

**STANDARD FORM OF AGREEMENT
BETWEEN CITY OF LA CROSSE (CLIENT)
AND
GRAEF-USA INC. (GRAEF)
FOR
PROFESSIONAL SERVICES**

This AGREEMENT made this 10th day of February, 2022, by and between GRAEF-USA Inc., (GRAEF) and CITY OF LA CROSSE (CLIENT).

This AGREEMENT covers the Comprehensive Plan Writing services for the City of La Crosse, First Floor, 400 La Crosse St., La Crosse, WI 54601 (CLIENT) and GRAEF-USA inc. (GRAEF) for professional services, the preparation and writing of the City of La Crosse's Comprehensive Plan update to include associated research, review, draft, and delivery of the final Comprehensive Plan to the CLIENT, hereinafter called the PROJECT.

SECTION 1 - BASIC SERVICES OF GRAEF

- 1.1 BASIC SERVICES**
- 1.1.1** GRAEF shall provide for CLIENT professional services in all phases of the Project to which this AGREEMENT applies. These services will include serving as CLIENT's professional representative for the Project, providing professional Planning consultation and advice.
- 1.1.2** Basic Services of GRAEF to be provided under this AGREEMENT are contained in EXHIBIT A, attached to, made a part of and incorporated by reference into this AGREEMENT.

SECTION 2 - ADDITIONAL SERVICES OF GRAEF

- 2.1 SERVICES REQUIRING AUTHORIZATION IN ADVANCE**
- 2.1.1** The following services are not included in this AGREEMENT to be provided by GRAEF. The CLIENT may request GRAEF at a future date to provide any or all of these services by a written request for proposal and/or a written authorization to proceed with the Additional Services(s). The written authorization to proceed shall become an Amendment to this Agreement. Payment for the Additional Service(s) shall be in accordance with Section 5 of this AGREEMENT.
 - 2.1.1.1** Lead the approval/adoption process with Common Council.
 - 2.1.1.2** Media and general community outreach. GRAEF will provide guidance and expertise to reach stakeholders and the community (including the use of Social Pinpoint in public engagement).
 - 2.1.1.3** GIS service updates or regenerations beyond the use of existing data available through the timeframe of the project.
 - 2.1.1.4** Attend or facilitate additional project meetings, and develop additional draft documents, beyond what is specified in EXHIBIT A Scope of Services.

- 2.1.1.5 Produce design alternatives or additional options after sub-area/neighborhood concepts have been completed.
- 2.1.1.6 Produce multiple design and/or bidding package submittals.
- 2.1.1.7 Provide cost opinions for site specific projects.

SECTION 3 - CLIENT'S RESPONSIBILITIES

3.1 CLIENT'S RESPONSIBILITY

- 3.1.1 CLIENT shall be responsible to provide those services and/or items enumerated in EXHIBIT B, attached to, made a part of and incorporated by reference into this AGREEMENT.
- 3.1.2 CLIENT shall provide the items in EXHIBIT B in a timely manner so as not to delay the services of GRAEF.

SECTION 4 - PERIOD OF SERVICE

4.1 PERIOD OF SERVICE

- 4.1.1 The provisions of this Section 4 and the various rates of compensation for GRAEF's services provided for elsewhere in this AGREEMENT have been agreed to in anticipation of the orderly and continuous progress of the Project. In EXHIBIT A, specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such dates are exceeded through no fault of GRAEF, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.

4.2 SCHEDULE ADJUSTMENTS

- 4.2.1 If CLIENT requests significant modifications or changes in the general scope, extent or character of the Project, the time of performance of GRAEF's services will be adjusted equitably.
- 4.2.2 If GRAEF's services for design or during construction of the Project are delayed or suspended in whole or in part by CLIENT for more than three months for reasons beyond GRAEF's control, GRAEF shall on written request to CLIENT (but without termination of this Agreement) be paid as provided in Section 5. If such delay or suspension extends for more than one year for reasons beyond GRAEF's control, the various rates of compensation provided for elsewhere in this AGREEMENT will be subject to equitable adjustment.

