



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Meeting Agenda - Final-revised

Finance & Personnel Committee

Thursday, October 5, 2023

6:00 PM

Council Chambers
City Hall, First Floor

This meeting is open for in-person attendance and will also be available through video conferencing. The meeting can be viewed (no participation) by visiting the Legislative Information Center Meetings calendar (<https://cityoflacrosse.legistar.com/Calendar.aspx>) - find the scheduled meeting and click on the "In Progress" video link to the far right in the meeting list.

Public comment is limited to agenda items; statements shall be restricted to the subject matter. If you wish to speak on an agenda item, please register in advance:

- Register online at <https://www.cityoflacrosse.org/city-services/meeting-registration>
- Contact the City Clerk's Office no later than 4:00p on the day of the meeting, with the following information: name, municipality of residence, if you are representing an organization or a person other than yourself at the meeting, and if you are speaking in favor, opposition or neutral.
- Sign up in person no less than ten (10) minutes before the start of the meeting.

If attending virtual and you wish to speak, contact the City Clerk's Office and we will provide you with the information necessary to join the meeting. Call 608-789-7510 or email cityclerk@cityoflacrosse.org.

Public hearings shall be limited to 30 minutes when there are opposing viewpoints from the public. In the absence of opposing viewpoints, public hearings are limited to 15 minutes. Individual speakers shall speak no more than three (3) minutes unless waived by the Chair or a majority of the committee.

Members of the public who would like to provide written comments on any agenda may do so by emailing cityclerk@cityoflacrosse.org, using a drop box outside of City Hall or mailing to City Clerk, 400 La Crosse Street, La Crosse WI 54601.

Call To Order

Roll Call

Agenda Items:

NEW BUSINESS

[23-1003](#)

Resolution approving a professional services agreement with MSA to review policies and ordinances for compliance with 2017 Wisconsin Act 67.

Sponsors: Reynolds

[23-1049](#)

Resolution amending Appendix C Fee Schedule regarding fee for review of certified survey maps in the La Crosse Municipal Code.

Sponsors: Reynolds

- [23-1083](#) Resolution approving Second Amendment to the Development Agreement between Spies Construction, LLC and the City of La Crosse for the former Navy Reserve site.
Sponsors: Schwarz
- [23-1114](#) Resolution approving and appropriating funds for the La Crosse Center improvements.
Sponsors: Janssen
- [23-1117](#) Resolution changing the source of American Rescue Plan Act (ARPA) funds for residential development in the floodplain.
Sponsors: Janssen
- [23-1118](#) Resolution authorizing public improvement and levying special assessments against benefited property in La Crosse, Wisconsin - Sanitary Sewer Construction on 21st Street S.
Sponsors: Kiel
Public hearing.
- [23-1119](#) Resolution authorizing public improvement and levying special assessments against benefited property in La Crosse, Wisconsin - Sanitary Sewer Construction on Sill Street.
Sponsors: Dickinson
Public hearing.
- [23-1120](#) Resolution authorizing public improvement and levying special assessments against benefited property in La Crosse, Wisconsin - Water Utility Construction on St. Cloud Street.
Sponsors: Goggin
Public hearing.
- [23-1132](#) Resolution reallocating funds for the Bicycle and Pedestrian Master Plan Update for community engagement and marketing.
Sponsors: Sleznikow
- [23-1136](#) Resolution to approve adjusted wage rates for part time, seasonal and casual city employees effective October 13, 2023, and January 1, 2024.
Sponsors: Reynolds
- [23-1173](#) Resolution approving Unum for a voluntary employee paid vision plan, effective January 1, 2024.
Sponsors: Reynolds
Short-circuited by Mayor Reynolds on 10/3/2023.
- [23-1174](#) Resolution approving an agreement between the City of La Crosse and ASI Flex to provide third party administration services for the City's I.R.S. Section #125 Plan for a three (3) year term beginning January 1, 2024, through December 31, 2026.
Sponsors: Reynolds
Short-circuited by Mayor Reynolds on 10/3/2023.

23-0001

Collective Bargaining Update.

(Note: The Committee and/or Council may convene in closed session pursuant to Wis. Stat. 19.85(1)(e) to formulate & update negotiation strategies and parameters. Following such closed session, the Committees and/or Council may reconvene in open session.)

F&P Item Only, unless otherwise directed.

Adjournment

Notice is further given that members of other governmental bodies may be present at the above scheduled meeting to gather information about a subject over which they have decision-making responsibility.

NOTICE TO PERSONS WITH A DISABILITY

Requests from persons with a disability who need assistance to participate in this meeting should call the City Clerk's office at (608) 789-7510 or send an email to ADAcityclerk@cityoflacrosse.org, with as much advance notice as possible.

Finance & Personnel Members:

Doug Happel, Larry Sleznikow, Erin Goggin, Barb Janssen, Rebecca Schwarz, Mark Neumann



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1003

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution approving a professional services agreement with MSA to review policies and ordinances for compliance with 2017 Wisconsin Act 67.

RESOLUTION

WHEREAS, 2017 Wisconsin Act 67 changed Wis. Stats. [62.23 \(7\) \(de\)](#) 2. a. to require cities approve conditional use permits (CUPs) that have met “all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board,” and that conditions “must be related to the purpose of the ordinance and be based on substantial evidence.”; and

WHEREAS, 2017 Wisconsin Act 67 changed Wis. Stats. [62.23 \(7\) \(de\)](#) 1. b. to define substantial evidence as “facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.”

WHEREAS, the Common Council would benefit from a study ensuring conditions it is imposing are related to the purpose of the CUP ordinance and are based on substantial evidence; and

WHEREAS, the Planning, Development, and Assessment has budgeted \$50,000 and engaged MSA to conduct a policy and ordinance review; and

WHEREAS, MSA requested a modification of the City’s Standard Terms and Conditions.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves a professional services agreement with MSA to conduct a study justifying the use of payment for municipal services agreements.

BE IT FURTHER RESOLVED that the Director of Planning, Development, and Assessment and the City Attorney are hereby authorized and directed to take all necessary steps to implement this resolution.



Professional Services Agreement

MSA Project Number: R01070034.0

This AGREEMENT (Agreement) is made effective August 21, 2023 by and between

MSA PROFESSIONAL SERVICES, INC (MSA)

Address: 1702 Pankratz St., Madison, WI 53704

Phone: 608-242-6629

Representative: Jason Valerius

Email: jvalerius@msa-ps.com

CITY OF LA CROSSE

Address: 400 La Crosse St., La Crosse, WI 54601

Phone: 608-789-7512

Representative: Andrea Trane

Email: tranea@cityoflacrosse.org

Project Name: City of La Crosse Planning Assistance 2023 Re: Policy and Ordinance Review

The scope of the work authorized is: MSA planning staff, coordinated and led by Jason Valerius, AICP will assist with research, report writing, ordinance review and revision and other tasks as requested.

The schedule to perform the work is: Approximate Start Date: October 18, 2023
Approximate Completion Date: December 31, 2023

The estimated fee for the work is: Time and materials, not to exceed \$50,000.

The retainer amount required is: \$0.

All services shall be performed in accordance with the City of La Crosse Standard Terms and Conditions, as revised August 2023, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a time and expense basis. Attachment A: Rate Schedule is attached and made part of this Agreement

Approval: Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

CITY OF LA CROSSE, WI

MSA PROFESSIONAL SERVICES, INC.

Mitch Reynolds
Mayor

Jason Valerius, AICP
Senior Planner/Senior Team Leader

Date:

Date: August 21, 2023

**ATTACHMENT A:
RATE SCHEDULE**

<u>CLASSIFICATION</u>	<u>LABOR RATE</u>
Administrative.....	\$ 85 – \$140/hr.
Architects	\$ 70 – \$205/hr.
Community Development Specialists.....	\$140 – \$175/hr.
Digital Design.....	\$165 – \$180/hr.
Environmental Scientists/Hydrogeologists.....	\$100 – \$170/hr.
Geographic Information Systems (GIS).....	\$ 90 – \$175/hr.
Housing Administration.....	\$ 90 – \$160/hr.
Inspectors/Zoning Administrators.....	\$100 – \$120/hr.
IT Support.....	\$165 – \$180/hr.
Land Surveying.....	\$ 90 – \$175/hr.
Landscape Designers & Architects	\$ 70 – \$205/hr.
Planners	\$ 95 – \$160/hr.
Principals.....	\$200 – \$300/hr.
Professional Engineers/Designers of Engineering Systems	\$140 – \$175/hr.
Project Managers.....	\$145 – \$220/hr.
Real Estate Professionals.....	\$130 – \$145/hr.
Staff Engineers.....	\$ 70 – \$130/hr.
Technicians.....	\$ 90 – \$140/hr.
Wastewater Treatment Plant Operator.....	\$ 85 – \$105/hr.

REIMBURSABLE EXPENSES

Copies/Prints.....	Rate based on volume
Specs/Reports.....	\$10
Copies	\$0.12/page
Plots.....	\$0.006/sq.in.
Flash Drive.....	\$10
GPS Equipment	\$20/hour
Dini Laser Level	\$30/per day
Mailing/UPS	At cost
Mileage – Reimbursement.....	IRS Rate – IRS Rate + \$5/day
Mileage – MSA Vehicle.....	\$0.75 mile standard/ \$0.67 mile for DOT
Nuclear Density Testing.....	\$25.00/day + \$10/test
Organic Vapor Field Meter	\$100/day
PC/CADD Machine.....	Included in labor rates
Robotic Survey Equipment.....	\$20/hour - \$15/hour for DOT
Stakes/Lath/Rods.....	At cost
Travel Expenses, Lodging, & Meals.....	At cost
Traffic Counting Equipment & Data Processing.....	At cost
Geodimeter	\$30/hour
Drone Flight.....	\$375/flight

Labor rates represent an average or range for a particular job classification. These rates are in effect until Dec. 31, 2023.

STANDARD TERMS AND CONDITIONS (Service Contracts)

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 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.

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, if applicable, 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 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. The scope of services to be performed shall include, 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. If mutually agreed to in advance in writing, Contracting Party shall make 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 and documented in writing.

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, unless lump sum, 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. If payment is by lump sum, then only the percent complete will be invoiced. 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. 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 its own fault, intentional misconduct, or the fault or intentional misconduct of its subcontractors, agents or volunteers, 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 deliverables performed by the Contracting Party under this Agreement for which compensation has been 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 the Contracting Party’s intentional misconduct or negligent 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. Use of incomplete or unfinished work is at the sole risk of La Crosse.

9. **TERMINATION FOR CONVENIENCE.** Either Party may terminate this Agreement for convenience at any time and for any reason by giving sixty (60) days written notice to the other Party 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 performed and accepted by La Crosse 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 other

persons or property. Except as otherwise provided in this Agreement, Contracting Party disclaims any authority or responsibility for general job site safety, or the safety of third-parties or their property.

11. DELAYS. If performance of Contracting Party's obligations under this Agreement is delayed through no fault of Contracting Party, Contracting Party shall be entitled to a reasonable extension of time as proposed by Contracting Party and as accepted or amended by La Crosse. 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. 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. 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.

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 if commercially available and at La Crosse's expense. 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 hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees, authorized representatives and volunteers ("La Crosse Indemnitees") from and against third party tort suits, actions, legal or administrative proceedings, claims, costs and expenses (including, without limitation, reasonable attorney and professional fees) to the extent caused by the negligent acts, errors or omissions of Contracting Party, its subcontractors or of anyone acting under its direction or control or on its behalf in the performance of this Agreement. Contracting Party's defense obligation shall not apply to professional liability claims. The aforesaid indemnity and hold harmless agreement shall not be

applicable to any liability to the extent caused by La Crosse, its elected and appointed officials, officers, employees or authorized representatives, consultants, contractors or volunteers in the performance of this Agreement. 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 ten (10) 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 either party have any personal liability arising out of this Agreement, unless an employee of the Contracting Party shall commit a criminal, fraudulent, malicious, or dishonest act which is excluded from Contracting Party's insurance coverage.

16. Intentionally omitted.

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. Parties 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 the other Party in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by defaulting party to cure or mitigate the default.

(2) Promptly notify the other Party of the commencement of any litigation or administrative proceeding that would cause any representation contained in this Agreement to be untrue.

(3) If related to the performance of services and work under this Agreement, notify the other Party, 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 a Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of a Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against a 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. A Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of the other Party. This Agreement shall be binding on the heirs, successors,

and permitted assigns of each party hereto. A 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 instances, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

24. SUBCONTRACTING. None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

25. CONFLICTS OF INTEREST. Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to La Crosse

26. NON-DISCRIMINATION. Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

27. POLITICAL ACTIVITIES. Contracting Party employees 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. This does not apply to periods of time in which employee is not at work, or is billing other than La Crosse for his/ her time.

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. 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 modification or deviation from such schedules shall occur only upon approval of La Crosse or reasons of Force Majeure. Any phase or schedule that is determined to be "time of the essence" shall be specifically identified as such within the scope of services. 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. If such delays cause additional cost, Contracting Party shall be reimbursed.

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	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.

34. Intentionally omitted.

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 the hourly rates of pay and reimbursable costs under this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. Once deliverables are provided to La Crosse, additional copies will be provided for a fee.

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. If the requested record is not within that which is required to be produced by statute or other authority, then Contracting Party may object, and La Crosse will reject the request. Contracting Party shall seek to intervene in any subsequent public records lawsuit, writ of mandamus, or other action against La Crosse seeking to compel disclosure in order to dispute disclosure of the requested record. Contracting Party shall also cooperate and provide assistance to La Crosse, at no cost, in the defense of such lawsuit, writ or other action. If the request is upheld by a court of law, then Contracting Party will produce the records or indemnify and hold harmless La Crosse Indemnitees from 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 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 applicable federal, state and local laws, regulations and ordinances.

40. FORCE MAJEURE. Neither Party shall be responsible 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, industrywide 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.

46. COMPLIANCE WITH LAW. Contracting Party agrees to abide by applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

47. RELIANCE. Contracting Party has the right to reasonably rely on information provided by or through La Crosse.

Revised:
08.17.23

STANDARD TERMS AND CONDITIONS (Service Contracts)

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 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.

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, if applicable, 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 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. The scope of services to be performed shall include, 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. If mutually agreed to in advance in writing, Contracting Party shall make 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 and documented in writing.

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, unless lump sum, 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. If payment is by lump sum, then only the percent complete will be invoiced. 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. 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 its own fault, intentional misconduct, or the fault or intentional misconduct of its subcontractors, agents or volunteers, 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 deliverables performed by the Contracting Party under this Agreement for which compensation has been 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 the Contracting Party’s intentional misconduct or negligent 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. Use of incomplete or unfinished work is at the sole risk of La Crosse.

9. **TERMINATION FOR CONVENIENCE.** Either Party may terminate this Agreement for convenience at any time and for any reason by giving sixty (60) days written notice to the other Party 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 performed and accepted by La Crosse 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 other

persons or property. Except as otherwise provided in this Agreement, Contracting Party disclaims any authority or responsibility for general job site safety, or the safety of third-parties or their property.

11. DELAYS. If performance of Contracting Party's obligations under this Agreement is delayed through no fault of Contracting Party, Contracting Party shall be entitled to a reasonable extension of time as proposed by Contracting Party and as accepted or amended by La Crosse. 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. 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. 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.

