

LEASE

This lease made this 8 day of Feb, 2015, by and between the City of La Crosse, Wisconsin, a municipal corporation, "Lessor," with offices at 400 La Crosse Street, La Crosse, Wisconsin and Badger Corrugating Company, 1801 West Ave, South, La Crosse, Wisconsin.

WITNESSETH:

That Lessor, does hereby lease parking spaces on certain land near Marco Drive on Isle La Plume, an abandoned landfill in the City of La Crosse, County of La Crosse, State of Wisconsin, on Isle La Plume as part of a former landfill shown as "Proposed Truck Parking Area" on the map marked as Exhibit "A" attached hereto

To have and to hold said premises on the following terms and conditions:

1. TERM

Except as otherwise provided herein, the term of this lease shall be for three (3) years beginning on January 1, 2015 and ending December 31, 2017.

2. RENT

Lessee, its permitted successors and assigns, agrees to pay as and for a monthly rent of Fifteen Dollars (\$15.00) per space per month with it being understood that Lessee estimates utilizing sixteen (16) spaces per month. This equates to \$240 per month. Lessee shall be responsible for marking spaces reserved for Badger Corrugating.

3. USE OF PREMISES.

Said premises shall be used only for the purpose of parking trucks and trailers and no other purpose without the express written consent of Lessor being first had and obtained.

Truck drivers personal vehicles may be parked in the Snow Storage Area from April 1 through October 31. Drivers personal vehicles may be parked on the north side of Marco Drive in the boat ramp parking area between November 1 and April 1.

No building may be constructed on the leased premises excepting only temporary portable structures used in conjunction with truck staging which structures shall be subject to prior approval from the Lessor's Board of Public Works, which approval shall not be unreasonably withheld.

4. Lessee agrees it will not sublet said premises, nor any part thereof, nor assign the Lease without the express written consent of Lessor except that Lessee shall be allowed use of the premises for parking trailers, tractors and equipment used in conjunction with Badger Corrugating and its business, its distributors and contractors.

5. Lessee agrees to furnish Lessor with liability insurance naming the City of La Crosse as co-insured in an amount not less than \$1,000,000 for personal injury and property damage. A certificate of such insurance shall be maintained at all times during the term of this lease and it shall provide that the City shall have at least thirty (30) days notice prior to any cancellation of the same.

6. Lessee agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the leased premises and the use thereof.

7. In the event the Lessee shall hold over and remain in possession of the leased premises, such holding over shall be from month-to-month only, and upon all of the same rents, terms, covenants and conditions as contained herein.

8. Lessee shall be responsible for maintaining the leased premises in good condition and good and proper order and obtain any necessary permits or approvals for its intended use. Lessee further agrees that the premises shall be improved for the parking of trailers and tractors. Variations from the above permitted improvements to the premises shall require prior approval from Lessor's Board of Public Works.

9. ENVIRONMENTAL LIABILITIES.

The Lessor shall be responsible for all environmental liabilities arising out of its prior use and occupancy of the premises leased to Lessee and the Lessor shall indemnify and hold Lessee harmless from all costs or other liabilities arising therefrom.

The Lessor shall also be responsible for all costs of properly abandoning any landfill, monitoring or remediation devices on the leased premises as the result of any Environmental Cleanup activities undertaken by the Lessor. And, if any damage to any person or property (including environmental damage) arises from the construction, use, maintenance or abandonment or the monitoring or remediation devices, the Lessor shall be liable for all Environmental Cleanup related thereto, and shall indemnify, hold harmless and defend Lessee for the costs, liabilities, claims, judgments, orders or proceedings related thereto.

In the event that the Lessor is required to engage in environmental clean up, it shall do so with the minimum amount of disruption to Lessee's use and occupancy of the leased premises. IN the event that Lessee is required to discontinue using a portion or all of the said premises due to said clean up, the Lessor will provide Lessee with suitable, alternative leased premises located as close to this leased premises as possible at no additional costs to Lessee.