SECTION 5 - PAYMENT

5.1 PAYMENT FOR BASIC SERVICES

- 5.1.1 For Basic Services: CLIENT shall pay GRAEF for all Basic Services rendered under Section 1 and EXHIBIT A, in accordance with EXHIBIT D, attached to, made a part of and incorporated by reference into this Agreement.

5.2 TIME OF PAYMENTS

- 5.2.1 GRAEF shall submit monthly statements on or before the twentieth of the month for Basic and Additional Services rendered and Reimbursable Expenses incurred.
- 5.2.2 CLIENT shall make prompt payment on or before the twentieth of the month following the date of the GRAEF monthly statement.

- 5.2.3 Lump Sum contracts for Basic Services shall be based upon GRAEF's estimate of that proportion of the total services actually completed at the time of billing.
- 5.3 OTHER PROVISIONS CONCERNING PAYMENT
- 5.3.1 If CLIENT objects to any statement submitted by GRAEF, CLIENT shall so advise GRAEF in writing within seven days giving reasons therefor. If no such objection is made, the statement will be considered acceptable.
- 5.3.2 If CLIENT fails to make any payment due GRAEF for services and expenses within sixty days after receipt of monthly statement therefor, the amounts due will be increased at the rate of 1.5 percent per month from date of invoice, and in addition, GRAEF may, after giving seven days' written notice to CLIENT, suspend services under this AGREEMENT until GRAEF has been paid in full all amounts due for services, expenses and charges.
- 5.3.3 Fiscal records of GRAEF pertinent to GRAEF's compensation and payments under this Agreement will be kept in accordance with generally accepted accounting practices.
- 5.3.4 In the event of termination by CLIENT under paragraph 7.1 upon the completion of any phase of the Basic Services, progress payments due GRAEF for services rendered through such phase shall constitute total payment for such services.
- 5.3.5 In the event of termination by CLIENT under paragraph 7.1 during a phase of the Basic Services, GRAEF will be paid for services rendered up to the date of receipt of termination.
- 5.3.6 In the event of any such termination of GRAEF indicated in 5.3.4 or 5.3.5 above, GRAEF shall also be reimbursed for the charges of independent professional associates and consultants employed to render Basic Services, paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

SECTION 6 - CONSTRUCTION COST AND OPINIONS OF COST

(Not Applicable)

SECTION 7 - GENERAL CONSIDERATION

- 7.1 TERMINATION
- 7.1.1 The obligation to provide further services under this AGREEMENT may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- 7.2 REUSE OF DOCUMENTS
- 7.2.1 Documents including Drawings and Specifications prepared or furnished by GRAEF (and GRAEF's independent professional associates and consultants) pursuant to this AGREEMENT are instruments of service of GRAEF whether or not the Project is completed. GRAEF will provide CLIENT with a reproducible copy of documents requested and a set of record documents at the completion of the Project. CLIENT may make and retain copies for information and reference in connection with the use and occupancy of the Project; however, such documents are not intended or represented to be suitable for reuse by CLIENT on extensions of the Project or on any other project.
- 7.2.2 CLIENT agrees to, to the fullest extent permitted by law, to indemnify and hold harmless, GRAEF, its independent professional associates or consultants from any claims, damages, losses and expenses including attorneys' fees arising out of or resulting from any

unauthorized reuse or modification of the documents by the CLIENT or any person or entity that acquires or obtains the documents from or through the CLIENT. It is mutually agreed that the hard copy of the Instruments of Service in GRAEF's files is the original.

7.3 INSURANCE

7.3.1 GRAEF shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, in the following amounts:

7.3.1.1 Worker's Compensation and Employer's Liability Insurance as required by the State of Wisconsin.

7.3.1.2 Commercial General Liability - Occurrence

General Aggregate	\$2,000,000
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7.3.1.3 Automobile Liability

Combined Single Limit	\$2,000,000
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7.3.1.4 Excess Liability Umbrella Form
\$5,000,000 each occurrence, and
\$5,000,000 Aggregate.