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 if commercially available and at La Crosse's expense. 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 ("La Crosse Indemnitees") from and against third party tort suits, actions, legal or administrative proceedings, claims, costs and expenses (including, without limitation, reasonable attorney and professional fees) to the extent caused by the negligent acts, errors or omissions of Contracting Party, its subcontractors or of anyone acting under its direction or control or on its behalf in the performance of this Agreement. Contracting Party's defense obligation shall not apply to professional liability claims. The aforesaid indemnity and hold harmless agreement shall not be

applicable to any liability to the extent caused by La Crosse, its elected and appointed officials, officers, employees or authorized representatives, consultants, contractors or volunteers in the performance of this Agreement. 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 ten (10) 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 either party have any personal liability arising out of this Agreement, unless an employee of the Contracting Party shall commit a criminal, fraudulent, malicious, or dishonest act which is excluded from Contracting Party's insurance coverage.

16. Intentionally omitted.

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. Parties 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 the other Party in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by defaulting party to cure or mitigate the default.

(2) Promptly notify the other Party of the commencement of any litigation or administrative proceeding that would cause any representation contained in this Agreement to be untrue.

(3) If related to the performance of services and work under this Agreement, notify the other Party, 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 a Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of a Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against a 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. A Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of the other Party. This Agreement shall be binding on the heirs, successors,

and permitted assigns of each party hereto. A 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 instances, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

24. SUBCONTRACTING. None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

25. CONFLICTS OF INTEREST. Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to La Crosse

26. NON-DISCRIMINATION. Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

27. POLITICAL ACTIVITIES. Contracting Party employees 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. This does not apply to periods of time in which employee is not at work, or is billing other than La Crosse for his/ her time.

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. .

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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. Intentionally omitted.

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 the hourly rates of pay and reimbursable costs under this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. Once deliverables are provided to La Crosse, additional copies will be provided for a fee.

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. If the requested record is not within that which is required to be produced by statute or other authority, then Contracting Party may object, and La Crosse will reject the request. Contracting Party shall seek to intervene in any subsequent public records lawsuit, writ of mandamus, or other action against La Crosse seeking to compel disclosure in order to dispute disclosure of the requested record. Contracting Party shall also cooperate and provide assistance to La Crosse, at no cost, in the defense of such lawsuit, writ or other action. If the request is upheld by a court of law, then Contracting Party will produce the records or indemnify and hold harmless La Crosse Indemnitees from 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 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 applicable federal, state and local laws, regulations and ordinances.

40. FORCE MAJEURE. Neither Party shall be responsible 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, industrywide 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.

46. COMPLIANCE WITH LAW. Contracting Party agrees to abide by applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

47. RELIANCE. Contracting Party has the right to reasonably rely on information provided by or through La Crosse.

Revised:
08.17.23



CITY OF LA CROSSE

400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation

Agenda Item 23-1003 (Lewis Kuhlman)

Resolution approving a professional services agreement with MSA to review policies and ordinances for compliance with 2017 Wisconsin Act 67.

General Location

Citywide

Background Information

In 2017, The State made changes to Wis. Stats. 62.23 regarding conditional use permits. Conditions that cities impose must be based on substantial evidence. The City of La Crosse would benefit by ensuring that its conditional use permit requirements meet the state law, and planning staff would like to contract with MSA for assistance. Since there is already funding allocated for this study, there wouldn't be a need for a resolution. However, the consultant is requesting a modification to the City's Standard Terms and Conditions. The consultant does not want to be required to defend the City under 14. Indemnification on page 3.

Recommendation of Other Boards and Commissions

None

Consistency with Adopted Comprehensive Plan

Intergovernmental coordination is an important aspect of the comprehensive plan.

Staff Recommendation

Approval – This research will help the plan commission in making well-reasoned decisions when it comes to imposing conditions for CUP applications.

Routing J&A 10.3.2023



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1049

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution amending Appendix C Fee Schedule regarding fee for review of certified survey maps in the La Crosse Municipal Code.

RESOLUTION

WHEREAS, on November 15, 2011, the Common Council of the City of La Crosse adopted Ordinance 4640 creating a fee schedule; and

WHEREAS, an amendment is necessary for costs related to staff review of certified survey maps pursuant to secs. 101-3 and 113-13.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the following change to Appendix C.

<u>101-3</u>	<u>Certified Survey Map: First application for review</u>	<u>2023</u>	<u>\$300.00</u>
<u>101-3</u>	<u>Certified Survey Map: Reapplication for additional review of same certified survey map</u>	<u>2023</u>	<u>\$150.00</u>
113-13	Certified survey map: First application for review	2020 <u>2023</u>	\$200.00 <u>\$300.00</u>
113-13	Certified survey map: Reapplication for additional review of same certified survey map	2020 <u>2023</u>	\$100.00 <u>\$150.00</u>

BE IT FURTHER RESOLVED that all other fees included within Appendix C remain unchanged.

BE IT FURTHER RESOLVED that City staff is authorized to take any and all steps necessary to effectuate this resolution.



CITY OF LA CROSSE

400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1083

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution approving Second Amendment to the Development Agreement between Spies Construction, LLC and the City of La Crosse for the former Navy Reserve site.

RESOLUTION

WHEREAS, Spies Construction, LLC and the City of La Crosse entered into a development agreement (“Development Agreement”) in May 2018 for the development and construction of a multi-phase residential / mixed use project on lands comprised of the former Navy Reserve Training Center; and

WHEREAS, the parties entered into a First Amendment to the Development Agreement in January 2019; and

WHEREAS, Spies Construction submitted a communication to the City dated August 16, 2023 requesting that certain property that was previously designated in Resolution No. 2006-07-024 for a Navy memorial be transferred to it for the benefit of the project; and

WHEREAS, the status of the Navy memorial is currently unknown at this time, yet a viewing of the property demonstrates that no memorial exists to date; and

WHEREAS, certain procedural steps would need to occur in order to vacate the memorial dedication on the property before it could be transferred, if the Common Council decides to approve the transfer. These steps include the Common Council deciding to vacate the designation as well as a Circuit Court decision to remove the designation; and

WHEREAS, the purpose of this Second Amendment is to allow City staff to commence the process to remove the designation and determine what, if any, progress has been made to date on the memorial; and

WHEREAS, upon obtaining additional information, subsequent legislation would be submitted to the Common Council to either (1) remove the designation and convey the property, (2) partially remove the designation and convey part of the property, or (3) not remove the designation nor convey the property.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LA CROSSE that it approves the Second Amendment with Spies Construction, LLC.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign the Second Amendment.

BE IT FURTHER RESOLVED that City staff is authorized to obtain information about the status of the memorial and return new legislation to the Common Council for a determination on whether the designation shall be removed.

**SECOND AMENDMENT TO THE
DEVELOPMENT AGREEMENT BETWEEN
SPIES CONSTRUCTION, LLC AND THE CITY
OF LA CROSSE**

This Second Amendment to the Development Agreement between Spies Construction, LLC and City of La Crosse, (the “**Second Amendment**”), is made and among the City of La Crosse, Wisconsin, a Wisconsin municipal corporation with offices located at 400 La Crosse Street, La Crosse, Wisconsin, 54601 (the “**City**”) and **Spies Construction, LLC**, a Wisconsin limited liability company with offices located at 2011 Liberty Street, La Crosse, WI 54603 (the “**Developer**”).

WHEREAS, the parties entered into an agreement (the “Development Agreement”) in May 2018 and recorded on May 14, 2018 as document no. 1710192.

WHEREAS, the parties entered into a First Amendment to the Development Agreement, (the “First Amendment”) in January 2019 and recorded in document no. 1722212.

WHEREAS, Developer has requested that real property at the site, which was previously designated for a memorial in Res. No. 2006-07-024, be transferred to the Developer for the benefit of the Project.

WHEREAS, the City determines that a transfer of the real property would increase the value of the Project as well as further benefit the community.

WHEREAS, it is necessary to amend the Development Agreement.

WHEREAS, the parties wish to set forth in the Second Amendment their respective commitments, understandings, rights and obligations as more fully described herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein exchanged, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

1. **Acquisition of Real Property.** The Developer agrees to acquire the real property, or part thereof, from the City at a price of _____ dollars (\$_____) per square foot. The real property is more particularly described in the attached **Exhibit A**. The sale of the real property is limited by the following conditions precedent:
 - a. Prior to any sale, the Common Council shall decide by separate legislation, subsequent to this Second Amendment, whether to sell the real property, or part thereof. The Common Council will make its decision, in its sole and absolute discretion, based upon information provided to it about the status and progress of the memorial since the adoption of Res. No. 2006-07-024.

This space is reserved for recording data
Drafted by and when recorded return to:
City Attorney 400 La Crosse Street Lacrosse WI 54601
Parcel Identification Number Tax Key Number

- b. Prior to any sale, the Common Council shall memorialize its decision to release, waive or otherwise vacate the memorial dedication, or part thereof, in writing.
- c. Prior to any sale, a court, tribunal or other authoritative review body, if necessary, shall determine the memorial designation is to be removed.
- d. Any such sale of the real property, or part thereof, shall be by quitclaim deed from the City to the Developer, with any transactional costs to be paid by Developer.
- e. The real property, or part thereof, to be sold is more particularly described in the attached **Exhibit A**. If the Common Council, court, tribunal or other authoritative review body determines an area less than the area described in **Exhibit A** is to be sold, then the Developer will not have any claim or right to the remainder of the property described in **Exhibit A**, or for additional compensation or damages. The Developer expressly agrees to waive any such claims, rights or damages. If the Developer determines that an area less than the real property described in **Exhibit A** is too small for its requested purposes, then the Developer will provide written notice to the City within thirty (30) days and the Developer will have no further obligation to complete the purchase.

2. **Execution of Agreement.** Developer shall sign, execute and deliver this Second Amendment to the City on or before the close of regular City Hall business hours twenty (20) days after its final adoption by the City. Developer's failure to sign, execute and cause this Second Amendment to be received by the City within said time period shall render the Second Amendment null and void, unless otherwise authorized by the City. After Developer has signed, executed and delivered the Second Amendment, the City shall sign and execute the Second Amendment.

3. **Authority to Sign.** The person signing this Second Amendment on behalf of Developer certifies and attests that the respective Articles of Organization, Articles of Incorporation, By Laws, Member's Agreement, Charter, Partnership Agreement, Corporate or other Resolutions and/or other related documents of Developer give full and complete authority to bind Developer, on whose behalf the person is executing this Second Amendment. Developer assumes full responsibility and holds the City harmless for any and all payments made or any other actions taken by the City in reliance upon the above representation. Further, Developer agrees to indemnify the City against any and all claims, demands, losses, costs, damages or expenses suffered or incurred by the City resulting from or arising out of any such payment or other action, including reasonable attorney fees and legal expenses.

4. **Miscellaneous.** The Development Agreement, as amended by this Second Amendment, remains in full force and effect and is binding on the parties, successors and assigns. This Second Amendment may be executed in any number of counterparts, all of which are considered one and the same amendment notwithstanding that all parties hereto have not signed the same counterpart. Signatures of this Second Amendment, which are transmitted either or both by electronic or telephonic means (including, without limitation, facsimile and email) are valid for all purposes. Any party shall, however, deliver an original signature of this Second Amendment to the other party upon request.

IN WITNESS, the parties to this Second Amendment have caused this instrument to be signed and sealed by duly authorized representatives of Developer and the City this ____ day of _____, 2023.

[

SPIES CONSTRUCTION, LLC.

CITY OF LA CROSSE

BY: _____
Delores Spies, Member

BY: _____
Mitch Reynolds, Mayor

BY: _____
Raymond Spies, Member

BY: _____
Nikki Elsen, City Clerk

Subscribed and sworn to before me this
____ day of _____, 2023.

Subscribed and sworn to before me this
____ day of _____, 2023.

Notary Public, State of WI
My Commission: _____

Notary Public, State of WI
My Commission: _____



SPIES CONSTRUCTION, LLC

2011 LIBERTY STREET • LA CROSSE, WISCONSIN 54603

City of LaCrosse Common Council Members: ^{(608).781-3797}

As current head of Homeowners Association of the Naval Reserve site, we would like to officially request an amendment to the developer's agreement to add Parcel #17-50781-420 to the East side of the addition.

A few of the reasons to add this parcel are as follows: The parcel in question has been unused since the project started in 2018 and since then, there has been no change or development of the parcel. The parcel would be maintained (mowing and snow shoveling) by the Homeowners Association rather than the Fire Dept. The space would be used by the homeowners of the Association as green and garden space. The owners would grow flowers and vegetables which would add to the sustainability of the development. The owners are very excited for the potential to enhance the site. A shared vegetable/flower garden, for the Naval homeowners, would attract butterflies, hummingbirds, etc. The parcel could be purchased at the same value as the current outlot of the development or fair market value. The estimated tax base of the Naval Reserve site is \$3,000,000.00 which will generate approximately \$60,000.00 in taxes per year. Add this parcel will only increase the value of the development.


As far as current dedication, 10'-15' of the North end of the parcel, by the width of the parcel could be still set aside for a possible memorial, flagpole, etc, if still requested. This matches setback of the house on Colorado Ct.

A lot of thought and dreaming was put into this project. Along with work of our crew,

the development turned out just like we envisioned. We have always wanted to do a project like this in the City of LaCrosse and are so proud of how it all came together and put our name on it. Acquiring this parcel would put the final touch to this development and enhance the East side of the development.

Thank you for your consideration on this matter.

Spies Construction LLC


Raymond L. Spies 8/10/2023


Delores M. Spies 8/10/2023



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1114

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution approving and appropriating funds for La Crosse Center improvements.

RESOLUTION

WHEREAS, the La Crosse Center is a 322,000 square foot facility that hosts events year-round; and

WHEREAS, upgrading and maintaining the facility is required to offer a continued level of customer satisfaction and building efficiency; and

WHEREAS, quotes have been obtained for maintenance improvements totaling \$100,000; and

WHEREAS, these items include Concrete Replacement – South Hall Entrance, South Hall Elevator Repairs, Additional Security Fencing, Access Point Upgrades – South Hall, Stage Leg Upgrades, Handrails for Escalator; and

WHEREAS, quotes have been obtained for signage totaling \$150,000; and

WHEREAS, this signage includes building exterior and interior digital displays; and

WHEREAS, quotes have been obtained for food and beverage improvements totaling \$75,000; and

WHEREAS, these improvements include Electrical Upgrades, Merchandisers, Flat Top Grill -South Hall Kitchen; and

WHEREAS, quotes have been obtained for additional capacity for operational assets totaling \$50,000, and funds are needed; and

WHEREAS, Section 2-360(c) of the code of ordinances states Unanticipated projects/equipment. Any Capital Project and Capital Equipment item not previously listed in the adopted Capital Budget requiring immediate funding from the Capital Budget will require a two-thirds vote of the Common Council members present at the meeting.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that funding not to exceed \$375,000 is hereby appropriated from the La Crosse Center Surplus Account (2904150) for La Crosse Center Improvements.

BE IT FURTHER RESOLVED that staff are hereby authorized to effectuate this resolution.



CITY OF LA CROSSE

400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1117

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution changing the source of American Rescue Plan Act (ARPA) funds for residential development in the floodplain.

RESOLUTION

WHEREAS, the City of La Crosse allocated \$1,100,000 of ARPA “Lost Revenue” funds for property acquisition, demolition and fill for residential development in the floodplain via Resolution #23-0451; and

WHEREAS, after further review of the anticipated project, it has been determined that the preparation work to allow for the conversion of these properties into affordable housing would meet the requirement for addressing housing needs for those most negatively impacted by the pandemic and therefore do not need to come from the Lost Revenue funds; and

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby reallocates \$600,000.00 of ARPA funds previously allocated to Lost Revenue to funds that had been assigned to Lead Clean-up for the La Crosse River Marsh Lead Contamination Project (#22-0259).

BE IT FURTHER RESOLVED that the Planning, Development and Assessment Department is hereby authorized to perform all duties to effectuate this resolution.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1118

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution authorizing public improvement and levying special assessments against benefited property in La Crosse, Wisconsin – Sanitary Sewer Construction on 21st Street S.

