer Connection Fee shall be no greater than the fee charged to similarly situated La Crosse Customers.

6.7.2 *Connection Fee Charge Per REC.* Sewer connection fees shall be determined on a per REC basis. Each single-family residential property is one REC. All other uses shall be assigned RECs based upon estimated usage compared to that of an average residential user. For each new non-single-family residential connection, La Crescent shall prepare and submit a usage estimate for review and approval by La Crosse.

6.7.3 *Amount of Connection Fee Per REC.* The sewer connection fee per REC to be paid by La Crescent shall be the same as the sewer connection fee per REC to be paid by La Crosse residents. The amount of the sewer connection fee per REC shall be established as provided in the La Crosse Sewer Connection Fee Ordinance.

6.7.4 *Notification of Connections and Payment of Fees.* La Crescent shall provide La Crosse a copy of every permit issued by La Crescent for each sewer connection from new properties or areas connecting to the La Crescent Sewer System. Within ten (10) days after each connection is completed, La Crescent shall provide La Crosse with a copy of the inspection report of the connection along with payment of the applicable sewer connection fee for the property.

6.7.5 *Failure to Timely Pay Connection Fee.* If a sewer connection fee is not timely paid as required by subsection 6.7.4, the unpaid sewer connection fee shall be subject to interest at the rate of one and one-half percent (1.5%) per month.

ARTICLE 7

MAINTENANCE OF LA CRESCENT SEWER SYSTEM

7.1 Maintenance of La Crescent Sewer System. La Crescent shall pay all costs associated with maintaining, operating, and replacing the La Crescent Sewer System. The costs shall be included in La Crescent's sewer utility budget and reflected in the La Crescent

sewer rates. There shall be no cost to La Crosse for replacement of La Crescent Sewer System facilities.

- 7.2 **Infiltration and Inflow.** La Crescent shall, at its expense, reduce excessive infiltration and inflow into the La Crescent Sewer System. For purposes of this Agreement, excessive infiltration and inflow means the quantities of infiltration and inflow which can be economically eliminated from a sewerage system by rehabilitation, as determined in a cost effectiveness analysis that compares the costs of correcting the infiltration and inflow conditions to the total cost for transportation and treatment of the infiltration and inflow. La Crosse may conduct the analysis to determine whether infiltration and inflow into the La Crescent Sewer System is excessive. If La Crosse finds that infiltration and inflow is excessive, La Crescent shall reimburse La Crosse for the cost of the analysis.

ARTICLE 8

BARRON ISLAND FORCE MAIN

- 8.1 **Maintenance of Barron Island Force Main.** La Crosse shall maintain and repair the Barron Island Force Main, with La Crescent paying eighty-five percent (85%) of the full maintenance and repair cost, and La Crosse paying fifteen percent (15%) of the full maintenance and repair cost. La Crescent's portion of the cost of maintaining and repairing the Barron Island Force Main shall be calculated annually and added to La Crosse's invoice to La Crescent for January treatment service.
- 8.2 **Replacement of Barron Island Force Main.** The Parties agree that in the event the Barron Island Force Main fails and must be replaced, the Parties will share in the full cost of replacement. The Parties agree to divide replacement costs between the Parties in proportion to each Party's anticipated flow volume in the Barron Island Force Main. Failure of the Barron Island Force Main is defined as any condition or situation that renders the Barron Island Force Main completely unusable.
- 8.3 **Supplemental Force Main.** When it is the reasonable opinion of La Crosse that the Barron Island Force Main volume will be exceeded, then La Crescent shall construct and maintain a supplemental force main at its sole cost and expense.

ARTICLE 9

RECIPROCAL OBLIGATIONS

- 9.1 **Access to Records.**
- 9.1.1 ***La Crosse Utility Records.*** La Crosse shall provide La Crescent access to all La Crosse records on sanitary sewer flow, sewer utility income and expenses, sewer utility reserve funds, and other financial records relative to the La Crosse Sewer Utility's operations,

subject to any limitations imposed by Wisconsin's Public Records Law, secs. 19.31 to 19.39, Wis. Stats., on the right to access all or any part of the records.