7.3.2 PROFESSIONAL LIABILITY

7.3.2.1 GRAEF will procure and maintain professional liability insurance in the amount of \$2,000,000 for protection from claims arising out of performance of professional services caused by a negligent error, omission or act for which GRAEF is legally liable, and certificates indicating that such insurance is in effect will be delivered to CLIENT.

7.3.3 RISK ALLOCATION

7.3.3.1 CLIENT and GRAEF have discussed the risks, rewards and benefits of the project and GRAEF's total fee for services, and such risks have been allocated to each party.

7.3.3.2 In consideration for services to be rendered, CLIENT hereby covenants and agrees never to bring, initiate or maintain, or cause to be brought, initiated or maintained for its benefit, any civil action, proceeding or other civil dispute resolution procedure or process against GRAEF seeking recovery of monetary compensation in excess of the sum of the total compensation received by GRAEF under this AGREEMENT for any injuries, damages, losses, costs, fees or expenses whatsoever (including, but not limited to attorney's fees, expert witness fees or other fees or expenses arising from or in connection with any dispute resolution procedure or process) in any way arising from or in connection with any negligent act, error or omission in connection with rendering or failing to render any professional services in connection with this AGREEMENT.

7.3.3.3 GRAEF will cause Professional Associates and Consultants retained by it for this Project to procure and maintain comparable insurance coverage or provide that each Consultant be covered by GRAEF's insurance.

7.4 CONTROLLING LAW

7.4.1 This AGREEMENT is to be governed by the law of the State of Wisconsin.

7.5 SUCCESSORS AND ASSIGNS

7.5.1 CLIENT and GRAEF each is hereby bound and the partners, successors, executors, administrators and legal representatives of CLIENT and GRAEF (and to the extent permitted by paragraph 7.5.2 the assigns of CLIENT and GRAEF) are hereby bound to the other party to this AGREEMENT and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this AGREEMENT.

7.5.2 Neither CLIENT nor GRAEF shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent GRAEF from employing such independent professional associates and consultants as it may deem appropriate to assist in the performance of services hereunder.

7.5.3 Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than CLIENT and GRAEF, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of CLIENT and GRAEF and not for the benefit of any other party.

7.6 DISPUTE RESOLUTION

7.6.1 All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this AGREEMENT shall be initially negotiated between the designated project representatives of both parties.

7.6.2 If negotiation between the designated project representatives does not result in a settlement of the matter, it shall be referred to the principal of each firm or its designee, for joint discussion and attempted resolution of the matter.

7.6.3 Both parties agree that if the matter cannot be resolved by mutual agreement of the principals, the matter will be referred to an alternate dispute resolution process which shall initially be mediation.

7.6.4 Mediator shall be selected by and mutually agreed to by both parties.

7.6.5 Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Both parties agree to cooperate fully in the mediation process in order that the Mediator can provide said informal opinion and advice within thirty days of selection of the mediator. The mediator's fee shall be shared equally by the parties.

7.6.6 If mediation fails to resolve the dispute either party may then pursue another form of alternate dispute resolution or litigation. Binding arbitration shall not be a remedy to the dispute.

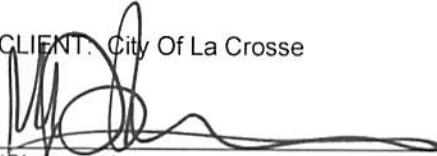
7.6.7 The parties further agree that the CLIENT will require this dispute resolution process in other project contracts as a condition of participation in the project by all other Contractors, Subcontractors, Suppliers or other persons, whose portion of the work amounts to Five Thousand Dollars (\$5,000) or more. Further their insurers and sureties shall agree to this procedure.