RESOLUTION

WHEREAS, on October 2nd, 2023, a report was prepared and adopted by the Board of Public Works on the proposed public improvements consisting of:

Sanitary Sewer Construction at the following:

- 600 block of 21st Street S

WHEREAS, the assessments against benefited properties, and said report, are on file with the City Clerk, and

WHEREAS, on October 5th, 2023, the Finance and Personnel Committee of La Crosse, Wisconsin held a public hearing for all interested persons concerning the report of the Board of Public Works, this resolution and proposed assessments against benefited property, and all persons who desire to speak at the hearing shall be heard.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of La Crosse, that it determine as follows:

It is expedient and necessary and for the best interest of the City of La Crosse and for the property affected thereby, that said properties be improved at the expense of the property benefited by the construction of Sanitary Sewer Construction.

The Common Council exercises its police power to levy special assessments upon property for benefits conferred upon such property.

The report of the Board of Public Works, incorporated herein as it fully set forth herein, including plans and specifications and assessments set forth therein, is adopted and approved.

The Board of Public Works has advertised for bids and supervised construction of the improvements in accordance with the report and public bidding and construction statutes.

Payment for the improvements shall be made by assessing the entire cost to the property benefited as indicated in the report.

The Common Council determines that assessments shown on the report represent an exercise of the police power for the health, safety and general welfare of the City and its inhabitants and have been determined on a reasonable basis and are hereby confirmed.

Assessments may be paid in cash or shall be payable over a period of ten (10) years or fifteen (15) years to the City Treasurer. Installments shall be placed on the next tax roll after the due date for collection and shall bear interest at the rate established by the Common Council per annum on the unpaid balance from January 1st of the year following the levy.

The City Clerk shall provide notices in accordance with City Ord. 38-1.

Dated _____ Mayor _____

Published _____ Attest _____
City Clerk

NOTICE OF PUBLIC HEARING ON SPECIAL ASSESSMENTS
FOR PUBLIC IMPROVEMENTS IN LA CROSSE, WISCONSIN

PLEASE TAKE NOTICE that the governing body of the City of La Crosse intends to exercise its police power in accordance with Sec. 38-1 of the Code of Ordinances of the City of La Crosse, to levy special assessments against benefited property in La Crosse, Wisconsin for:

Sanitary Sewer Construction at the following:

- 600 Block of 21st Street s

A report prepared by the Board of Public Works showing plans and specifications, estimated cost of improvements and proposed assessments is on file in the Engineering Department at City Hall, 400 La Crosse St., Fourth Floor, La Crosse, Wisconsin 54601 and may be inspected upon request.

You are further notified that the Finance & Personnel Committee of the Common Council of the City of La Crosse will hear all interested persons, their agents or attorneys concerning matters contained in the resolution authorizing the assessments in the above described report at 6:00 pm on October 5, 2023, at the City Hall Council Chambers, 400 La Crosse Street, La Crosse, Wisconsin. All objections shall be considered at this hearing and thereafter the amounts of assessments determined and approved.

Nikki Elsen, City Clerk

Published in the La Crosse Tribune: 9/21/2023

Mailed to Property Owners: 9/19/2023

WINNEBAGO STREET

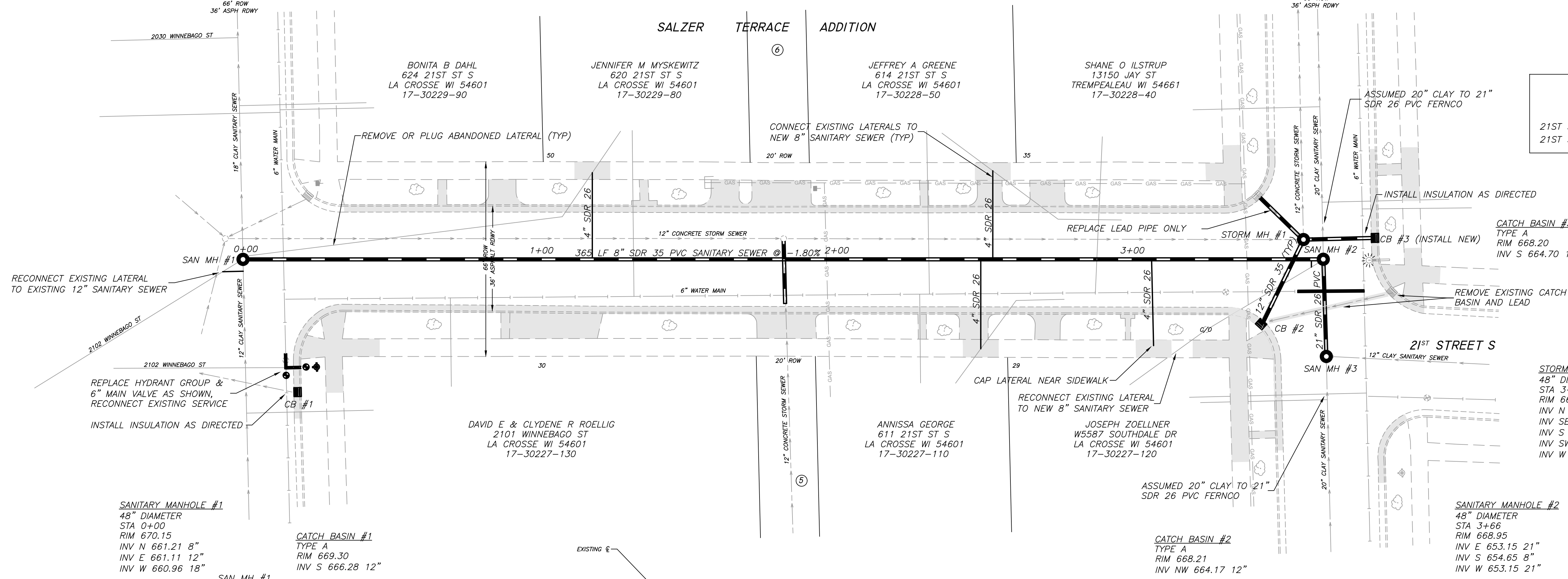
MARKET STREET

SALZER TERRACE ADDITION

SCALE: H 1"=20' / V 1"=2'
ELEVATIONS SHOWN ARE NAVD 88

BENCHMARKS
TOP NUT OF HYDRANT
21ST STREET & WINNEBAGO ST 673.29
21ST STREET & MARKET ST 671.87

GENERAL NOTES
• CONTRACTOR TO VERIFY ALL PIPE SIZES AND MATERIAL IN FIELD
• CONTRACTOR SHALL PROTECT ALL STM INFRASTRUCTURE UNLESS NOTED ON PLAN AS REPLACE



SANITARY MANHOLE #1
48" DIAMETER
STA 0+00
RIM 670.15
INV N 661.21 8"
INV E 661.11 12"
INV W 660.96 18"

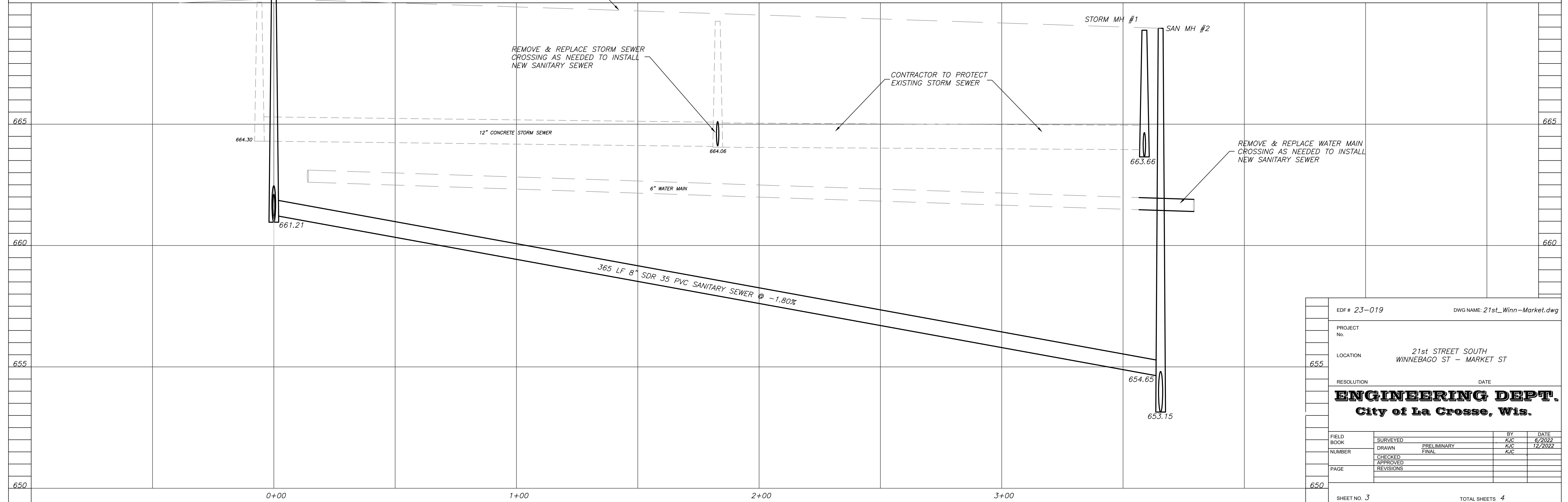
CATCH BASIN #1
TYPE A
RIM 669.30
INV S 666.28 12"

STORM MANHOLE #1
48" DIAMETER
STA 3+59
RIM 668.95
INV N 664.30 12"
INV SE 663.95 12"
INV S 663.95 12"
INV SW 665.00 12"
INV W 663.66 12"

SANITARY MANHOLE #2
48" DIAMETER
STA 3+66
RIM 668.95
INV E 653.15 21"
INV S 654.65 8"
INV W 653.15 21"

SANITARY MANHOLE #3
48" DIAMETER, OUTSIDE DROP
RIM 669.00
INV N 656.04 12"
INV SE 653.23 10" OUTSIDE DROP
INV E 653.23 21"
INV W 653.23 21"

CATCH BASIN #2
TYPE A
RIM 668.21
INV NW 664.17 12"



EDF # 23-019		DWG NAME: 21st_Winn-Market.dwg	
PROJECT No.			
LOCATION 21st STREET SOUTH WINNEBAGO ST - MARKET ST			
RESOLUTION		DATE	
ENGINEERING DEPT. City of La Crosse, Wis.			
FIELD BOOK	SURVEYED	BY	DATE
NUMBER	DRAWN	KJC	6/2022
	CHECKED	KJC	12/2022
	APPROVED		
	REVISIONS		
PAGE			
650			
SHEET NO. 3		TOTAL SHEETS 4	

ORIGINAL ASSESSMENT ESTIMATE

23-1118

Resolution # 23-0656

For the construction of sanitary sewer main and laterals on 21th Street South between Market Street and Winnebago Street

OWNER & MAIL ADDRESS	PROPERTY ADDRESS	ADDITION & PROPERTY DESCRIPTION	PARCEL ID#	SANITARY LATERAL		Sanitary Main (8")		TOTAL ASSESSMENT	DEFERRED?
				Lateral Length (LF)	Cost Per LF	Main Length (LF)	Cost Per LF		
Annissa George 611 21th St S La Crosse, WI 54601	611 21th St S	SALZER TERRACE LOT 29 EX N 75.09FT BLOCK 5 LOT SZ: 65 X 45	17-30227-110	33	\$ 100.00	121	\$ 100.00	\$ 15,400.00	No
Jeffery A Greene 614 21th St S La Crosse, WI 54601	614 21th St S	SALZER TERRACE S1/2 LOT 35 BLOCK 6 LOT SZ: 70.045 X 40	17-30228-50	33	\$ 100.00	121	\$ 100.00	\$ 15,400.00	No
Jennifer M Myskewitz 620 21th St S La Crosse, WI 54601	620 21th St S	SALZER TERRACE PRT LOTS 49 & 50 BLOCK 6 COM AT PT 70FT N OF SE COR LOT 50 W TO PT 5FT W OF W LN LOT 50 N 35 1/2FT W 10 1/2FT N 34.545FT E TO NE COR LOT 50 S TO POB LOT SZ: IRR	17-30229-80	33	\$ 100.00	121	\$ 100.00	\$ 15,400.00	No
Joseph Zoellner 2102 Market St La Crosse, WI 54601	2102 Market St	SALZER TERRACE N 75.09FT OF LOT 29 BLOCK 5 LOT SZ: 49.75 X 75.09	17-30227120	33	\$ 100.00	0	\$ 100.00	\$ 3,300.00	Yes
TOTAL ASSESSMENT								\$ 49,500.00	
DEFERRED ASSESSMENT								\$ 3,300.00	

SPECIAL ASSESSMENT PROCEDURE FOR PROPERTY OWNERS

As a property owner proposed to be assessed for improvements that benefit your property, following is a summary of the procedure you are invited to be a part of:

1. Plans and specifications for the proposed improvement and a schedule indicating an estimate of the cost to be assessed against your property are open to inspection from the Engineering Department, 4th Floor of City Hall. Phone (608) 789-7505.
2. Public Hearing to be held before the **Finance and Personnel Committee** of the Common Council at 6:00 on **October 5th, 2023**, in the Council Chambers. You are invited to speak or register at this meeting, either for or against, regarding the proposed project or your proposed assessment.
3. You may also express approval or object to the improvement or your assessment by submitting a letter to the City Engineer, 400 La Crosse Street, La Crosse, Wisconsin, 54601. If objecting, you must state your reasons for objecting. This written objection must be received by the City Engineer no later than 5:00 p.m. on the day of the F & P meeting (noted above).
4. If the Common Council adopts the Resolution for Levying Special Assessments, property owners will be sent a copy of the resolution by the City Clerk.
5. Assessments may be paid in cash or shall be payable over a period of ten (10) years or fifteen (15) years to the City Treasurer. Installments shall be placed on the next tax roll after the due date for collection and shall bear interest at the rate established by the council per annum on the unpaid balance from January 1st of the year following the levy.
6. The assessments indicated for this project are based on ESTIMATES of proposed work costs. After construction is completed, FINAL assessments are determined that may be LOWER than assessments indicated. **DO NOT MAKE ANY PAYMENT TO THE CITY AT THIS TIME.** If final costs are higher than estimated, the city pays difference.

REPORT ON
PROPOSED SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS AGAINST
PROPERTIES LOCATED IN LA CROSSE, WISCONSIN
(Police Power Assessments)

This report is submitted in accordance with the requirements of Sec.66.0703, Wis. Stats., and Ordinance No. 4222 of the Common Council of the City of La Crosse, Wisconsin, dated April 14, 2005 determining to levy special assessments on benefited properties for public improvements described in Schedule B of this report to be made in the assessment district described in Schedule B of this report.

The properties shown on Schedule B, against which the proposed assessments are to be made, are benefited by the proposed improvements by the construction of:

Sanitary Sewer Construction at the following:

- 600 block of 21st Street S

This report consists of the following schedules attached hereto, except as otherwise provided:

SCHEDULE A – Final Plans and Specifications are on file with the Engineering Department, 4th Floor, City Hall, 400 La Crosse Street, La Crosse, WI.

SCHEDULE B – Final Costs of Improvements and Proposed Assessments against each benefited parcel.

City of La Crosse by
Board of Public Works:

Dated: October 2, 2023



CITY OF LA CROSSE BOARD OF PUBLIC WORKS

400 LA CROSSE ST
LA CROSSE WI 54601-3396

MITCH REYNOLDS, President
REBECCA SCHWARZ, Council Member
TAMRA DICKINSON, Council Member
MATTHEW GALLAGER, City Engineer
ANDREA TRANE, Director Planning & Development
NIKKI M. ELSSEN, City Clerk - Secretary

October 2, 2023

Honorable Mayor and
Common Council Members

Re: 23-1118 Resolution authorizing public improvement and levying special assessments against benefited property in La Crosse, Wisconsin - Sanitary Sewer Construction on 21st Street S.