- 9.1.2 ***La Crescent Records.*** La Crescent shall provide La Crosse access to all La Crescent's records on sanitary sewer flow, sewer utility income and expenses, sewer utility reserve funds, and other financial records relative to operation of La Crescent's Sewer System.
- 9.2 **Public Records Law.** La Crosse is subject to the Public Records Law of the State of Wisconsin. As such, except as otherwise provided in this Agreement, each 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. Each Party agrees to assist a Party who receives a public record request pertaining to this Agreement ("Receiving Party") to comply with such public records request. Additionally, each Party agrees to indemnify and hold harmless a Receiving Party, 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 the indemnifying Party's actions or omissions which contribute to the Receiving Party's inability to comply with the Public Records Law. This provision shall survive the termination of this Agreement.
- 9.3 **Insurance.** La Crosse and La Crescent shall each maintain insurance policies or maintain self-insurance programs of the kinds and in the amounts which are customarily carried or maintained by local governments operating wastewater collection and treatment systems. Each Party shall provide the other with proof of such insurance coverage upon request.
- 9.4 **Notification of Certain Discharges.** Each Party shall be solely responsible for notifying applicable state governmental agencies of a discharge to or from its wastewater system in violation of federal or state law, or its wastewater discharge permit. If a Party provides a state governmental agency with notice under this Section, it shall notify the other Party of the notice and provide details of the discharge covered by the notice.
- 9.5 **Capacity, Management, Operation, and Maintenance Programs.** La Crescent shall be solely responsible for implementing and maintaining a capacity, management, operation, and maintenance program for the La Crescent Sewer System that meets the requirements of Wis. Admin. Code NR 210.23. La Crescent shall provide a copy of a written program and an annual self-audit to La Crosse. La Crosse shall not be responsible for implementing or maintaining a capacity, management, operation, and maintenance program for the La Crescent Sewer System. La Crosse shall be solely responsible for implementing and maintaining a capacity, management, operation, and maintenance program for the La Crosse Sewer System that satisfies the requirements of Wis. Admin. Code NR 210.23.

- 9.6 **Metropolitan Sewerage District.** Each Party shall oppose the establishment of a metropolitan sewerage district or any similar joint wastewater authority to provide sewer service to all or any part of (i) La Crosse, or (ii) the portion of La Crescent eligible to receive sewer service under Section 3.1, unless both Parties mutually agree in writing to support the establishment of the district or authority.

ARTICLE 10
FORCE MAJEURE

- 10.1 **Force Majeure.** In case by reason of Force Majeure any Party is rendered unable wholly or in part to carry out its obligations under this Agreement, then if such Party gives notice and full particulars of such Force Majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligations of the Party giving such notice, so far as it is affected by such Force Majeure shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. Notwithstanding any Force Majeure, La Crescent shall remain responsible for any costs incurred by La Crosse under subsection 3.6.4. The term Force Majeure means acts of God, acts of public enemy, orders of any kind of Governmental Authorities, or of any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, or pipelines, partial or entire failure of wastewater treatment, or inability on the part of a Party to receive or convey wastewater hereunder, on account of any other causes not reasonably within the control of the Party claiming such inability.

ARTICLE 11
NOTICES

- 11.1 **Written Notice Required.** Unless otherwise provided in this Agreement, any notice, demand or other communication required or permitted under this Agreement shall be given in writing and delivered personally, by courier, by U.S. Mail or commercial delivery service.
- 11.2 **Effective Date of Notice.** Notice provided under this Agreement shall be deemed effective: (i) when personally delivered; (ii) three (3) days after deposit with the United States Postal Service, postage prepaid, certified, return receipt requested; or (iii) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the Party or person intended, at the address provided in accordance with Section 11.3.

- 11.3 **Address for Notices.** Notices to a Party shall be provided to its respective address set forth below, or at such other address as may from time to time be designated by such Party to the others in accordance with this Article 11:

If to La Crosse:

Attn. La Crosse Clerk
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

With a copy to:
Attn. La Crosse Attorney
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

If to La Crescent:

Attn: La Crescent City Administrator
City of La Crescent
315 Main Street
La Crescent, MN 55947

With a copy to:
Attn. Skip Wieser
Wieser Law Office, P.C.
33 South Walnut Street, Suite 200
La Crescent, MN 55947

ARTICLE 12 **EFFECTIVE DATE; TERM**

- 12.1 **Effective Date.** This Agreement shall become effective upon the date of execution of this Agreement by both La Crosse and La Crescent.
- 12.2 **Term.** This Agreement shall extend from the effective date through December 31, 2041. The Agreement may be extended for further subsequent terms upon the written consent of both Parties.
- 12.3 **Negotiation Prior to End of Term.** Provided no event of default by La Crescent under this Agreement is outstanding or uncured, the Parties agree to enter into good faith

negotiations no later than March 1, 2035 to discuss an extension or replacement agreement.