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES

- 8.1 The following EXHIBITS are attached to and made a part of this AGREEMENT:
 - 8.1.1 EXHIBIT A, "Basic Services of GRAEF," including Schedule for Performance of Services consisting of 4 pages.
 - 8.1.2 EXHIBIT B, "CLIENT's Responsibilities," consisting of 2 pages.
 - 8.1.3 EXHIBIT C, "Resident Project Representative Services," consisting of 1 page.
 - 8.1.4 EXHIBIT D, "Payment Provisions", consisting of 2 pages.
- 8.2 This AGREEMENT is subject to the following Special Provisions.
 - 8.2.1 The City of La Crosse STANDARD TERMS AND CONDITIONS (Service Contracts), Revised December 2018.
- 8.3 This AGREEMENT (consisting of pages 1 to 7, inclusive) together with the EXHIBITS and Schedules identified above constitute the entire Agreement between CLIENT and GRAEF and supersede all prior written or oral understandings. This AGREEMENT and said Appendices and Schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT as of the day and year first above written.

CLIENT: City Of La Crosse



(Signature)


Mayor

(Title)

2/17/2022

(Date)

GRAEF-USA Inc.



(Signature)

Vice President

(Title)

2/28/2022

(Date)

Address for giving Notices:

400 La Crosse Street

La Crosse, WI 54601

Address for giving Notices:

275 West Wisconsin Avenue, Suite 300

Milwaukee, WI 53203

EXHIBIT A
BASIC SERVICES OF GRAEF-USA INC. (GRAEF)
TO
AGREEMENT BETWEEN
CITY OF LA CROSSE (CLIENT)
AND
GRAEF-USA INC. (GRAEF)

Dated February 10, 2022

SECTION 1 - BASIC SERVICES OF GRAEF

- 1.1** GRAEF shall provide for CLIENT professional services in all phases of the Project to which this AGREEMENT applies. These services will include serving as CLIENT's professional representative for the Project, providing professional Planning consultation and advice services incidental thereto.
- 1.2** **TASK 1. COMMUNITY PARTICIPATION PLAN**
 - 1.2.1** Task 1 encompasses ongoing public engagement work, as well as deliverables and meetings identified in tasks 2 and 3 that address community participation. It is noted at the end of each task or deliverable if it is completed in Task 2 or 3.
 - 1.2.2** Establish goals, strategy, and methods for public participation throughout the project.
 - 1.2.3** Conduct 1 visioning "SWOT" open house (completed in Task 2).
 - 1.2.4** Conduct 3 neighborhood-level focus groups (held same day, during the neighborhood-level work during Task 2).
 - 1.2.5** Facilitate 2 department-level working meetings (held same day, during the systems work, during Task 2).
 - 1.2.6** Conduct 1 final draft presentation to Plan Commission (completed in Task 3).
 - 1.2.7** Provide ongoing text and photos for website updates at key milestones, to be used by City staff on a Comprehensive Plan page on the City's website.
 - 1.2.8** Provide map/graphic/GIS updates.
 - 1.2.9** Provide electronic copy of the first draft comprehensive plan update for city review (shown in Task 3).
 - 1.2.10** Provide electronic copy of the second draft comprehensive plan update for public review (shown in Task 3).

- 1.2.11 Provide electronic copy and thirty hard copies of the final draft comprehensive plan update for adoption (Task 3).
- 1.2.12 After adoption, provide an electronic copy of the final comprehensive plan update with the adoption date listed. (Task 3).
- 1.3 **TASK 2. UPDATING THE COMPREHENSIVE PLAN**
- 1.3.1 Task 2 generally encompasses review, development, outreach and collaboration to producing and updating the City of La Crosse's Comprehensive Plan. The background and research work necessary to building a robust and design-forward Comprehensive Plan.
- 1.3.2 Attend one (1) meeting with staff and media partner to discuss findings and align schedules.
- 1.3.2.1 Media Consultant/City Task: Provide any final or working files of media plan.
- 1.3.3 Attend one (1) virtual data gathering and kick-off meeting with staff.