Ladies and Gentlemen:

The Board of Public Works considered the above matter at their meeting on October 2, 2023, and recommends the same be adopted.

Sincerely,

Mitch Reynolds
President

/nme

To City Engineer of LaCrosse,

I live at 614 21st Street So. and received notice of a special assessment on my property for sanitary sewer replacement. While I understand at some point these repairs are necessary, I am not in agreement with the way the city wants to pay for this through a special assessment. I have only lived at this address for two and a half years and don't plan on staying at this address more than a few more years. Why I should bear the entire load of paying for these "improvements" doesn't seem fair to me. The last resident at this address I was told lived here more than 50 years. He sold at the right time is not on the hook to pay for any repairs of a sanitary sewer system he used for way longer than I will. I realize I can add this assessment onto my taxes over the next 15 years. This will definitely hinder my ability to sell this house in a few years as I had planned. I also don't understand how the owner of the home on 2102 Market Street only must pay 3300 dollars. Aren't we using the same system? For these reasons I object to the special assessment of my property.

Jeff Greene



*** Proof of Publication ***

Lee Enterprises Proof of Publication Affidavit

Retain this portion for your records.
Please do not remit payment until you receive your advertising invoice.

Mail to:

LA CROSSE CITY CLERK
NIKKI EISEN
400 LA CROSSE ST
LA CROSSE WI 54601

ORDER NUMBER 127810

STATE OF INDIANA

} ss.

LAKE COUNTY

I, Robin Nelson being duly sworn, doth
depose and say that he/she is an authorized representative of Lee
Enterprises, publishers of

LA CROSS TRIBUNE

a newspaper, at La Crosse, County of La Crosse, State of Wisconsin,
and that an advertisement of which the annexed is a true copy, taken
from said paper, was published therein on the dates listed below.

Sworn to and subscribed before me this 21 day of

September, 2023

(Signed) [Signature]
(Title) Principal Clerk

[Signature]
Notary Public, Indiana

My Commission expires
Section: Legals
Category: 0001 Wisconsin Legals
PUBLISHED ON: 09/21/2023



TOTAL AD COST: 42.64
FILED ON: 9/21/2023

NOTICE OF PUBLIC HEARING ON
SPECIAL ASSESSMENTS
FOR PUBLIC IMPROVEMENTS IN
LA CROSSE, WISCONSIN
PLEASE TAKE NOTICE that the
governing body of the City of La
Crosse intends to exercise its police
power in accordance with Sec. 38-1
of the Code of Ordinances of the City
of La Crosse, to levy special
assessments against benefited prop-
erty in La Crosse, Wisconsin for:
Sanitary Sewer Construction at the
following:
• 600 Block of 21st Street S
A report prepared by the Board of
Public Works showing plans and
specifications, estimated cost of
improvements and proposed assess-
ments is on file in the Engineering
Department at City Hall, 400 La
Crosse St., Fourth Floor, La Crosse,
Wisconsin 54601 and may be
inspected upon request.
You are further notified that the
Finance & Personnel Committee of
the Common Council of the City of
La Crosse will hear all interested
persons, their agents or attorneys
concerning matters contained in the
resolution authorizing the assess-
ments in the above described report
at 6:00 pm on October 5, 2023, at
the City Hall Council Chambers, 400
La Crosse Street, La Crosse,
Wisconsin. All objections shall be
considered at this hearing and
thereafter the amounts of assess-
ments determined and approved.
Nikki Eisen, City Clerk
9/21 LAC 127810 WNAXLP





City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1119

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution authorizing public improvement and levying special assessments against benefited property in La Crosse, Wisconsin – Sanitary Sewer Construction on Sill Street.

RESOLUTION

WHEREAS, on October 2nd, 2023, a report was prepared and adopted by the Board of Public Works on the proposed public improvements consisting of:

Sanitary Sewer Construction at the following:

- 800 block of Sill Street

WHEREAS, the assessments against benefited properties, and said report, are on file with the City Clerk, and

WHEREAS, on October 5th, 2023, the Finance and Personnel Committee of La Crosse, Wisconsin held a public hearing for all interested persons concerning the report of the Board of Public Works, this resolution and proposed assessments against benefited property, and all persons who desire to speak at the hearing shall be heard.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of La Crosse, that it determine as follows:

It is expedient and necessary and for the best interest of the City of La Crosse and for the property affected thereby, that said properties be improved at the expense of the property benefited by the construction of Sanitary Sewer Construction.

The Common Council exercises its police power to levy special assessments upon property for benefits conferred upon such property.

The report of the Board of Public Works, incorporated herein as it fully set forth herein, including plans and specifications and assessments set forth therein, is adopted and approved.

The Board of Public Works has advertised for bids and supervised construction of the improvements in accordance with the report and public bidding and construction statutes.

Payment for the improvements shall be made by assessing the entire cost to the property benefited as indicated in the report.

The Common Council determines that assessments shown on the report represent an exercise of the police power for the health, safety and general welfare of the City and its inhabitants and have been determined on a reasonable basis and are hereby confirmed.

Assessments may be paid in cash or shall be payable over a period of ten (10) years or fifteen (15) years to the City Treasurer. Installments shall be placed on the next tax roll after the due date for collection and shall bear interest at the rate established by the Common Council per annum on the unpaid balance from January 1st of the year following the levy.

The City Clerk shall provide notices in accordance with City Ord. 38-1.

Dated _____ Mayor _____

Published _____ Attest _____
City Clerk

ORIGINAL ASSESSMENT ESTIMATE

For the construction of sanitary sewer on Sill Street between Avon Street and Liberty Street.

OWNER & MAIL ADDRESS	PROPERTY ADDRESS	ADDITION & PROPERTY DESCRIPTION	PARCEL ID#	SANITARY SEWER ASSESSMENT	DEFERRED?
BRENDEN SCOT ROHLAND & TAYLOR RAY SCHIFERL 817 SILL STREET LA CROSSE WI 54603-2449	817 SILL ST	P.S. DAVIDSON'S ADDITION LOT 11 EX E 116FT BLOCK 2 LOT SZ: 39.01 X 50	17-10093-140	\$13,750.00	NO
DEBORAH PACKARD 823 SILL STREET LA CROSSE WI 54603-2449	823 SILL ST	P.S. DAVIDSON'S ADDITION W 42FT OF E 116FT LOT 11 BLOCK 2 LOT SZ: 42 X 50	17-10093-135	\$13,750.00	NO
TOTAL ASSESSMENT				\$27,500.00	
TOTAL DEFERRED ASSESSMENT				\$0.00	

Engineering Department

400 La Crosse St., La Crosse, WI 54601 • (608) 789-7505 • Fax: (608) 789-8184
<http://www.cityoflacrosse.org>



CITY OF LA CROSSE ASSESSMENTS ESTIMATE

Estimate Date

2/20/2023

1	L.F.	F & I 8" SDR 35 PVC SANITARY SEWER MAIN (with bedding)	175	\$ 100.00	\$17,500.00
2	L.F.	F & I 4" SDR 26 PVC SANITARY SEWER LATERAL	50	\$ 100.00	\$5,000.00
3	L.S.	F & I SANITARY SEWER MH2 (D=9')	1	\$ 5,000.00	\$5,000.00
		TOTAL			\$27,500.00

SPECIAL ASSESSMENT PROCEDURE FOR PROPERTY OWNERS

As a property owner proposed to be assessed for improvements that benefit your property, following is a summary of the procedure you are invited to be a part of:

1. Plans and specifications for the proposed improvement and a schedule indicating an estimate of the cost to be assessed against your property are open to inspection from the Engineering Department, 4th Floor of City Hall. Phone (608) 789-7505.
2. Public Hearing to be held before the **Finance and Personnel Committee** of the Common Council at 6:00 on **October 5th, 2023**, in the Council Chambers. You are invited to speak or register at this meeting, either for or against, regarding the proposed project or your proposed assessment.
3. You may also express approval or object to the improvement or your assessment by submitting a letter to the City Engineer, 400 La Crosse Street, La Crosse, Wisconsin, 54601. If objecting, you must state your reasons for objecting. This written objection must be received by the City Engineer no later than 5:00 p.m. on the day of the F & P meeting (noted above).
4. If the Common Council adopts the Resolution for Levying Special Assessments, property owners will be sent a copy of the resolution by the City Clerk.
5. Assessments may be paid in cash or shall be payable over a period of ten (10) years or fifteen (15) years to the City Treasurer. Installments shall be placed on the next tax roll after the due date for collection and shall bear interest at the rate established by the council per annum on the unpaid balance from January 1st of the year following the levy.
6. The assessments indicated for this project are based on ESTIMATES of proposed work costs. After construction is completed, FINAL assessments are determined that may be LOWER than assessments indicated. **DO NOT MAKE ANY PAYMENT TO THE CITY AT THIS TIME.** If final costs are higher than estimated, the city pays difference.

REPORT ON
PROPOSED SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS AGAINST
PROPERTIES LOCATED IN LA CROSSE, WISCONSIN
(Police Power Assessments)

This report is submitted in accordance with the requirements of Sec.66.0703, Wis. Stats., and Ordinance No. 4222 of the Common Council of the City of La Crosse, Wisconsin, dated April 14, 2005 determining to levy special assessments on benefited properties for public improvements described in Schedule B of this report to be made in the assessment district described in Schedule B of this report.

The properties shown on Schedule B, against which the proposed assessments are to be made, are benefited by the proposed improvements by the construction of:

Sanitary Sewer Construction at the following:

- 800 block of Sill Street

This report consists of the following schedules attached hereto, except as otherwise provided:

SCHEDULE A – Final Plans and Specifications are on file with the Engineering Department, 4th Floor, City Hall, 400 La Crosse Street, La Crosse, WI.

SCHEDULE B – Final Costs of Improvements and Proposed Assessments against each benefited parcel.

City of La Crosse by
Board of Public Works:

Dated: October 2, 2023

NOTICE OF PUBLIC HEARING ON SPECIAL ASSESSMENTS
FOR PUBLIC IMPROVEMENTS IN LA CROSSE, WISCONSIN

PLEASE TAKE NOTICE that the governing body of the City of La Crosse intends to exercise its police power in accordance with Sec. 38-1 of the Code of Ordinances of the City of La Crosse, to levy special assessments against benefited property in La Crosse, Wisconsin for:

Sanitary Sewer Construction at the following:

- 800 Block of Sill Street

A report prepared by the Board of Public Works showing plans and specifications, estimated cost of improvements and proposed assessments is on file in the Engineering Department at City Hall, 400 La Crosse St., Fourth Floor, La Crosse, Wisconsin 54601 and may be inspected upon request.

You are further notified that the Finance & Personnel Committee of the Common Council of the City of La Crosse will hear all interested persons, their agents or attorneys concerning matters contained in the resolution authorizing the assessments in the above described report at 6:00 pm on October 5, 2023, at the City Hall Council Chambers, 400 La Crosse Street, La Crosse, Wisconsin. All objections shall be considered at this hearing and thereafter the amounts of assessments determined and approved.

Nikki Elsen, City Clerk

Published in the La Crosse Tribune: 9/21/2023
Mailed to property Owners: 9/19/2023



CITY OF LA CROSSE BOARD OF PUBLIC WORKS

400 LA CROSSE ST
LA CROSSE WI 54601-3396

MITCH REYNOLDS, President
REBECCA SCHWARZ, Council Member
TAMRA DICKINSON, Council Member
MATTHEW GALLAGER, City Engineer
ANDREA TRANE, Director Planning & Development
NIKKI M. ELSSEN, City Clerk - Secretary

October 2, 2023

Honorable Mayor and
Common Council Members

Re: 23-1119 Resolution authorizing public improvement and levying special assessments against benefited property in La Crosse, Wisconsin - Sanitary Sewer Construction on Sill Street.

Ladies and Gentlemen:

The Board of Public Works considered the above matter at their meeting on October 2, 2023, and recommends the same be adopted.

Sincerely,

Mitch Reynolds
President

/nme

*** Proof of Publication ***

Lee Enterprises Proof of Publication Affidavit

Retain this portion for your records.
Please do not remit payment until you receive your advertising invoice.

Mail to:

LA CROSSE CITY CLERK
NIKKI ELSEN
400 LA CROSSE ST
LA CROSSE WI 54601

ORDER NUMBER 127819

NOTICE OF PUBLIC HEARING ON
SPECIAL ASSESSMENTS
FOR PUBLIC IMPROVEMENTS IN
LA CROSSE, WISCONSIN

PLEASE TAKE NOTICE that the governing body of the City of La Crosse intends to exercise its police power in accordance with Sec. 38-1 of the Code of Ordinances of the City of La Crosse, to levy special assessments against benefited property in La Crosse, Wisconsin for:

Sanitary Sewer Construction at the following:

• 800 Block of Sill Street
A report prepared by the Board of Public Works showing plans and specifications, estimated cost of improvements and proposed assessments is on file in the Engineering Department at City Hall, 400 La Crosse St., Fourth Floor, La Crosse, Wisconsin 54601 and may be inspected upon request.

You are further notified that the Finance & Personnel Committee of the Common Council of the City of La Crosse will hear all interested persons, their agents or attorneys concerning matters contained in the resolution authorizing the assessments in the above described report at 6:00 pm on October 5, 2023, at the City Hall Council Chambers, 400 La Crosse Street, La Crosse, Wisconsin. All objections shall be considered at this hearing and thereafter the amounts of assessments determined and approved.

Nikki Elsen, City Clerk
9/21 LAC 127819 WNAXLP

STATE OF INDIANA } ss.
LAKE COUNTY

I, Robin Nelson being duly sworn, doth depose and say that he/she is an authorized representative of Lee Enterprises, publishers of

LA CROSS TRIBUNE

a newspaper, at La Crosse, County of La Crosse, State of Wisconsin, and that an advertisement of which the annexed is a true copy, taken from said paper, was published therein on the dates listed below.

Sworn to and subscribed before me this 21 day of

September, 20 23

(Signed) [Signature]
(Title) Principal Clerk

[Signature]
Notary Public, Indiana

My Commission expires
Section: Legals
Category: 0001 Wisconsin Legals
PUBLISHED ON: 09/21/2023



TOTAL AD COST: 42.64
FILED ON: 9/21/2023





City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1120

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution authorizing public improvement and levying special assessments against benefited property in La Crosse, Wisconsin – Water Utility Construction on St Cloud Street.

RESOLUTION

WHEREAS, on October 2nd, 2023, a report was prepared and adopted by the Board of Public Works on the proposed public improvements consisting of:

Water Utility Construction at the following:

- 500 block of St Cloud Street

WHEREAS, the assessments against benefited properties, and said report, are on file with the City Clerk, and

WHEREAS, on October 5th, 2023, the Finance and Personnel Committee of La Crosse, Wisconsin held a public hearing for all interested persons concerning the report of the Board of Public Works, this resolution and proposed assessments against benefited property, and all persons who desire to speak at the hearing shall be heard.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of La Crosse, that it determine as follows:

It is expedient and necessary and for the best interest of the City of La Crosse and for the property affected thereby, that said properties be improved at the expense of the property benefited by the construction of Water Utility Construction.

The Common Council exercises its police power to levy special assessments upon property for benefits conferred upon such property.

The report of the Board of Public Works, incorporated herein as it fully set forth herein, including plans and specifications and assessments set forth therein, is adopted and approved.

The Board of Public Works has advertised for bids and supervised construction of the improvements in accordance with the report and public bidding and construction statutes.