ARTICLE 13
DISPUTE RESOLUTION

- 13.1 **Dispute Resolution.** A dispute or controversy between La Crosse and La Crescent regarding any matter relating to this Agreement shall be resolved in accordance with this Article except as otherwise provided in this Agreement.
- 13.2 **Notice of Dispute and Initial Meeting.** If a dispute or controversy arises and exists regarding any matter relating to this Agreement, either Party may send a written notice to the other Party identifying the nature and underlying facts of the dispute. Within thirty (30) days of the date written notice is delivered, a meeting between the Parties shall be held to attempt in good faith to negotiate a resolution of the dispute or controversy. This Section is intended by the Parties to waive any respective statutory right to further notice. Such waiver, however, shall not constitute a waiver of any applicable damage cap, liability cap, or immunities contained in applicable state law.
- 13.3 **Mediation.** If the Parties have not succeeded in resolving the dispute or controversy at the initial meeting or subsequent meetings scheduled by mutual agreement, or if the Parties have not held an initial meeting within thirty (30) days after the date of delivery of the written notice, the Parties may choose to proceed to mediation in accordance with this Section. The Parties shall jointly appoint a mutually acceptable neutral person not affiliated with either of them (the “Mediator”) to conduct the mediation. The Mediator shall have a minimum of ten (10) years of experience in the subject matter of the dispute or controversy. The fees of the Mediator shall be shared equally by the Parties. If the Parties are unable to agree upon the selection of a Mediator within twenty (20) days after the initial meeting, or if no initial meeting was held, within fifty (50) days after the delivery of the written notice required by Section 13.2, the Parties shall either request that the La Crosse County Circuit Court select the Mediator or, in the alternative, proceed with other forms of dispute resolution. If the La Crosse County Circuit Court is to select the Mediator, the Parties agree that the Mediator selected shall be a Wisconsin professional with a minimum of ten (10) years of experience in the subject matter of the dispute or controversy, and that the selected Mediator need not be an attorney.

In consultation with the Parties, the Mediator will select or devise the mediation procedure to be held in La Crosse County, Wisconsin, by which the Parties will attempt to resolve the dispute or controversy. In consultation with the Parties, the Mediator will also select a date and time for the mediation and a date by which the mediation will be completed.

The Parties shall participate in good faith in the mediation to its conclusion as designated by the Mediator. If the Parties are not successful in resolving the dispute or controversy through the mediation, the dispute may be resolved by litigation or other appropriate means.

- 13.4 **Costs.** Except as expressly provided in this Agreement, each Party shall bear its own costs associated with dispute resolution, including attorneys' fees and litigation expenses.

ARTICLE 14 **TECHNICAL ADVISORY COMMITTEE**

- 14.1 **Establishment of Technical Advisory Committee.** As a vehicle for sharing information and providing recommendations on issues related to the provision of wastewater treatment services to wholesale customers, a TAC is established. The role of the TAC is advisory in nature and no action of the TAC may alter any term of a wholesale treatment agreement.
- 14.2 **Membership.** The TAC consists of the La Crosse Utilities Manager, the La Crosse Director of Public Works, and one representative from each community that has signed a current wholesale wastewater treatment agreement with La Crosse containing a provision allowing its participation in the TAC. Each TAC member may designate an alternate representative. The La Crosse Utilities Manager shall serve as the Chair of the TAC.
- 14.3 **TAC Meetings.** The TAC will meet at least once annually to communicate with and make recommendations to the La Crosse Utilities Manager regarding matters relating to La Crosse's provision of wastewater treatment services to wholesale customers. The La Crosse Utilities Manager will prepare the meeting agenda and provide notice of the meeting to all TAC representatives.
- 14.4 **TAC Staffing.** La Crosse Sewer Utility staff will provide staff support to the TAC and will be responsible for keeping the official records.
- 14.5 **Input on Operating Practices.** The TAC will recommend to the La Crosse Utilities Manager wastewater system operating practices to enhance the efficiency, reliability, and cost-effectiveness of the collection, transmission, treatment and disposal of wastewater provided under this Agreement. These operating practices may address issues such as, but not necessarily limited to, forecasting seasonal demands, forecasting peak demands, managing the system to minimize the impact of peak demand periods, security, and emergency management. Upon receipt of the TAC's recommendations, the La Crosse Utilities Manager may adopt the operating practices recommendations, with such alterations as he or she deems necessary or advisable.