Meeting agenda to include discussion of existing conditions, opportunities/challenges related to future growth, findings as part of media component, identification of key milestones.
- 1.3.3.1 City Task: Provide working files of existing and ongoing plans.
- 1.3.3.2 City Task: Provide base mapping data/GIS data.
- 1.3.4 Update project schedule and timeline.
- 1.3.5 Conduct and facilitate a discussion related to opportunities and weaknesses, known as a "SWOT" analysis with City staff and the Comprehensive Plan Update Steering Committee members. (1 meeting with City staff)
- 1.3.5.1 Review existing Comprehensive Plan and begin revision discussion regarding objectives, goals, guiding principles, and recommendations for individual sections.
- 1.3.5.2 City Task: identify Comp Plan Steering Committee members and City staff participants.
- 1.3.6 Develop a SWOT-style "triage" session of the current comprehensive plan sections:
- 1.3.6.1 Update and revise objectives, goals, guiding principles, and recommendations for individual sections.
- 1.3.6.2 Identify past plan components that have already been achieved.
- 1.3.6.3 Identify other regional studies, developments or proposals that influence opportunities for the City.
- 1.3.6.4 Identify components that may be beyond the purview of the City's existing resources and authority.
- 1.3.6.5 Identify components where concerted action by the City will make the difference between success and failure.

- 1.3.6.6 Deliverables to include individual component maps and graphics, SWOT findings summary.
- 1.3.6.7 City Task: Add/cross out pertinent text in existing Comp Plan to guide update.
- 1.3.6.8 City Task: Provide current capital improvements plans for public works projects, summarize TIF districts based on annual reports, provide existing utility and community facility maps.
- 1.3.6.9 Meetings and deliverables:
 - 1.3.6.9.1 One meeting with staff and media partner to discuss findings and align schedules.
 - 1.3.6.9.2 Conduct up to three (3) meetings total, one (1) with City staff and up to two (2) department-level to discuss regional systems.
 - 1.3.6.9.3 Conduct up to four (4) meetings, (3) special focus group neighborhood meetings and (1) with City staff to discuss Neighborhood, Districts, and Corridors Systems.
 - 1.3.6.9.4 Develop individual component maps and graphics, SWOT findings summary.
 - 1.3.6.9.5 Develop and provide PowerPoint files for staff use at Plan Commission Meeting.
 - 1.3.6.9.6 Provide ongoing project management of team and ensure regular communication with Client.
 - 1.3.6.9.7 Provide ongoing public engagement support and facilitation.
 - 1.3.6.9.8 Ongoing coordination efforts/meetings with media consultant.
- 1.4 TASK 3. ADOPTION PROCESS
 - 1.4.1 Update City GIS spatial data with tailored, technical expertise and outside-the-box creativity to provide a wide range of GIS database objects with the ability to scale for future use.
 - 1.4.2 Conduct up to one (1) meeting with City staff and one (1) Plan Commission review meeting.
 - 1.4.3 Prepare preliminary draft document as a collaborative effort for City review.
 - 1.4.4 Prepare edits to preliminary draft report.
 - 1.4.5 Prepare Final document, including three (3) hard copies and digital version of completed plan.
 - 1.4.6 The scope includes public meetings as described above as well as aiding staff in the development and facilitation of public engagement. It is understood that City staff lead approval/adoption process with the Common Council with the GRAEF team available for questions.

1.4.6.1

City Task: provide comment and distribute draft plans to identified Steering Committee or community reviewers.

1.5

Schedule: Scope of Services outlined above will begin in February 2022 and complete in April 2023 for an approximate 18-month project duration.

END OF EXHIBIT A

EXHIBIT B
CLIENT'S RESPONSIBILITIES
TO
AGREEMENT
BETWEEN
CITY OF LA CROSSE (CLIENT)
AND
GRAEF-USA INC. (GRAEF)

Dated February 10, 2022

CLIENT'S RESPONSIBILITIES

CLIENT shall do the following in a timely manner so as not to delay the services of GRAEF:

- 3.2** Designate in writing a person to act as CLIENT's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decisions with respect to GRAEF's services for the Project.
- 3.3** Assist GRAEF by placing at its disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 3.4** Furnish to GRAEF, as required for performance of its Basic Services (except to the extent provided otherwise in EXHIBIT A "Further Description of Basic Services and Related Matters"), the following:
 - 3.4.1** Digital files of existing plans and studies relevant to the Comprehensive Plan update for the City of La Crosse (Task 2 or as soon as possible)
 - 3.4.2** Base mapping data in Arc GIS or similar file types (Task 2 or as soon as possible)
 - 3.4.3** Existing conditions data (Task 2 or as soon as possible)
 - 3.4.4** Identification of individuals and community facilitators for steering committee, focus group and/or stakeholder meetings (Task 1 and 2)
 - 3.4.5** Creation of initial interview questions for focus group and stakeholder meetings (Task 1 and 2)
 - 3.4.6** Written summaries and scanned imagery from community workshops, public open houses and online surveys conducted by the City or Media consultant (ongoing)
 - 3.4.7** Coordination lead between ongoing City of La Crosse planning and marketing efforts related to the Comprehensive Plan update (Climate Action Plan, Comprehensive Plan Marketing, any other community engagement or plan update efforts, ongoing)

- 3.4.8 Distribution of draft comprehensive plan to steering committee members and select staff (Task 3)
- 3.4.9 Comments and edits to draft plan from steering committee and staff (Task 3)
- 3.4.10 Invitations, mailings, locations, proper notices and logistics for all meetings by Client or Marketing consultant (ongoing)
- 3.4.11 Distribution of Final Plan to key members (Task 3)
- 3.4.12 Presentation and logistics to final adoption of Comprehensive Plan 2040 update (Task 3); all of which GRAEF may use and rely upon in performing services under this Agreement.
- 3.5 Give prompt written notice to GRAEF whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of GRAEF's services.
- 3.6 Furnish, or direct GRAEF to provide, Additional Services as stipulated in Section 2 of the AGREEMENT.
- 3.7 Bear all costs incident to compliance with the requirements of this EXHIBIT B.

END OF EXHIBIT B

EXHIBIT C
RESIDENT PROJECT REPRESENTATIVE SERVICES
TO
AGREEMENT
BETWEEN
CITY OF LA CROSSE (CLIENT)
AND
GRAEF-USA INC. (GRAEF)

Dated February 10, 2022

(NOT APPLICABLE)

END OF EXHIBIT C

EXHIBIT D
PAYMENT PROVISIONS
TO
AGREEMENT
BETWEEN
CITY OF LA CROSSE (CLIENT)
AND
GRAEF-USA INC. (GRAEF)

Dated February 10, 2022

SECTION 5 - PAYMENT PROVISIONS

5.1 BASIS OF PAYMENT

CLIENT shall pay GRAEF for costs of Basic Services rendered under Section 1 and EXHIBIT A as follows:

5.1.1 LUMP SUM PAYMENT FOR BASIC SERVICES

5.1.1.1 Basic Services rendered under Section 1 and EXHIBIT A, a Lump Sum fee of \$298,447.00, on a monthly basis as determined in 5.1.1.2.

5.1.1.2 Monthly statements will be based upon an estimate of the proportion of services completed to date in proportion to total lump sum. Upon conclusion of each phase of Basic Services, an additional amount, if any, will be paid to bring total compensation paid to the following percentages of total compensation payable for each phase.

<u>Phase</u>	<u>Percentage</u>
Task 1	33.33 %
Task 2	33.33 %
Task 3	33.33 %
	100 %

5.1.1.3 GRAEF may alter the distribution of compensation between individual phases indicated in 5.1.1.2 to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount except by an amendment to this Agreement.

5.1.1.4 Lump Sum includes compensation for GRAEF's services and its consultants, if any. Amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and reimbursable expenses.

5.1.1.5 Total Compensation in 5.1.1.1 is based upon Contract Time to complete the Work not exceeding 18 months. Should the Contract Time to complete the Work be extended by CLIENT beyond this period, the total compensation to GRAEF shall be appropriately adjusted.