Payment for the improvements shall be made by assessing the entire cost to the property benefited as indicated in the report.

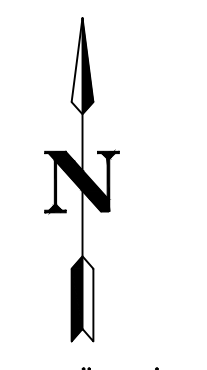
The Common Council determines that assessments shown on the report represent an exercise of the police power for the health, safety and general welfare of the City and its inhabitants and have been determined on a reasonable basis and are hereby confirmed.

Assessments may be paid in cash or shall be payable over a period of ten (10) years or fifteen (15) years to the City Treasurer. Installments shall be placed on the next tax roll after the due date for collection and shall bear interest at the rate established by the Common Council per annum on the unpaid balance from January 1st of the year following the levy.

The City Clerk shall provide notices in accordance with City Ord. 38-1.

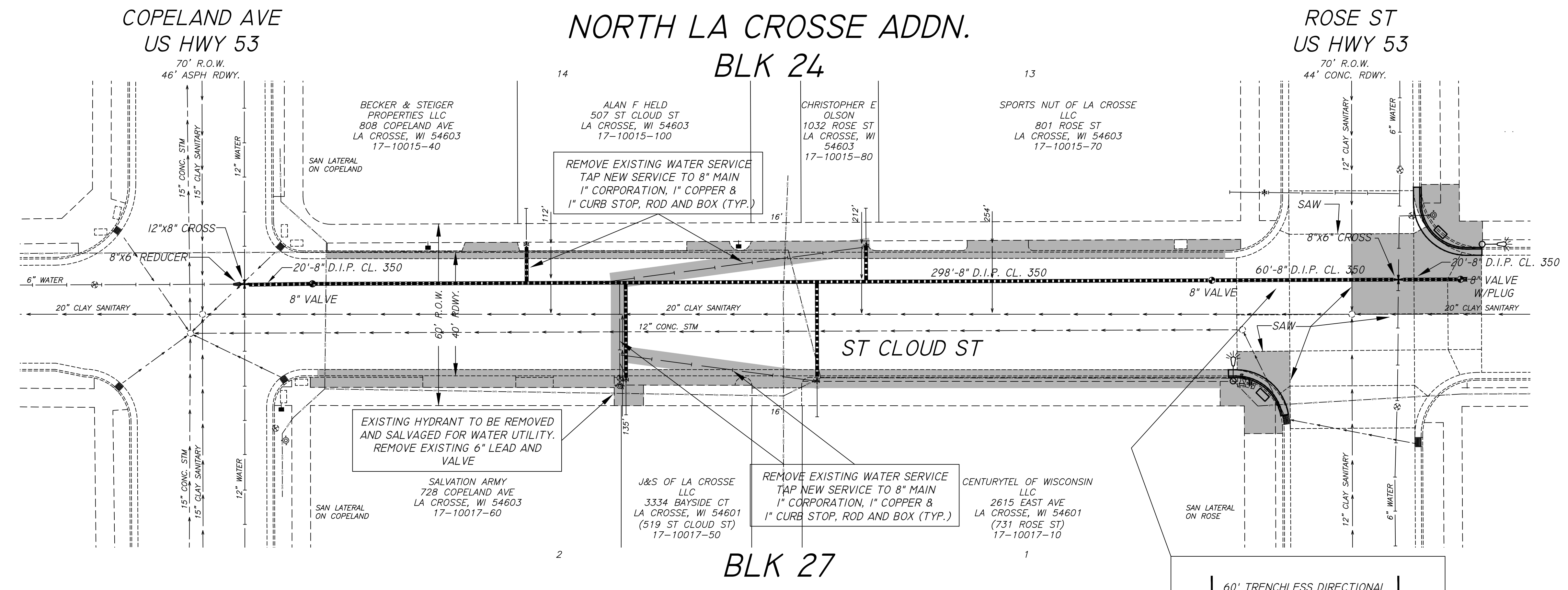
Dated _____ Mayor _____

Published _____ Attest _____
City Clerk



SCALE: 1"=20' H
1"=2' V

ELEVATIONS SHOWN ARE
NAVD 88

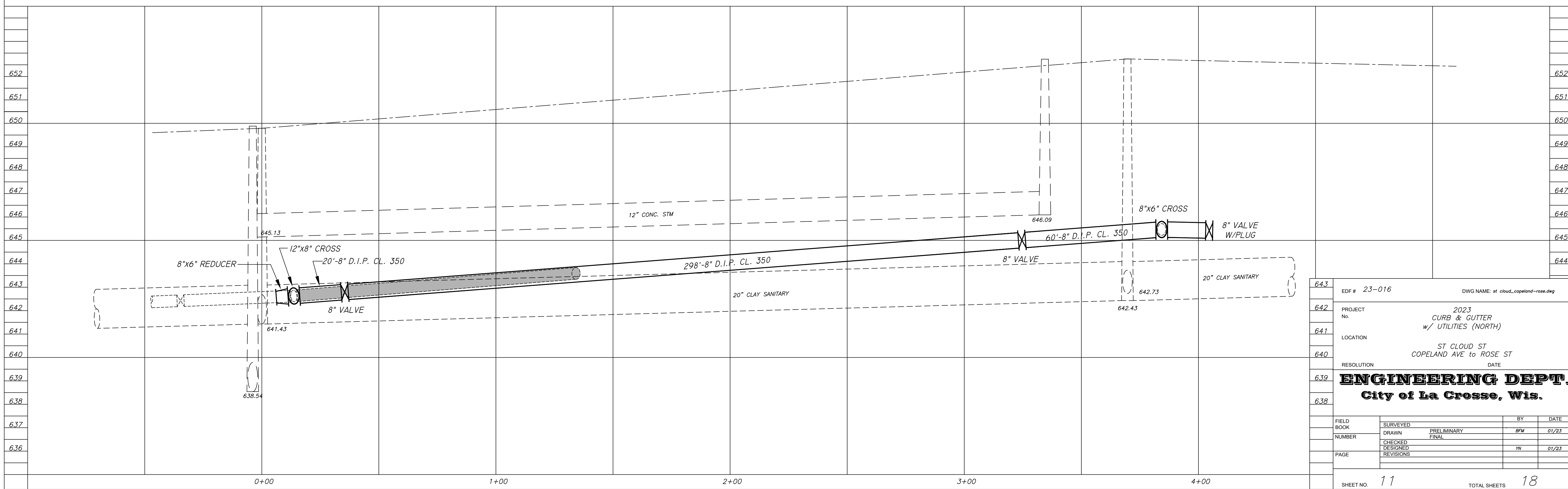


UTILITY QUANTITIES	
QUANTITIES	
388 L.F.	8" D.I.P. CLASS 350 CEMENT LINED WATER MAIN
1 EA.	12"x8" CROSS
1 EA.	8"x6" CROSS
3 EA.	8"x6" REDUCER
2 EA.	8" GATE VALVE
4 EA.	1" CORPORATION STOP
4 EA.	1" CURB STOP, ROD AND BOX
86 L.F.	1" COPPER "TYPE K" WATER SERVICE
1 L.S.	EROSION CONTROL
1 L.S.	TRAFFIC CONTROL

CURB & GUTTER	
QUANTITIES	
439 L.F.	STANDARD CURB & GUTTER INCLUDING 6" CRUSHED BASE
1180 S.F.	9" HIGH EARLY CONCRETE PAVEMENT
102 S.F.	7" CONCRETE ALLEY APPROACH
366 S.F.	6" CONCRETE DRIVEWAY
464 S.F.	5" CONCRETE SIDEWALK
2 EA.	TRUNCATED DOME WARNING FIELD
786 S.F.	4" CONCRETE FLATWORK
30 S.Y.	4" BLACK DIRT, SEED, FERTILIZER, HYDROMULCH
1 L.S.	EROSION CONTROL
1 L.S.	TRAFFIC CONTROL
REMOVALS	
439 L.F.	CURB & GUTTER
2831 S.F.	CONCRETE (ANY DEPTH)
280 L.F.	CONCRETE SAW

NOTE
CONTRACTOR IS TO VERIFY LOCATION OF ALL UTILITIES PRIOR TO ANY CONSTRUCTION

TEMPORARY WATER SERVICES MUST BE MAINTAINED TO ALL AFFECTED PROPERTIES UNTIL NEW 1" SERVICE IS INSTALLED



643	EDF # 23-016	DWG NAME: st_cloud_copeland-rose.dwg
642	PROJECT No.	2023 CURB & GUTTER w/ UTILITIES (NORTH)
641	LOCATION	ST CLOUD ST COPELAND AVE to ROSE ST
640	RESOLUTION DATE	
639	ENGINEERING DEPT.	
638	City of La Crosse, Wis.	
637	FIELD BOOK	SURVEYED BY DATE
636	NUMBER	DRAWN PRELIMINARY BM 01/23
	PAGE	CHECKED DESIGNED REVISIONS YW 01/23
	SHEET NO. 11	TOTAL SHEETS 18

ORIGINAL ASSESSMENT ESTIMATE

For the construction of water main and all appurtenances on St Cloud Street between Rose Street and Copeland Ave.

OWNER & MAIL ADDRESS	PROPERTY ADDRESS	ADDITION & PROPERTY DESCRIPTION	PARCEL ID#	WATER MAIN		INDIVIDUAL SERVICES	TOTAL ASSESSMENT	DEFERRED?
				FRONTAGE WIDTH (ft)	COST @ \$14/FOOT			
		<u>NORTH LA CROSSE</u>						
ALAN F HELD 507 ST CLOUD ST LA CROSSE WI 54603-2632	507 ST CLOUD ST	NORTH LA CROSSE E 75FT LOT 14 BLOCK 24 LOT SZ: 75 X 50	17-10015-100	60	\$840.00	\$2,500.00	\$3,340.00	NO
SPORTS NUT OF LACROSSE LLC ATTN: JAMIE OLSON 1032 ROSE ST LA CROSSE WI 54603	515 ST CLOUD ST	NORTH LA CROSSE W 25FT OF E 142FT LOT 13 BLOCK 24 LOT SZ: 25 X 50	17-10015-80	60	\$840.00	\$2,500.00	\$3,340.00	NO
J & S OF LACROSSE LLC 3334 BAYSIDE CT LA CROSSE WI 54601-7281	510 ST CLOUD ST	NORTH LA CROSSE LOTS 2 & 3 EX W 100FT BLOCK 27 LOT SZ: 42 X 100	17-10017-50	60	\$840.00	\$4,500.00	\$5,340.00	NO
CENTURYTEL OF WISCONSIN LLC 2615 EAST AVE S LA CROSSE WI 54601	731 ROSE ST	NORTH LA CROSSE LOTS 1 & 4 BLOCK 27 LOT SZ: 100 X 142	17-10017-10	22	\$308.00	\$4,500.00	\$4,808.00	NO
TOTAL ASSESSMENT							\$16,828.00	
TOTAL DEFERRED ASSESSMENT							\$0.00	

INDIVIDUAL WATER SERVICE ASSESSMENT

For 507 & 515 St Cloud Street properties (per each):

1" Copper Water Service, Installed Complete: 15 LF x \$100 = \$1500
1" Corporation Stop: 1 x \$500 = \$500
1" Curb Stop & Box, F&I Complete with all Fittings: 1 x \$500 = \$500

TOTAL: \$2,500

For 510 St Cloud Street & 731 Rose Street properties (per each):

1" Copper Water Service, Installed Complete: 35 LF x \$100 = \$3,500
1" Corporation Stop: 1 x \$500 = \$500
1" Curb Stop & Box, F&I Complete with all Fittings: 1 x \$500 = \$500

TOTAL: \$4,500

SPECIAL ASSESSMENT PROCEDURE FOR PROPERTY OWNERS

As a property owner proposed to be assessed for improvements that benefit your property, following is a summary of the procedure you are invited to be a part of:

1. Plans and specifications for the proposed improvement and a schedule indicating an estimate of the cost to be assessed against your property are open to inspection from the Engineering Department, 4th Floor of City Hall. Phone (608) 789-7505.
2. Public Hearing to be held before the **Finance and Personnel Committee** of the Common Council at 6:00 on **October 5th, 2023**, in the Council Chambers. You are invited to speak or register at this meeting, either for or against, regarding the proposed project or your proposed assessment.
3. You may also express approval or object to the improvement or your assessment by submitting a letter to the City Engineer, 400 La Crosse Street, La Crosse, Wisconsin, 54601. If objecting, you must state your reasons for objecting. This written objection must be received by the City Engineer no later than 5:00 p.m. on the day of the F & P meeting (noted above).
4. If the Common Council adopts the Resolution for Levying Special Assessments, property owners will be sent a copy of the resolution by the City Clerk.
5. Assessments may be paid in cash or shall be payable over a period of ten (10) years or fifteen (15) years to the City Treasurer. Installments shall be placed on the next tax roll after the due date for collection and shall bear interest at the rate established by the council per annum on the unpaid balance from January 1st of the year following the levy.
6. The assessments indicated for this project are based on ESTIMATES of proposed work costs. After construction is completed, FINAL assessments are determined that may be LOWER than assessments indicated. **DO NOT MAKE ANY PAYMENT TO THE CITY AT THIS TIME.** If final costs are higher than estimated, the city pays difference.

REPORT ON
PROPOSED SPECIAL ASSESSMENTS FOR PUBLIC IMPROVEMENTS AGAINST
PROPERTIES LOCATED IN LA CROSSE, WISCONSIN
(Police Power Assessments)

This report is submitted in accordance with the requirements of Sec.66.0703, Wis. Stats., and Ordinance No. 4222 of the Common Council of the City of La Crosse, Wisconsin, dated April 14, 2005 determining to levy special assessments on benefited properties for public improvements described in Schedule B of this report to be made in the assessment district described in Schedule B of this report.

The properties shown on Schedule B, against which the proposed assessments are to be made, are benefited by the proposed improvements by the construction of:

Water Utility Construction at the following:

- 500 block of St Cloud Street

This report consists of the following schedules attached hereto, except as otherwise provided:

SCHEDULE A – Final Plans and Specifications are on file with the Engineering Department, 4th Floor, City Hall, 400 La Crosse Street, La Crosse, WI.

SCHEDULE B – Final Costs of Improvements and Proposed Assessments against each benefited parcel.

City of La Crosse by
Board of Public Works:

Dated: October 2, 2023

NOTICE OF PUBLIC HEARING ON SPECIAL ASSESSMENTS
FOR PUBLIC IMPROVEMENTS IN LA CROSSE, WISCONSIN

PLEASE TAKE NOTICE that the governing body of the City of La Crosse intends to exercise its police power in accordance with Sec. 38-1 of the Code of Ordinances of the City of La Crosse, to levy special assessments against benefited property in La Crosse, Wisconsin for:

Water Utility Construction at the following:

- 500 Block of St Cloud Street

A report prepared by the Board of Public Works showing plans and specifications, estimated cost of improvements and proposed assessments is on file in the Engineering Department at City Hall, 400 La Crosse St., Fourth Floor, La Crosse, Wisconsin 54601 and may be inspected upon request.

You are further notified that the Finance & Personnel Committee of the Common Council of the City of La Crosse will hear all interested persons, their agents or attorneys concerning matters contained in the resolution authorizing the assessments in the above described report at 6:00 pm on October 5th, 2023, at the City Hall Council Chambers, 400 La Crosse Street, La Crosse, Wisconsin. All objections shall be considered at this hearing and thereafter the amounts of assessments determined and approved.