- 14.6 **Input on La Crosse Sewer Utility's Capital Improvement Program.** The La Crosse Sewer Utility will share with the TAC its proposed capital projects for funding and its proposed schedule for completing the capital projects. The TAC will be provided an opportunity to present to the La Crosse Sewer Utility suggestions and recommendations for specific capital projects, for improvements in the capital planning and financing process, and for changes to La Crosse Sewer Utility's proposed capital improvement plan.
- 14.7 **Input on La Crosse Sewer Utility's Operation and Maintenance Budget Requests.** The La Crosse Sewer Utility will share with the TAC information on the development of its yearly operation and maintenance budget requests and the proposed expenses to be incurred to serve the participating wholesale customers. The TAC will be provided an opportunity to present to the La Crosse Sewer Utility suggestions and recommendations for the yearly operation and maintenance budget and the proposed expenses to be incurred to serve the participating wholesale customers.
- 14.8. **Budget Reports.** At each TAC meeting, the La Crosse Utilities Manager will report to the TAC on the status of the La Crosse Sewer Utility's adopted capital improvement plan and current budget, the status of budget preparations for the upcoming fiscal year, and any particular budgetary issues or concerns related to that part of the wastewater treatment system used to serve the wholesale customers.
- 14.9 **Input on Utility Rates.** The La Crosse Sewer Utility will provide the TAC with timely notification of proposed changes in rates, charges, and rate design and an opportunity for the TAC to evaluate and comment on such proposals before they are presented to the La Crosse Common Council.
- 14.10 **Protection of Confidential Information.** Information submitted to or produced by the TAC or otherwise exchanged by La Crosse and its wholesale customers may include documents related to the vulnerability or security of wastewater treatment and collection systems. In order to participate in the TAC, TAC members must agree that if a TAC member receives a public document request for such information, the TAC member receiving that request shall, prior to release of any documents, expeditiously notify the entity about whose system information is sought and shall, in addition, assert all applicable exemptions to release of the documents available under Wisconsin's Public Records Law.

ARTICLE 15

PAYMENTS FROM UNDESIGNATED RESERVE FUNDS TO CITY OF LA CROSSE

- 15.1 **Undesignated Reserve Funds.** The La Crosse Sewer Utility may make payments to the City of La Crosse from the Undesignated Reserve Funds of the La Crosse Sewer Utility, pursuant to and in accordance with Wis. Stat. § 66.0811(3) and 66.0821(2)(b). Funds reserved in accordance with La Crosse's Sewer Utility Reserve Policy shall not be included as Undesignated Reserve Funds. The City of La Crosse agrees to adopt a sewer

utility reserve policy that establishes reserves for operating expenses, debt service, an equipment replacement fund, and capital improvements.

- 15.2 **Appropriation of Excess Sewer Revenues to City of La Crosse.** Starting on January 1, 2022, the City of La Crosse may appropriate excess sewer revenues from the Undesignated Reserve Funds of the La Crosse Sewer Utility. The City of La Crosse intends to use appropriated excess sewer revenues as allowed by law.
- 15.3 **No Challenge to Payments.** La Crescent shall not challenge (and waives any right to challenge) any payments made under this Article 15 to the City of La Crosse from the Undesignated Reserve Funds of the La Crosse Sewer Utility.
- 15.4 **Impact of Termination.** La Crosse's willingness to provide wastewater treatment services under this Agreement is conditioned on the continued applicability of this Article 15. Notwithstanding Section 16.7, if this Article 15 is invalidated for any reason, then this Agreement shall also terminate.

ARTICLE 16 **MISCELLANEOUS**

- 16.1 **Recitals.** The Parties confirm and ratify the statements and commitments contained in the Recitals. The Recitals are incorporated and made a part of this Agreement.
- 16.2 **Agreement Supersedes Prior Agreements.** This Agreement replaces all former agreements between La Crosse and La Crescent related to the treatment and disposal of sewage, including but not limited to the Agreement for Sanitary Sewer Conveyance and Treatment dated January 11, 2007, and the Agreement for the Design, Construction and Maintenance of Sanitary Sewer Force mains dated February 8, 2007.
- 16.3 **Modification of this Agreement.** This Agreement shall be amended only by formal written supplementary amendment executed by the Parties unless otherwise provided in this Agreement. No oral amendment of this Agreement shall be given any effect.
- 16.4 **Mutual Cooperation.** Each Party agrees to provide information to assist the other in obtaining the governmental permits necessary for the receipt and provision of wastewater conveyance and treatment service in accordance with this Agreement.
- 16.5 **Non-Assignability.** No assignment or transfer of this Agreement shall be made by La Crescent or La Crosse without the prior written agreement of the other Party. This Agreement shall be binding on the heirs, successors, and assigns of each Party.
- 16.6 **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.