5.1.2 ADDITIONAL SERVICES

5.1.2.1 CLIENT shall pay GRAEF for Additional Services authorized by CLIENT and rendered by GRAEF under Article 2 and EXHIBIT B as follows:

5.1.2.1.1 Payment for Additional Services shall be contained in an amendment to this Agreement.

END OF EXHIBIT D

STANDARD TERMS & CONDITIONS FOR SERVICE CONTRACTS, REV: DEC. 04, 2018

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 document titled "Standard Terms and Conditions (Service Contracts)" 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 at least equal to 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 all applicable state and local laws and any other applicable laws or regulations to perform the services.
4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in, and reasonably inferable from, 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. The scope of service may not be fully definable during initial phases, and as the project progresses, facts discovered may indicate that the scope must be redefined. Contracting Party agrees to make any and all changes, furnish necessary materials, and perform the work that La Crosse may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the total cost of the project. Under no circumstances shall Contracting Party make any changes, either as additions or deductions, without the written consent of La Crosse, and La Crosse shall not pay any extra charges made by Contracting Party that have not been agreed upon in advance in writing. Disputed work shall be performed as ordered in writing by La Crosse, and the proper cost or credit breakdowns therefor shall be submitted without delay by Contracting Party to La Crosse.
6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingences 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 identify labor costs and the Contracting Party's direct expenses, including subcontractor and supplier 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 not be made until La Crosse, in its sole discretion, determines the work is complete and accepts the services performed by the Contracting Party under this Agreement. Without prejudice to any other right or remedy it may have,

La Crosse reserves the right to setoff at any time any amount owing to it by Contracting Party against any amount payable by La Crosse to Contracting Party.

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, both as determined by La Crosse in its sole discretion, 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. 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 virtue of the Contracting Party's performance of this Agreement, 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 for convenience at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date. 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 Contracting Party's obligations under this Agreement is delayed through no fault of Contracting Party, as determined by La Crosse in its sole discretion, Contracting Party shall be entitled to a reasonable extension of time as proposed by Contracting Party and as accepted or amended by La Crosse in its sole discretion. If performance of La Crosse's obligations is delayed through no fault of La Crosse, as determined by La Crosse in its sole discretion, La Crosse shall be entitled to an extension of time equal to the delay.
12. **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.
13. **INSURANCE.** Unless otherwise specified in this Agreement, Contracting Party shall, at its sole expense, maintain in effect at all times during the Agreement, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

- a. ***Worker's Compensation and Employers Liability Insurance.*** Contracting Party shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Contracting Party shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employer's liability of one hundred thousand dollars (\$100,000.00) per each accident, one hundred thousand dollars (\$100,000.00) per each employee and five hundred thousand dollars (\$500,000.00) total policy limit.
- b. ***Commercial General Liability and Automobile Liability Insurance.*** Contracting Party shall provide and maintain the following commercial general liability and automobile liability insurance:
 - i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:
 - 1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
 - 2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).
 - ii. Contracting Party shall maintain limits no less than the following:
 - 1. General Liability. Two million dollars (\$2,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
 - 2. Automobile Liability. Two million dollars (\$2,000,000.00) for bodily injury and property damage per occurrence covering all vehicles to be used in relationship to the Agreement.
 - 3. Umbrella Liability. Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.
- c. ***Professional Liability Insurance.*** When Contracting Party renders professional services to La Crosse under the Agreement, Contracting Party shall provide and maintain two million dollars (\$2,000,000.00) of professional liability insurance. If such policy is a "claims made" policy, all renewals thereof during the life of the Agreement shall include "prior acts coverage" covering at all times all claims made with respect to Contracting Party's work performed under the Agreement. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the La Crosse.
- d. ***Required Provisions.*** The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - i. La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of Contracting Party; products and completed operations of Contracting Party; premises occupied or used by Contracting Party; and vehicles owned, leased, hired or borrowed by Contracting Party. The coverage shall contain no special limitations on the scope of protection afforded to La Crosse, its elected and appointed officials, officers, employees or authorized