Except as otherwise expressly provided herein, Lessee, on behalf of itself, its representatives, successors and assigns expressly waives and releases any and all claims against the Lessor, its successors and assigns, and their respective officers and employees, which may arise during the lease term, for injuries or damage to Lessee's improvements or business activity on the leased premises caused by Environmental Cleanup activities on the property, including but not limited to demolition of buildings, interference with business, whether temporary or permanent, or loss of use of the lands leased herein, provided the City gives Lessee at least 45 days prior notice of the activity.

Lessee hereby agrees to indemnify the Lessor, its officers and employees, against all costs, losses, penalties, liability, claims, actions and proceedings arising from injuries to persons (including death) or damages to property (including but not limited to the environment) that are caused by Lessee, its distributors and contractors, during the term of this lease.

"Environmental Cleanup" shall include all removal or response actions, remedial investigation, feasibility studies, remedial designs or remedial actions as those cognate terms are used in the enforcement of the Comprehensive Environmental Response, Compensation, Liability Act (CERCLA) sec. 144.442, Wis. Stats., or sec. 144.76, Wis. Stats. or any implementing regulations or guidance documents and the amendments or successor provisions thereto, including any continuation of the remedial investigation already commenced on the Property.

10. NONENCUMBRANCE OF LEASED PROPERTY

Lessee shall not permit any mechanics or materialmen's lien to be filed against the leased premises or engage in any financing or other transaction creating a mortgage or other encumbrance or lien upon the leased premises whether by express agreement or operation of law, and shall not place upon the leased premises or suffer to be placed upon the leased premises, any lien or encumbrance. Any mortgage, encumbrance or lien shall be deemed a violation of this lease.

11. EMINENT DOMAIN

If the whole or any part of the premises herein leased shall be taken under the power of eminent domain, then the terms of this lease shall cease as to the part so taken from the day of possession of that part taken for any public purpose, and from that date, Lessee shall have the right to either cancel this lease or to continue to possession of the remainder of the premises under the terms provided for herein.

All damages awarded for any such taking shall belong to and be the property of Lessor; provided, however, that Lessor shall not be entitled to any portion of the award made for loss of improvements belonging to Lessee.

12. SIGNS

Lessee shall not erect, install, operate nor cause nor permit to be erected, installed or operated in or upon the premises herein, any signs or similar advertising device without first obtaining the express written consent of Lessor.

13. TERMINATION

If Lessee shall fail to comply with any of the terms or conditions of this lease or any notice given under it or shall become insolvent or shall make an assignment for the benefit of creditors or if any of the leased property be attached and attachment not properly released, or if execution be issued against it or if a petition be filed by or against Lessee to have it adjudicated bankrupt, or if a Trustee or Receiver should be created or appointed to take charge of its assets, or if it shall desert or abandon the premises for a period of thirty (30) days, then at or anytime afterwards, Lessor may, at its option, enter into the premises and remove any and all of Lessor's personalty and improvements or provide reasonable notice to Lessor to remove the same and obtain possession of said leased premises, in which event this lease shall be considered terminated. The Board of Public Works may terminate this Lease within thirty (30) days advance written notice to Lessee for any reason. If this right to terminate is exercised, the Lessor will make a good faith effort to provide alternative parking spaces for Lessee.

15. WAIVER AND NON-WAIVER

Any waiver or any breach of the covenants contained herein to be kept and performed by Lessee shall not be considered as a continuing waiver and shall not operate to bar or prevent Lessor from declaring a forfeiture of any succeeding breach either the same condition or covenant or otherwise.

16. SUCCESSORS IN INTEREST

All terms, covenants and conditions contained herein shall continue, and bind all successors in interest of Lessee.

17. APPLICABLE LAW

This lease shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Wisconsin.

18. STANDARD TERMS AND CONDITIONS

The City's Standard Terms and Conditions dated July 2011 shall be made part of this lease and shall prevail in the event of conflicts or discrepancies within this lease.

IN WITNESS WHEREOF the parties have hereto on the day and year first above written executed this lease.