Nikki Elsen, City Clerk

Published in the La Crosse Tribune: 9/21/2023

Mailed to Property Owners: 9/19/2023



CITY OF LA CROSSE BOARD OF PUBLIC WORKS

400 LA CROSSE ST
LA CROSSE WI 54601-3396

MITCH REYNOLDS, President
REBECCA SCHWARZ, Council Member
TAMRA DICKINSON, Council Member
MATTHEW GALLAGER, City Engineer
ANDREA TRANE, Director Planning & Development
NIKKI M. ELSSEN, City Clerk - Secretary

October 2, 2023

Honorable Mayor and
Common Council Members

Re: 23-1120 Resolution authorizing public improvement and levying special assessments against benefited property in La Crosse, Wisconsin - Sanitary Sewer Construction on St. Cloud Street.

Ladies and Gentlemen:

The Board of Public Works considered the above matter at their meeting on October 2, 2023, and recommends the same be adopted.

Sincerely,

Mitch Reynolds
President

/nme

*** Proof of Publication ***

Lee Enterprises Proof of Publication Affidavit

Retain this portion for your records.
Please do not remit payment until you receive your advertising invoice.

Mail to:

LA CROSSE CITY CLERK
NIKKI ELSEN
400 LA CROSSE ST
LA CROSSE WI 54601

ORDER NUMBER 127817

NOTICE OF PUBLIC HEARING ON
SPECIAL ASSESSMENTS
FOR PUBLIC IMPROVEMENTS IN
LA CROSSE, WISCONSIN

PLEASE TAKE NOTICE that the governing body of the City of La Crosse intends to exercise its police power in accordance with Sec. 38-1 of the Code of Ordinances of the City of La Crosse, to levy special assessments against benefited property in La Crosse, Wisconsin for:

Water Utility Construction at the following:

• 500 Block of St Cloud Street
A report prepared by the Board of Public Works showing plans and specifications, estimated cost of improvements and proposed assessments is on file in the Engineering Department at City Hall, 400 La Crosse St., Fourth Floor, La Crosse, Wisconsin 54601 and may be inspected upon request.

You are further notified that the Finance & Personnel Committee of the Common Council of the City of La Crosse will hear all interested persons, their agents or attorneys concerning matters contained in the resolution authorizing the assessments in the above described report at 6:00 pm on October 5, 2023, at the City Hall Council Chambers, 400 La Crosse Street, La Crosse, Wisconsin. All objections shall be considered at this hearing and thereafter the amounts of assessments determined and approved.

Nikki Elsen, City Clerk
9/21 LAC 127817 WNAXLP

STATE OF INDIANA } ss.
LAKE COUNTY

I, Robin Nelson being duly sworn, doth depose and say that he/she is an authorized representative of Lee Enterprises, publishers of

LA CROSS TRIBUNE

a newspaper, at La Crosse, County of La Crosse, State of Wisconsin, and that an advertisement of which the annexed is a true copy, taken from said paper, was published therein on the dates listed below.

Sworn to and subscribed before me this 21 day of

September, 2023

(Signed) [Signature]
(Title) Principal Clerk

[Signature]
Notary Public, Indiana

My Commission expires

Section: Legals

Category: 0001 Wisconsin Legals

PUBLISHED ON: 09/21/2023



TOTAL AD COST: 42.64

FILED ON: 9/21/2023



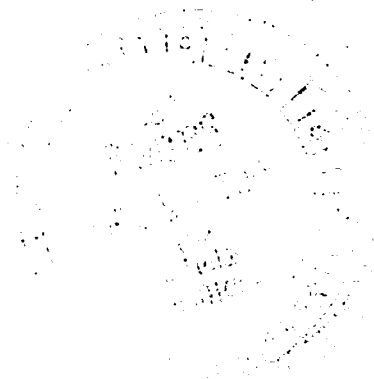
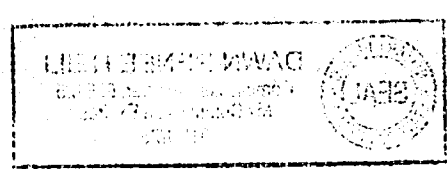
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Robert Wilson

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Robert Wilson





City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1132

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Resolution reallocating funds for the Bicycle and Pedestrian Master Plan Update for community engagement and marketing.

RESOLUTION

WHEREAS, the Common Council previously approved funding through the 2020-2024 & the 2022-2026 CIP Budgets to update the City's Comprehensive Plan; and

WHEREAS, funding was approved to be used to hire consultants to implement the community engagement and public participation component of the process, hire limited term employees to assist with editing and drafting of the comprehensive plan, hiring facilitators to solicit input from the community, printing, and other project related costs; and

WHEREAS, a local media firm was hired to assist with community engagement and marketing of the planning process; and

WHEREAS, the total amount of remaining funding allocated to this project is not required for its completion; and

WHEREAS, the Common Council accepted a WisDOT Transportation Alternatives Grant and approved funding in the 2023-2027 CIP Budget to update the Bicycle and Pedestrian Master Plan; and

WHEREAS, there is a desire to have additional community engagement resources and marketing for the Bicycle and Pedestrian Master Plan process.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the reallocation of \$16,000 from Account #4833095-520050-18U04 for community engagement and marketing services for the update of the Bicycle and Pedestrian Master Plan and for any other project related costs.

BE IT FURTHER RESOLVED that the Director of Planning, Development, & Assessment and the Director of Finance are hereby authorized to take any and all steps necessary in connection with this resolution.

*Nikki M. Elsen, WCMC, City Clerk
City of La Crosse, Wisconsin*



CITY OF LA CROSSE

400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org

LEGISLATION STAFF REPORT FOR COUNCIL

File ID	23-1132	Caption	Resolution reallocating funds for the Bicycle and Pedestrian Master Plan Update for community engagement and marketing.
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Staff/Department Responsible for Legislation

Tim Acklin/Planning, Development, and Assessment Department

Requestor of Legislation

Planning, Development, and Assessment Department
CM Larry Sleznikow

Location, if applicable

City-Wide

Summary/Purpose

Reallocation of funds from the City's Comprehensive Plan update process to the City's Bicycle and Pedestrian Master Plan update process in order to hire a local media firm to assist with community engagement and marketing.

Background

The Planning, Development, and Assessment Department hired a separate local media firm to assist with community engagement and marketing of the process to update the comprehensive plan of which community participation was considered very high when compared to past planning efforts, especially online and through social media. Following that success there is a desire to apply that strategy to the update of the Bicycle and Pedestrian Master Plan process.

Fiscal Impact

\$16,000 from existing Account #4833095-520050-18U04

Staff Recommendation

Approval



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1136

Agenda Date: 10/5/2023

Version: 2

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution to approve adjusted wage rates for part time, seasonal and casual city employees effective October 13, 2023, and January 1, 2024.

RESOLUTION

WHEREAS, Resolution #17-1712 established wages rates and positions summary for part-time, seasonal and casual employees; and

WHEREAS, to attract and retain qualified part-time, seasonal and casual employees additional wage steps have been added for certain positions; and

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the amended Wage Rate Schedule for Part Time, Seasonal and Casual Employees is hereby approved effective October 13, 2023 and January 1, 2024 with funds to come from the respective City department operating budgets.

BE IT FURTHER RESOLVED that the Director of Human Resources and all City department heads are hereby authorized to implement this resolution.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1173

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution approving Unum for a voluntary employee paid vision plan, effective January 1, 2024.

RESOLUTION

WHEREAS, the City is obligated under collective bargaining agreements, the Employee Handbook and the Library Handbook to provide a voluntary vision plan, and

WHEREAS the eligible employees that enroll for such plan pay 100% of the premium,
and

WHEREAS current agreement with Superior Vision expires on December 31, 2023, and

WHEREAS several proposals for voluntary vision plan services have been reviewed,
and

WHEREAS it is the recommendation of the Director of Human Resources to select Unum for an employee paid voluntary vision plan, and

WHEREAS the employee premiums and plan design for such benefit would be as defined on the Benefits Proposal attached, and

WHEREAS a final agreement is not issued by Unum until after an enrollment census is provided following the City's fall benefit open enrollment period.

NOW THEREFORE BE IT RESOLVED that the Director of Human Resources is hereby authorized to secure services with Unum to be effective January 1, 2024.



CITY OF LA CROSSE

**400 La Crosse Street
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LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation



CITY OF LA CROSSE

Situs state: Wisconsin

Presented by: The Carey Company Inc

Expires: December 6, 2023









Better benefits ahead

At Unum, we help millions of employees protect their families, their finances and their futures. Comprehensive coverages, superior technology and unparalleled support — delivered where and when it's needed most.

BENEFITS PROPOSED

Group Vision

Ask your UNUM representative about the additional benefits we offer:

-  Dental
-  Short Term Disability
-  Long Term Disability
-  Term Life and AD&D
-  Critical Illness
-  Accident
-  Hospital
-  Group Whole Life

Employer and employee funding methods may be available for the benefits above.

UNUM REPRESENTATIVE
Khushali Rami



Unum has been a **leading provider** of group disability benefits in the U.S. for over 40 years.¹



Unum serves **1 in 2 Fortune 100 companies**.²



Unum pays out **\$6.6 billion in benefits** each year.³



Unum **protects over 35 million** people and their families.³

FINANCIALLY STRONG

AGENCY	RATING
A.M. Best	A Excellent
Fitch	A- Strong
Moody's	A2 Good
S&P	A Strong

Ratings are given to the U.S. insuring subsidiaries of Unum Group and are current as of December 31, 2022.



GROUP VISION INSURANCE Powered by EyeMed

Coverage Effective Date: January 1, 2024 Rate Guarantee: 48 Months

Frames: Once per 24 Months Monthly Premiums	
Participation Requirement	40% of the total eligible lives
Employee	\$5.93
Employee & Spouse	\$11.87
Employee & Child(ren)	\$13.39
Employee & Family	\$20.71
Employees Eligible for Coverage	Minimum Hours for Eligibility
521	20 hours per week

BENEFIT FREQUENCIES

Frames: Once per 24 months	
Exam	1 per 12 months
Std. Plastic Lenses	1 per 12 months
Frames	1 per 24 months
Contact Lenses	1 per 12 months

THE UNUM DIFFERENCE

VISION NETWORKS: Members have the freedom to choose any provider from EyeMed's Insight network. Our network offers the right mix of independent, national retail and regional retail providers like Lens Crafters, Pearle Vision, Target Optical, JC Penney, and Sears Optical. Members can also purchase glasses and contact lenses online at [Glasses.com](https://www.glasses.com) and [ContactsDirect.com](https://www.contactsdirect.com).

Find a provider 24/7 at [EyeMedVisionCare.com/Unum](https://www.eyemedvisioncare.com/unum).

DISCOUNTS: You get everyday member savings, like 40% off a complete second pair of prescription glasses from participating in-network providers. You also get extra savings on LASIK procedures or discounts on hearing health care and services.



PLAN DESCRIPTION

	In-Network	Out-of-Network
EXAM		
Retinal imaging benefit (subject to provider availability)..	\$10 copay	Up to \$40
	\$39	Not Covered.....
MATERIALS		
Standard plastic lenses:		
Single Vision	\$10 copay	Up to \$30
Bifocal	\$10 copay	Up to \$50
Trifocal	\$10 copay	Up to \$70
Lenticular	\$10 copay	Up to \$70
Standard Progressive Lens	\$75 copay	Up to \$50
Premium Progressive Lens		
Tier 1	\$95 copay	Up to \$50
Tier 2	\$105 copay.....	Up to \$50
Tier 3	\$120 copay.....	Up to \$50
Tier 4	\$75 copay, 80% of charge less than \$120 allowance	Up to \$50
Lens Options:		
Polycarbonate Lenses (Under age 19).....	Covered	Up to \$32
FRAMES		
(Members may select any frame available).....	\$150 retail allowance.....	Up to \$105
CONTACT LENSES		
In lieu of eyeglass lenses.....
Elective (Std Contacts)	\$150 allowance	Up to \$150
Medical Necessary.....	Covered	Up to \$210
Standard contact lens fitting exam fee	\$40	Not Covered.....

LASIK DISCOUNT

We offer nationwide access to discounts on LASIK surgery through a partnership with TLC Vision. Discounts are also available with participating local providers. This is not an insured benefit. Visit our web site to find the specialist closest to you.



DISCOUNTS ON OPTICAL MATERIALS

Unum Vision Powered by EyeMed members will receive the following discounts on materials at in-network providers only:

- 40% off for a complete second pair of glasses.
- 20% off non-prescription sunglasses.
- 20% off remaining balance beyond plan coverage.

Unum Vision members will also receive additional savings on lens options at in-network providers.

- UV Treatment - \$15
- Tint (solid and gradient) - \$15
- Standard Plastic Scratch Coating - \$15
- Standard Polycarbonate – Adults – \$40
- Standard Anti-Reflective Coating - \$45
- Premium Anti-Reflective Coating
 - Tier 1 - \$57
 - Tier 2 - \$68
- Photochromic/Transitions - \$75

*Non-insured options unless listed in the Plan Description as a covered benefit and subject to change.

HEARING SAVINGS PLAN

Unum offers a Hearing Savings Plan at no additional cost, to all of its Unum Vision Powered by EyeMed members. Partnering with Amplifon, the Hearing Savings Plan provides:

- 40% off hearing exams at thousands of convenient locations nationwide
- Discounted set pricing on thousands of hearing aids, including those with the newest, most advanced technology
- Low price guarantee - if you find the same product at a lower price elsewhere, Amplifon will beat it by 5%
- 60-day hearing aid trial period with no restocking fees
- Free batteries for 2 years with initial purchase
- 3-year warranty plus loss and damage coverage

PLAN INFORMATION

Dependent Children:

Dependent children guidelines vary by state. Please refer to your policy certificate or contact customer service at (855) 652-8686.

Laser Vision Correction Network:

Membership provides access to preferred pricing. Transactions are handled directly between members and providers. Refractive surgery is an elective procedure and may involve potential risks to patients. This is not an insured benefit. Unum cannot and does not guarantee the outcome of any refractive surgical procedure or a total elimination of the need for glasses or contacts. Providers may not be available in all metropolitan areas. Login to www.eyemedvisioncare.com/unum for a list of participating laser vision correction providers.



PLAN INFORMATION

Coverage Exclusions and Limitations:

Services not listed: If you expect to require a vision service not included on this brochure, it may still be covered. Refer to the member portal at www.eyemedvisioncare.com/unum, to confirm your exact benefits. This is a primary vision care benefit and is intended to cover only eye examinations and/or corrective eyewear. Medical or surgical treatment of eye disease or injury is not provided under this plan. Coverage may not exceed the lesser of actual cost of covered services and materials or the limits of the policy.

No benefits will be paid for services, materials connected with, or charges arising from:

- Orthoptic or vision training, subnormal vision aids and any associated supplemental testing;
- Aniseikonic lenses;
- Medical and/or surgical treatment of the eye, eyes or supporting structures; services provided as a result of any Workers' Compensation law, or similar legislation, or required by any governmental agency or program whether federal, state or subdivisions thereof; any Vision Examination, or any corrective eyewear required by a Policyholder as a condition of employment;
- Safety eyewear;
- Plano (non-prescription) lenses;
- Non-prescription sunglasses;
- Two pair of glasses in lieu of bifocals;
- Services or materials provided by any other group benefit plan providing vision care;
- Services rendered after the date an Insured Person ceases to be covered under the Policy, except when Vision Materials ordered before coverage ended are delivered, and the services rendered to the Insured Person are within 31 days from the date of such order;
- Lost or broken lenses, frames, glasses, or contact lenses will not be replaced except in the next Benefit Frequency when Vision Materials would next become available.