- representatives or volunteers. Except for the workers' compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of La Crosse.
- ii. For any claims related to this Agreement, Contracting Party's insurance shall be primary insurance with respect to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by La Crosse, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
 - iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to La Crosse, its elected and appointed officers, employees or authorized representatives or volunteers.
 - iv. Contracting Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - v. Each insurance policy required by this Agreement shall state, or be endorsed so as to the state, that coverage shall not be canceled by the insurance carrier or the Contracting Party, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to La Crosse.
 - vi. Such liability insurance shall indemnify La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Contracting Party for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
 - vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
 - viii. All of the insurance shall be provided on policy forms and through companies satisfactory to La Crosse, and shall have a minimum AM Best's rating of A-VIII.
- e. ***Deductibles and Self-Insured Retentions.*** Any deductible or self-insured retention must be declared to and approved by La Crosse. At the option of La Crosse, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
 - f. ***Evidences of Insurance.*** Prior to execution of the Agreement, Contracting Party shall file with La Crosse a certificate of insurance (Accord Form 25-S or equivalent) 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. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.
 - g. ***Sub-Contractor.*** In the event that Contracting Party employ other contractors (sub-contractors) as part of this Agreement, it shall be the Contracting Party's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.
 - h. ***Amendments.*** La Crosse may amend its requirements for insurance upon sixty (60) days written notice. Contracting Party shall procure updated insurance to comply with the new requirements of La Crosse. Contracting Party may appeal any requirement to amend the

insurance coverage to La Crosse's City Council who may, in its sole discretion, mutually agree to waive such changes.

14. **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, authorized representatives and volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, reasonable attorney (including, without limitation, in-house counsel legal fees) and professional fees and costs, costs and expenses of whatsoever kind, character or nature (including, without limitation, the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) 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. Contracting Party's obligation to indemnify, defend and hold harmless shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees, authorized representatives or volunteers.

Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of La Crosse or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80, or other applicable law. To the extent that indemnification is available and enforceable against La Crosse, (a) La Crosse or its insurer shall not be liable in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law; and (b) La Crosse's obligations under this Agreement are further conditioned upon the following: (i) the indemnified party shall promptly notify La Crosse in writing of any such claims, demands, liabilities, damages, costs and expenses within five days of discovery; (ii) La Crosse shall have sole control of, and the indemnified party shall reasonably cooperate in all respects, in the defense of the claims, demands, liabilities, damages, costs and expenses and all related settlement negotiations; and (iii) the indemnified party shall not make any admission or disclosure or otherwise take any action prejudicial to La Crosse except as required by law. Neither party shall be liable for indirect, special, exemplary, consequential or incidental damages, including, without limitation, any damages for lost profits, revenue or business interruption. The parties represent that, as of the effective date, neither party has any notice or knowledge of any claims, demands, liabilities, damages, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement.

This indemnity provision shall survive the termination or expiration of this Agreement.

15. **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.
16. **TIMELINESS OF CLAIMS.** All causes of action against La Crosse arising out of or relating to this Agreement shall expire unless brought within one (1) year of the date of the first date of performance or breach which, in whole or in part, gives rise to the claim.

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 event of default by either party, 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 to cure or mitigate the default.
 - (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 permitted assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of request to assign, sublet or transfer any services provided under this Agreement. The decision to allow an assignment by Contracting Party rests solely with La Crosse, in its discretion.

23. **NO WAIVER.** The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.
24. **SUBCONTRACTING.** None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.
25. **CONFLICTS OF INTEREST.** Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to La Crosse
26. **NON-DISCRIMINATION.** Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.
- Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.
27. **POLITICAL ACTIVITIES.** Contracting Party shall not engage in any political activities within the City of La Crosse 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.

- 29. **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.
- 30. **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.
- 31. **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.
- 32. **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	Copy to:	Attn. City Attorney
	City of La Crosse		City of La Crosse
	400 La Crosse Street		400 La Crosse Street
	La Crosse, WI 54601		La Crosse, WI 54601

Contracting party shall identify in writing and provide to La Crosse the contact person and address for notices under this Agreement.

- 33. **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.

34. **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.
35. **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.
36. **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 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.
37. **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.
38. **COMPLIANCE WITH LAW.** The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.
39. **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.
40. **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.

41. **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.
42. **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.
43. **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.
44. **SURVIVAL.** All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

Revised: 12.04.18