- 16.7 **Severability**. Except as provided by Section 15.4, the provisions of this Agreement are severable. Except as provided by Section 15.4, 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.
- 16.8 **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 or Parties hereto but the obligation of such other Party with respect to such future performance shall continue in full force and effect.
- 16.9 **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.
- 16.10 **Jury Trial Waiver**. The Parties 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 authorized to file a copy of this Section in any proceeding as conclusive evidence of this waiver by the other Party.
- 16.11 **References to Laws**. Unless otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they may be amended or modified from time to time hereafter.
- 16.12 **Compliance with Law**. The Parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.
- 16.13 **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 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.

- 16.14 **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.
- 16.15 **Authority to Sign.** 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.
- 16.16 **Execution of Agreement.** Each Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.
- 16.17 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.
- 16.18 **Survival.** All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 16.19 **Condition Precedent.** The Parties' obligations to perform under this Agreement are conditioned upon obtaining the Wisconsin Attorney General's approval of this Agreement in accordance with Wis. Stat. § 66.0303(3)(a).

ARTICLE 17

NO CHALLENGE TO VALIDITY OF AGREEMENT

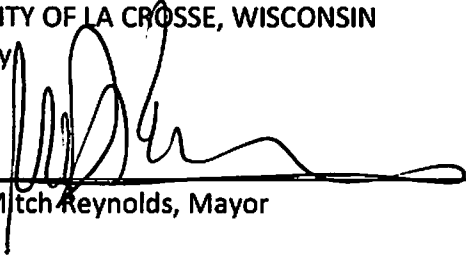
- 17.1 **No Challenges to the Validity or Enforceability of this Agreement.** Except as is otherwise expressly provided in this Agreement, each of the Parties waives any right to commence or maintain, and agrees not to commence or maintain, any civil action to contest or challenge the validity or enforceability of this Agreement or any of its provisions. Except as is otherwise expressly provided in this Agreement, each of the Parties waives any right to complain to the Public Service Commission of Wisconsin ("PSC"), and agrees not to complain to the PSC pursuant to Wis. Stat. § 66.0821(5), that this Agreement or any provision of this Agreement is unreasonable or unjustly discriminatory on its face.

IN WITNESS WHEREOF, the Mayor and City Clerk of the City of La Crosse, Wisconsin, and the Mayor and City Clerk of the City of La Crescent, Minnesota, by virtue of directions of the governing bodies of each local governmental body heretofore referred to, made and executed this Agreement on the dates indicated below.

Dated this 25 day of September, 2023 for the City of La Crosse, Wisconsin.

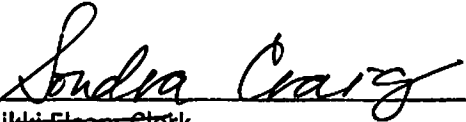
CITY OF LA CROSSE, WISCONSIN

By



A handwritten signature in black ink, appearing to read "Mitch Reynolds", written over a horizontal line.

Mitch Reynolds, Mayor



A handwritten signature in black ink, appearing to read "Sondra Craig", written over a horizontal line.

~~Nikki Eisen, Clerk~~

Sondra Craig, Deputy City Clerk

Dated this 11th day of September, 2023 for the City of La Crescent, Minnesota.

CITY OF LA CRESCENT, MINNESOTA

By:

A handwritten signature in black ink, appearing to read "Mike Poellinger", written over a horizontal line.

Mike Poellinger, Mayor

A handwritten signature in blue ink, appearing to read "Bill Waller", written over a horizontal line.

Bill Waller, City Administrator

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09.04.23

**EXHIBIT 1.4
FORCE MAIN MAP**



EXHIBIT 3.1
LA CRESCENT SERVICE AREA



Sanitary Service Area
La Crescent, MN



**EXHIBIT 3.2
LA CRESCENT DISCHARGE LIMITS**

Flow Rate (MGD)	
Annual Average	.40
Maximum Monthly	.60
Maximum Weekly	N/A
Maximum Daily	1.00
Peak Hourly	1.28
Maximum Month Loadings (lbs./day)	
Biochemical Oxygen Demand (BOD)	825
Total Suspended Solids (TSS)	766
Ammoniacal nitrogen (NH ₃ -N)	94
Total Phosphorus (TP)	17