Member receives a 20% discount on items not covered by the plan at EyeMed In-Network locations. Discount does not apply to EyeMed Provider's professional services or contact lenses. Plan discounts cannot be combined with any other discounts or promotional offers. In certain states, members may be required to pay the full retail rate and not the negotiated discount rate with certain participating providers. Please see EyeMed's online provider locator to determine which participating providers have agreed to the discounted rate. Discounts on vision materials may not be applicable to certain manufacturers' products EyeMed Vision Care reserves the right to make changes to the products on each tier and the member out-of-pocket costs.

Fixed pricing is reflective of brands at the listed product level. All providers are not required to carry all brands at all levels. Service and amounts listed above are subject to change at any time. Fees charged by a Provider for services other than a covered benefit must be paid in full by the Insured Person to the Provider. Such fees or materials are not covered under the Policy. Benefit allowances provide no remaining balance for future use within the same Benefit Frequency.

A Network Access Plan is available.

EyeMed Plan Number: 1000023

Broker Commissions:

Rates reflect net of commissions.

PROPOSAL CONDITIONS AND DISCLOSURES

Termination Provision for Vision:

By giving the Policyholder written notice at least 60 days in advance, we have the right to end coverage under this policy as follows:

1. We have the right to terminate all insurance under this Policy at the end of the Initial Term or on any Premium Due Date after participation drops below the following requirements:
 - a. When Members are not required to contribute to the cost of their own insurance, there must be 100% participation.
 - b. For groups of 2 to 9 Members, 100% participation is required in all circumstances for both Members and Eligible Dependents.
 - c. For groups of 10 or more Members where benefits are funded by the Members, 20% participation is required in all circumstances for both Members and Eligible Dependents. A minimum of 10 must enroll.
 - d. Participation must not drop 25% or more from the participation on the original effective date.
2. We can terminate all Dependent insurance under this Policy as of any Premium Due Date if there are less than 100% of the Members who have Dependent insurance when the Member is not required to contribute to its cost.

All insurance or any part may be ended on any date by mutual agreement between the Policyholder and Us. After the Initial Term, the Policy shall continue on a 12 month basis. It will automatically renew on the first day of each renewal period unless either We or the Policyholder has given to the other at least 60 days advance written notice of cancellation. Insurance will end as provided above without the consent of, or notice to, any Insured Dependent or Beneficiary.

Broker Compensation Disclosure Notice for Group Products:

- Your insurance or benefits advisor can offer you advice and guidance as you select the policy and provider most appropriate for your needs. At Unum we recognize the important role these professionals play in the sale of our products and services and offer them a variety of compensation programs. Your advisor can provide you with information about these programs as well as those available from other providers. We support disclosure of broker compensation so that customers can make an informed buying decision.
- Brokers may be eligible to receive Base Commissions as well as Supplemental Commissions from Unum.
- Unless you have agreed in writing to compensate the broker differently, Unum provides Base Commissions to all brokers in connection with the sale of an insurance policy. Base Commissions are a fixed percentage of the policy premium, and may include a one time, first year flat amount for each policy sold. Base Commissions are paid by Unum to the broker(s) on your policy. In some circumstances, broker(s) may be eligible to receive commissions on your policy even after a broker of record change has occurred.
- A broker may also qualify for Supplemental Commissions paid by Unum. For group insurance products, Supplemental Commissions may be paid as a fixed percentage of total eligible group insurance premiums. The Supplemental Commission rate depends on the total dollar amount of all eligible premiums or number of group policies that the broker had in force with Unum in the prior calendar year. The Supplemental Commission rate may range from 0% to 13.80% of total premium paid.
- Your broker may also be eligible to receive Supplemental Commissions on other insurance products, which may be calculated differently. The premium you pay is not impacted whether or not your broker receives Supplemental Commissions.
- If you would like additional information about the range of compensation programs our company offers for your group insurance policy or any other Unum insurance product, or if you want to speak to us directly about broker compensation, please call 1-800-ASK-UNUM (1-800-275-8686).

Proposal Conditions:

This proposal is under no circumstances a contract for the insurance coverage described within. If this proposal is accepted, a contract outlining the coverage will be issued. This proposal is based on census data received by Unum. Actual costs will be based on the final enrollment data of employees insured under the plan on its effective date. Quote assumes coverage of employees who are in active employment in the United States with the employer working the minimum hours for eligibility. Please contact your Unum representative to request a quote for coverage of any employees who do not fit this category. This quote will expire on the date listed on the first page and includes standard services only, unless otherwise expressly described herein. **Important Information Concerning the Sale of these Benefits:** State laws require that insurance brokers be licensed and appointed with the applicable Unum insurance subsidiary before engaging in the solicitation or sale of these benefits. Note that Unum cannot accept this business if the broker is not properly licensed and appointed before soliciting this proposal. Unum is prepared to help ensure compliance with these state regulations. Brokers who need to check their Unum appointment status should call 1-800-ASK-UNUM (1-800-275-8686). **Vision Plan Form Number: VI-2019**

Recently, there has been heightened attention on companies that promote “tax advantaged” wellness programs to help sell voluntary benefits. These offerings promise employers that they can use their payroll tax savings to pay for the wellness program, and that employees can use income and payroll tax savings to purchase voluntary benefits.

Unum’s position is that this practice is not in compliance with applicable laws and regulations. This means Unum will not offer any products in conjunction with such a wellness plan offering.

For additional guidance please consult your tax attorney and see the IRS Chief Counsel Memorandum 201703013, addressing the taxability of fixed indemnity payments from wellness programs at <https://www.irs.gov/pub/irs-wd/201703013.pdf>

PROPOSAL CONDITIONS AND DISCLOSURES

1. Employee Benefit Plan Review, "Group Accident & Health Surveys 1976-1990" (1977-1991); Gen Re, "U.S. Group Disability Market Surveys 1991-2013" (1992-2014); LIMRA, "U.S. Group Disability Insurance 2014-2016 Annual Sales and In Force" (2015-2017); LIMRA, "4Q 2017-2019 U.S. Workplace Disability Insurance Inforce" (2018-2020); LIMRA, "U.S. Workplace Disability In Force Report 4Q 2020-2021" (2021-2022) total group disability.
2. Fortune 100, 2021 and Unum Internal Data, 2022.
3. Unum internal data, 2022.

VISION INSURANCE PROVIDES LIMITED BENEFITS

The policy or its provisions may vary or be unavailable in some states. The policy has exclusions and limitations which may affect any benefits payable. See the actual policy or your Unum representative for specific provisions and details of availability

Vision plans are marketed by Unum and EyeMed, administered by First American Administrators and underwritten by Starmount Life Insurance Company, Baton Rouge, LA.

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SD-1143



OFFICE OF THE MAYOR
LA CROSSE

23-1173

October 3, 2023

I hereby approve the submitting of the attached Legislation "Resolution approving Unum for a voluntary employee paid vision plan, effective January 1, 2024." to the Finance and Personnel Committee, to be considered by the members thereof at their next committee meeting. This approval is given due to the time element necessitating consideration of the attached Legislation at the earliest possible date.

Mayor Mitch Reynolds



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-1174

Agenda Date: 10/5/2023

Version: 1

Status: New Business

In Control: Finance & Personnel Committee

File Type: Resolution

Agenda Number:

Resolution approving an agreement between the City of La Crosse and ASI Flex to provide third party administration services for the City's I.R.S. Section #125 Plan for a three (3) year term beginning January 1, 2024, through December 31, 2026.

AMENDED RESOLUTION

WHEREAS, the administrative services contract for third party administration of the City's Internal Revenue Service Section #125 Flexible Spending and Premium Reduction Plan expires on December 31, 2023; and

WHEREAS, the Human Resources Department sought proposals for third party administration services for the City's Internal Revenue Service Section #125 Flexible Spending and Premium Reduction Plan; and

WHEREAS, an open and competitive process was utilized to secure proposals from third party administrators of Internal Revenue Service Section #125 Flexible Spending and Premium Reduction Plans, and the recommendation of the Director of Human Resources is to select the proposal submitted by ASIFlex.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of La Crosse that the Revised 10.4.2023 Administrative Services Agreement between the City of La Crosse and ASIFlex for the period January 1, 2024, through December 31, 2026, is hereby approved.

BE IT FURTHER RESOLVED, that the Director of Human Resources and the Director of Finance are authorized to take all necessary steps to implement the attached Plan Services Agreement.

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (hereinafter called, the “**Agreement**”) is made and entered into as of October 3, 2023, by and between City of La Crosse (hereinafter called “**Client**”) and Application Software, Inc., dba ASI and ASIFlex (hereinafter called “**ASIFlex**”).

Background

Check applicable boxes

For Cafeteria Plan. Client has requested ASIFlex to provide administrative services for the following Benefit Programs, as described in Attachment A, offered under an Internal Revenue Code §125 Cafeteria Plan established by Client:

- Premium Payment Plan (PPP)
- Health Flexible Spending Arrangement (Health FSA)
- Dependent Care Assistance Program (DCAP)
- HSA Contribution Benefit

For Health Reimbursement Arrangements (HRA). Client has requested ASIFlex to provide administrative services for the Health Reimbursement Arrangement established under Revenue Ruling 2002-41 and Notice 2002-45 as described in Attachment A.

For Transportation Reimbursement Accounts (TRA). Client has requested ASIFlex to provide administrative services for the Transportation Reimbursement Account and/or Bicycle Commuting Expense Reimbursement Policy under Code §132(f) as described in Attachment A.

For LifeStyle Benefits Accounts (LSA). Client has requested ASIFlex to provide administrative services for the taxable LifeStyle Benefit Accounts (LSA) as described in Attachment A. LSA benefits are not intended to qualify for a tax exclusion under the Internal Revenue Code. Client agrees to comply with the provisions of Appendix B “Lifestyle Benefit Account (LSA) Compliance Considerations Appendix”.

The PPP, Health FSA, DCAP, LSA, and HSA Contribution Benefit will hereinafter be collectively referred to as the Program.

If services are provided for a Health FSA or HRA ASIFlex may be considered a “business associate” under HIPAA with regard to some of the programs. If applicable, there is a separate agreement between the Client and ASIFlex to document compliance with HIPAA's privacy, security, and electronic data interchange (EDI) requirements (Business Associate Agreement).

In consideration of the mutual promises and conditions contained in this Agreement, Client and ASIFlex agree as follows:

**Section 1
Effective Date and Term**

1.1 Effective Date

The effective date of this Agreement is January 1, 2024_(hereinafter called “**Effective Date**”).

1.2 Term

The term shall be three (3) years commencing on the Effective Date.

Section 2 Scope of Undertaking

2.1 Scope of Undertaking

Client has sole and final authority to control and manage the operation of the Program. ASIFlex is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of Client. ASIFlex and Client shall not be deemed partners, engaged in a joint venture, or governed by any legal relationship other than that of independent contractor.

ASIFlex does not assume any responsibility for the general policy design of the Program, the adequacy of its funding, or any act or omission, or breach of duty by Client. ASIFlex shall not in any way be deemed an insurer, underwriter, or guarantor with respect to any benefits payable under the Program. ASIFlex generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by Client under the Program.

Client is solely responsible for any applicable income and employment tax withholding as well as the associated W-2 and related reporting to the IRS and state agencies (as applicable) regarding any payments from any Account that are not excluded from gross income by the Internal Revenue Code and the regulations issued thereunder (as determined solely by the Client). ASIFlex and its Affiliates do not assume any responsibility for compliance with federal or state laws, including federal tax laws and regulations, applicable to the Client or any Employee Benefit Plan.

Except as otherwise expressly set forth herein, nothing herein shall be deemed to constitute ASIFlex as a party to the Program or to confer upon ASIFlex any authority or control respecting management of the Program, authority, or responsibility in connection with administration of the Program, or responsibility for the terms or validity of the Program. Nothing in this Agreement shall be deemed to impose upon ASIFlex any obligation to any employee of Client or any person who is participating in the Program (Participant).

2.2 Non-Discretionary Duties

Except as otherwise expressly set forth herein, the services to be performed by ASIFlex under this Agreement shall be ministerial in nature and will generally be performed in accordance with the terms of the Benefit Programs established by the Client.

2.3 Limited Fiduciary Duties (*Applies to Health FSA or HRA only*)

Notwithstanding the foregoing, pursuant to Section 405(c)(1) of ERISA, Client delegates to ASIFlex certain functions which might be deemed to be of a fiduciary nature, including authority to determine claims for benefits as set forth in Section 4, and to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of Client for the payment of Program benefits claims as set forth in Section 6, as further modified by Attachment A.

The parties agree that ASIFlex is fiduciary of the Program only to the limited extent necessary to perform such limited fiduciary duties as expressly delegated under this Agreement. ASIFlex shall not be deemed a fiduciary in connection with any other duty or responsibility in the administration of the Program.

Section 3 Client's Responsibilities

3.1 General Fiduciary Duties

Except as otherwise specifically delegated to ASIFlex in this Agreement, Client has the sole authority and responsibility for the Program and its operation, including the authority and responsibility for administering, construing, and interpreting the provisions of the Program and making all determinations thereunder. Client gives ASIFlex the authority to act on behalf of Client in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by Client and ASIFlex. Client is considered the Plan Administrator and Named Fiduciary of the Program benefits which are subject to ERISA.

3.2 Funding

Client shall promptly fund an account maintained for the payment of Program benefits as described in Section 6.

3.3 Information to ASIFlex

Upon request, Client agrees to provide ASIFlex with information necessary for ASIFlex's performance of duties and obligations under this Agreement, including information concerning the Program and the eligibility of individuals to participate in and receive Program benefits. ASIFlex shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the Client or its agents. Such information shall be provided to ASIFlex in the time and the manner agreed to by Client and ASIFlex. ASIFlex shall have no responsibility with regard to benefits paid in error due to Client's failure to timely update such information.

Client also agrees to provide ASIFlex with frequent updated reports summarizing eligibility data (Eligibility Reports). Unless otherwise agreed by Client and ASIFlex, the Eligibility Reports should be provided to ASIFlex by electronic medium. The Eligibility Reports shall specify the effective date for each Participant who is added to or terminated from participation in the Program.

Client shall be responsible for ensuring the accuracy of its Eligibility Reports and bears the burden of proof in any dispute with ASIFlex relating to the accuracy of any Eligibility Reports.

ASIFlex incurs no liability to Client or any Participant as a consequence of an inaccurate Eligibility Report. Additionally, ASIFlex is under no obligation to credit Client for any claims expenses or administrative fees incurred or paid to ASIFlex as a consequence of Client failing to review Eligibility Reports for accuracy.

ASIFlex shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information. Eligibility Reports are considered Protected Health Information (PHI) and, when transmitted by or maintained in electronic media shall be considered electronic PHI, and subject to the Privacy and Security Rules under HIPAA, and Section 5 of this Agreement.

3.4 Plan Documents

Client is responsible for the Program's compliance with all applicable federal and state laws and regulations and shall provide ASIFlex with all relevant documents, including but not limited to, the Program documents and any Program amendments. Client will notify ASIFlex of any changes to the Program at least 30 days before the effective date of such changes.

If requested by Client in Section 4.8, ASIFlex will provide sample plan documents and forms for review by Client and Client's legal counsel, including plan document/summary plan description, election forms, and other documents. ASIFlex will customize such documentation only to the extent to incorporate Client's responses to certain plan design questions submitted by ASIFlex. In addition, ASIFlex will provide sample document changes to reflect revisions in applicable legislation or regulations. Although ASIFlex has taken steps to ensure that its sample documents and forms are of high quality and generally comply with the applicable laws, it cannot be aware of all of the facts and circumstances that may apply to the Client or the Program.

Client acknowledges that ASIFlex is not providing tax or legal advice and that Client should ask its legal counsel to review such documents for legal and tax compliance. Client bears sole responsibility for determining the legal and tax status of the Program. Further, ASIFlex is not a law firm and has no authority to provide legal advice.