WITNESS: BADGER CORRUGATING CO

Michael J. Dumas CEO

WITNESS: CITY OF LA CROSSE:

Timothy Kabat  
Tim Kabat, Mayor

Teri Lehrke  
Teri Lehrke, City Clerk

## STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this section titled "Standard Terms and Conditions" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.
  2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.
  3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.
  4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.
  5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.
  6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingencies set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to include labor costs and the Contracting Party's direct expenses, including subcontractor costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement.
  7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.
  8. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of this Agreement by the Contracting Party, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined.
  9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.
  10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.
  11. **DELAYS.** If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.
  12. **OPINIONS OF COST.** Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.
  13. **USE OF LA CROSSE PROPERTY.** Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.
  14. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:
    - 1) Commercial General Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage;
    - 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;
    - 3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;
    - 4) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate; and
    - 5) To the extent that Contracting Party employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.
- On the certificate of insurance, La Crosse shall be named as an additional insured on any General Liability Insurance, Automobile Insurance, and Umbrella Liability Insurance. The certificate must state the following: The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insureds. Prior to execution of the Agreement, Contracting Party shall file with La Crosse, a certificate of insurance signed by the Insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Contracting Party shall provide La Crosse with a thirty (30) day notice prior to termination or cancellation of the policy. La Crosse reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.
15. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Contracting Party, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on La Crosse. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.
- Contracting Party shall reimburse La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contracting Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
16. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.
  17. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.
  18. **GOVERNING LAW.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.
  19. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
  20. **NOTIFICATION.** Contracting Party shall:
    - (1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.
    - (2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.
    - (3) Notify La Crosse, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.
  21. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

22. **ASSIGNMENT, SUBLET, AND TRANSFER.** Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of La Crosse. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

23. **NO WAIVER.** The failure of any party to insist, in any one or more 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 while in performance of any and all services and work under this Agreement.

28. **GOVERNMENTAL APPROVALS.** Contracting Party acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Contracting Party further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. La Crosse cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

29. **ENTIRE AND SUPERSEDING AGREEMENT.** This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of La Crosse, granting approvals or conditions attendant with such approval, the specific action of La Crosse shall be deemed controlling. To the extent that any terms and conditions contained in this Agreement, all Exhibits hereto, and the other documents and agreement referenced herein conflict with these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence.

30. **AMENDMENT.** This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

31. **IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE.** Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of La Crosse. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days.

32. **TIME COMPUTATION.** Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

33. **NOTICES.** Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one

(1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Attn. City Clerk City of La Crosse 400 La Crosse Street La Crosse, WI 54601	Copy to:	Attn. City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
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Contracting party shall identify in writing and provide to La Crosse the contact person and address for notices under this Agreement.

34. **INCORPORATION OF PROCEEDINGS AND EXHIBITS.** All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by La Crosse, including but not limited to adopted or approved plans or specifications on file with La Crosse, and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Contracting Party whether or not herein enumerated.

35. **ACCESS TO RECORDS.** Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. La Crosse, or any of its duly authorized representatives, shall have access, at no cost to La Crosse, to such books, records, documents, papers or any records, including electronic, of Contracting Party which are pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions.

36. **PUBLIC RECORDS LAW.** Contracting Party understands and acknowledges that La Crosse is subject to the Public Records Law of the State of Wisconsin. As such, Contracting Party agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Contracting Party agrees to assist La Crosse in complying with any public records request that La Crosse receives pertaining to this Agreement. Additionally, Contracting Party agrees to indemnify and hold harmless La Crosse, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Contracting Party's actions or omissions which contribute to La Crosse's inability to comply with the Public Records Law. In the event that Contracting Party decides not to retain its records for a period of seven (7) years, then it shall provide written notice to La Crosse whereupon La Crosse shall take custody of said records assuming such records are not already maintained by La Crosse. This provision shall survive the termination of this Agreement.

37. **CONSTRUCTION.** This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

38. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

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

40. **FORCE MAJEURE.** La Crosse shall not be responsible to Contracting Party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

41. **GOOD STANDING.** Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

42. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

43. **EXECUTION OF AGREEMENT.** Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.

44. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

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

Revised: July 2011