3.5 Liability for Claims

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of Client under the Program. Except for expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

3.6 Financial and Medical Records

In order to permit Client and/or ASIFlex to perform their obligations under this Agreement, personal financial records or medical records may be requested. If required by law or regulation, the Client must either, in accordance with applicable state and federal law:

- Notify each Participant and provide each Participant an opportunity to opt out (if required); or
- Obtain from each Participant written authorization for release of the requested records.

3.7 HIPAA Privacy

Client shall provide ASIFlex with the following documents, where required or applicable:

- Notice of Privacy Practices;
- Any subsequent changes to the Notice of Privacy Practices;
- Certification that Client amended the plan document as regulated by the Privacy Rule to permit disclosure of PHI to Client for plan administrative purposes;
- Certification that Client agrees to the conditions set forth in the plan amendment;
- Copies of any authorizations of Participants or beneficiaries to use or disclose PHI (and any later changes to or revocations of such authorizations);
- Notice of any restriction on the use or disclosure of PHI that Client agrees to under the Privacy Rule; and
- Notice of any requests that communications be sent to a Participant or beneficiary by an alternative means or at an alternative location that Client agrees to under the Privacy Rule.

Client shall not request ASIFlex to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by Client, except that ASIFlex may use or disclose PHI for purposes of Data Aggregation and the management and administrative activities of ASIFlex, as provided in Section 5 of this Agreement.

Section 4 ASIFlex's Responsibilities

4.1 Delegated Responsibilities

ASIFlex's responsibilities shall be as expressly delegated to ASIFlex in this Agreement (including the obligations listed in any Attachment to this Agreement) or any other written and signed Agreement between Client and ASIFlex. ASIFlex generally provides certain reimbursement and recordkeeping services, as described further below.

4.2 Service Delivery

ASIFlex agrees to provide customer service personnel by telephone during ASIFlex's normal business hours. ASIFlex also agrees to provide electronic administrative services 24 hours per day, 7 days per week. However, ASIFlex websites shall occasionally be unavailable in cases of required maintenance. Scheduled maintenance notices will be published in advance of closure.

ASIFlex will not be deemed in default of this Agreement, nor held responsible for any cessation, interruption, or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, acts of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

4.3 Benefits Payment

ASIFlex agrees to, on behalf of Client, operate under the express terms of this Agreement and the Program. ASIFlex makes the initial determination if persons covered by the Program (as described in the Eligibility Reports) are entitled to benefits under the Program and shall pay Program benefits in its usual and customary manner, to Participants as set forth in this Section 4.

Check this box if the following paragraph is applicable

- Client will be responsible for processing Prior Reimbursement Requests (including any run-out claims submitted after the Effective Date) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g., IRS substantiation) requirements;

OR *Check this box if the following paragraph is applicable*

- ASIFlex will be responsible for processing run-out claims submitted after the Effective Date and maintaining legally required records for such run-out claims.

4.4 Bonding

ASIFlex has, and will maintain, a fidelity bond and/or ERISA bond (where applicable) for all persons involved in collecting money or making claim payments, and all officers of the company. This bond covers the handling of Client's and Participants' money and must protect such money from losses by dishonesty, theft, forgery or alteration, and unexplained disappearance.

4.5 Reporting

ASIFlex agrees to make available to Client each month via electronic medium (unless otherwise agreed by the parties) a master report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts during the preceding month.

For those Program benefits subject to HIPAA, Client must provide certification that the plan document requires the Client to comply with applicable Privacy and Security Rules under HIPAA before ASIFlex will make available the reports provided for in this Section to the Client. ASIFlex agrees to also make available to Participants each month via electronic medium a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month.

For those Program benefits subject to HIPAA, Client is responsible for ensuring that any beneficiary of the Participant who submits a claim agrees to the disclosure of PHI to the Participant if required by the Privacy Rule.

4.6 Claims Appeals

ASIFlex agrees to refer to Client or its designee, Plan Administrator, and/or Named Fiduciary for the following:

- The second and final level of appeal of an adverse benefit determination; and
- Any class of claims Client may specify, including:
 - o Questions of eligibility or entitlement of the claimant for coverage under the Program;
 - o Questions with respect to the amount due; or
 - o Any other appeal.

4.7 Forfeited Funds

Any unclaimed benefit payments (e.g. uncashed benefit checks) are deemed forfeited.

Check this box if the following paragraph is applicable

- Client may use forfeited funds to offset reasonable administrative expenses.

OR Check this box if the following paragraph is applicable

- Upon approval of Client, ASIFlex shall tender any remaining forfeited funds (after payment of administrative expenses) to the state unclaimed property fund.

4.8 Additional Documents

Check this box if the following paragraph is applicable

- Client requests that ASIFlex furnish Client with Sample documents for review by Client with its legal counsel, for the creation of customized documentation for the Program to be approved and executed by Client, including summary plan description, plan document, and plan amendments; and sample administrative forms needed for ASIFlex to perform its duties under this Agreement.

OR Check this box if the following paragraph is applicable

- Client will be responsible for the creation and maintenance of its own plan documents, including summary plan description, plan document, and plan amendments. Client will provide ASIFlex with a copy of such documents for administration purposes.

4.9 Communication

ASIFlex agrees to provide development of certain communication information.

4.10 Recordkeeping

ASIFlex agrees to maintain for the duration of this Agreement the usual and customary books, records, and documents ASIFlex has prepared or received possession of in the performance of its duties hereunder. These books, records, and documents, including electronic records, are the property of Client, and Client has the right of continuing access to them during normal business hours at ASIFlex's offices with reasonable prior notice. If this Agreement terminates, ASIFlex may deliver, or at Client's request, will deliver all such books, records, and documents to Client, subject to ASIFlex's right to retain copies of any records it deems appropriate. Client shall be required to pay ASIFlex reasonable charges for transportation or duplication of such records.

4.11 Standard of Care; Erroneous Payments

ASIFlex shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If ASIFlex makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, ASIFlex shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, ASIFlex will not be liable for such payment, unless ASIFlex would otherwise be liable under another provision of this Agreement.

ASIFlex owes a duty of care only to the Client, which duty is one of reasonable care under the attendant circumstances. ASIFlex is not liable for any mistake of judgment or for any action taken in good faith unless such mistake or action results in a breach of such duty of care.

4.12 Notices to Client

ASIFlex shall provide to Client all notices (including any required opt-out notice) reflective of its privacy policies and practices as required by state and/or federal law (including the Gramm-Leach-Bliley Act).

Section 5 Compliance with Privacy and Security Rules under HIPAA

Applies to All Services, except DCAP, LSA, and TRA

5.1 Compliance with Privacy and Security Rules under HIPAA

Contemporaneously with this Agreement, Client and ASIFlex have entered into a Business Associate Agreement pursuant to HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

Section 6 Payment of Benefits and Funding Responsibility

Applies to Health FSA, DCAP, HRA, LSA, and TRA

6.1 Payment of Benefits

Client authorizes ASIFlex to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of Client for the payment of Program benefits. Each week or at such other interval as mutually agreed upon, ASIFlex will notify Client of the amount needed to pay approved benefit claims and Client shall pay or transfer into the bank account the amount needed for the payment of Program benefits. Client shall enter into such agreements and provide instructions to its bank as are necessary to implement this Section. ASIFlex has sole authority to provide whatever notifications, instructions, or directions are necessary to accomplish the disbursement of such Program funds to, or on behalf of, Participants in payment of approved claims.

6.2 Funding of Benefits

Funding for any payment on behalf of the Participants under the Program, including, but not limited to, all benefits to Participants in accordance with the Program, is the sole responsibility of Client, and Client agrees to accept liability for, and provide sufficient funds to satisfy, all payments to Participants under the Program, including claims for reimbursement for covered expenses, if such expenses are incurred and the claim is presented for payment during the terms of this Agreement.

6.3 Banking Arrangements

Client further represents and agrees that:

- Neither it nor any of its employees, directors, representatives, fiduciaries, or employee benefits plans (or any entity performing services for Client or such plans) nor any of its predecessors, successors, or assigns have represented, or will represent to any Participant or beneficiary of the Program, that a separate account, fund, or trust is being held on behalf of the Program that may be used to provide or secure benefits under the plan; and
- Client shall advise the Participants and beneficiaries of the Program that the benefits under the Program shall at all times be paid out of the general assets of the Client.

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of the Client under the Program. Except for expenses required for ASIFlex to be in the business of providing services under this Agreement and expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

6.4 Debit Card (If requested)

ASIFlex agrees to:

- Process debit card swipes reported to ASIFlex on behalf of the Client;
- Request receipt notification on all swipes not eligible for electronic adjudication under the current IRS guidelines;
- Report to the debit card provider any account reimbursements that are a result of activities mentioned above; and
- Request data from debit card providers each business day to ensure participants are properly reimbursed for their expenses.

Any interchange shared between the debit card provider and ASIFlex will be retained wholly by ASIFlex. Any fees charged to ASIFlex by the debit card provider shall be the responsibility of ASIFlex, unless noted in Attachment A of this Agreement. ASIFlex currently contracts with WEX Health for the ASIFlex Debit Card. Under this Agreement, ASIFlex reserves the right to change card providers during the year, providing at least 90 day notice to the Client.

Section 7 Indemnification

7.1 Indemnification by Client

Upon ASIFlex's adherence to the standard of care set forth in Section 4, Client shall indemnify ASIFlex and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees, or other obligations, resulting from, or arising out of, any act or omission of Client in connection with the performance of its duties hereunder. In addition, Client shall indemnify ASIFlex and hold it harmless from and against any liability, expense, demand, or other obligation, resulting from, or out of any premium charge, tax, or similar assessment (federal or state), for which the Program or Client is liable.

Client agrees to reimburse ASIFlex for all attorney's fees and costs incurred by ASIFlex as a result of any collection action taken by ASIFlex to recover overdue service charges required to be paid in accordance with this Agreement or any Attachment hereto.

7.2 Indemnification by ASIFlex

Upon Client's adherence to the standard of care set forth in Section 3, ASIFlex shall indemnify Client and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees, or other obligations, resulting from, or arising out of, any act or omission of ASIFlex in connection with the performance of its duties hereunder.

Section 8 Service Charges

8.1 Service Charges

The amounts of the monthly services charges of ASIFlex are described in the Attachments. It is ASIFlex's intention that the service charges will never increase during the life of the contract. However, if circumstances arise that require ASIFlex to change the amount of such service charges, then ASIFlex will provide at least 90 days written or electronic notice to Client. ASIFlex may also change the monthly service charges as of the date any substantial change is made in the Program.

8.2 Billing of Service Charges

All services charges of ASIFlex, whether provided for in this or any other Section, shall be billed separately from statements for payment of claims so that proper accounting can be made by Client of the respective amounts paid for claims and administrative expenses.

8.3 Payment of Service Charges

ASIFlex will determine all service charges under this Section and bill Client monthly. Alternatively, if the parties agree, ASIFlex may deduct payment for monthly service charges from the bank account maintained by Client as described in Section 6. Client shall make payment to ASIFlex within 10 business days of receipt of notice of the amount due, or such amount will automatically be deducted from the bank account maintained by Client as described in Section 6.

Section 9 General Provisions

9.1 Severability; Headings

If any term of this Agreement is declared invalid by a court, the invalid term will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.2 Compliance; Non-Waiver

Failure by Client or ASIFlex to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 9 below.

9.3 Assignment; Amendment

Neither Client nor ASIFlex can assign this Agreement without the other party's written consent. This Agreement may be amended only by written agreement of duly authorized officers of Client and ASIFlex.

9.4 Audits

Each party is authorized to perform audits of the records of payment to all Participants and other data specifically related to performance of the parties under this Agreement upon reasonable prior written notice to the other. Audits shall be performed during normal working hours. Audits may be performed by an

agent of either party provided such agent signs an acceptable confidentiality agreement and business associate agreement required by HIPAA and the HITECH Act. Each party agrees to provide reasonable assistance and information to the auditors. Each party also agrees to provide such additional information and reports as the other party shall reasonably request.

9.5 Non-Disclosure of Proprietary Information

- **General.** Client and ASIFlex each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each party has revealed and disclosed, and shall continue to reveal and disclose to the other, proprietary and/or confidential information of such party. Client and ASIFlex agree that each party shall:
 - o Keep such proprietary and/or confidential information of the other party in strict confidence;
 - o Not disclose proprietary and/or confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and
 - o Not use proprietary and/or confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).
- **Confidential Information Defined.** Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered confidential information for purposes hereof:
 - o If, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or
 - o If the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party.

For purposes of this Section, confidential information is any information in written, human-readable, machine-readable, or electronically recorded form (and legended as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records, and correspondence concerning the parties' respective businesses or finances. The terms and conditions of this Section 9 shall survive the termination of this Agreement.

9.6 Dispute Resolution; Arbitration

In the event of a dispute by either party related to this Agreement, the parties agree to first attempt to resolve such dispute by having the parties' Chief Executive Officers (or their designees) meet in person within 30 days of written notice of dispute issued by either party. In the event the dispute is not resolved after reasonable efforts by the Chief Executive Officers within such 30 day period, either party may then proceed to arbitration under this Section. All disputes, controversies, or claims arising out of or relating to the operation or interpretation of this Agreement shall be settled by arbitration before one arbitrator in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the Client and ASIFlex. Any award rendered by the arbitrator shall be final and binding upon the parties and judgment upon any such award may be entered in any court having jurisdiction thereof.

Arbitration shall take place in Missouri, or at a location mutually agreed upon by the parties. The fees and expenses of the arbitrator shall be borne equally by the parties. Each party shall pay its own fees and costs relating to any arbitral proceedings, including experts' and attorneys' fees. The arbitrator shall render his/her determination in a manner consistent with the terms of this Agreement, and the arbitrator shall not be entitled to award punitive or exemplary damages.

9.7 Notices and Communications

- **Notices.** All notices and communications required by this Agreement shall be in writing at the address(es) specified by each party. Such notices and communications shall be given by: (a) in-person delivery, (b) guaranteed overnight prepaid nationally-recognized courier service with tracing capabilities, (c) by first-class, registered, or certified mail, postage prepaid, and addressed to the party to be notified; or (d) pdf attachment to email with electronic confirmation of receipt by the receiving party. Either party may change its address for notice by giving notice to the other at the address provided below. All notices provided for herein shall be deemed given or made when received.
- **Addresses.**
 - o Client's address for notices as described above is:

ATTN: Audra Bloom
400 La Crosse Street
La Crosse, WI 54601
 - o ASIFlex's address for notices as described above is:

ATTN: John Riddick
201 W. Broadway, Suite 4-C
Columbia, MO 65203
- **Communications.** Client agrees that ASIFlex may communicate confidential, protected, privileged, or otherwise sensitive information to Client through a named contact designated by Client (such person hereinafter called "**Named Contact**") and specifically agrees to indemnify ASIFlex and hold it harmless:
 - o For any such communications directed to Client through the Named Contact attempted via facsimile, mail, telephone, e-mail, or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and
 - o From any claim for the improper use or disclosure of any PHI by ASIFlex if such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

9.8 Termination of Agreement

- **Automatic.** This Agreement automatically terminates on the earliest of the following:
 - o The effective date of any legislation which makes the Program and/or this Agreement illegal;
 - o The date Client or ASIFlex becomes insolvent, bankrupt, or subject to liquidation, receivership, or conservatorship; or

- o The termination date of the Program. This termination is subject to any Agreement between Client and ASIFlex regarding payment of benefits after the Program is terminated.
- **Optional.** This Agreement may be terminated as of the earliest of the following:
 - o By ASIFlex upon the failure of Client to pay any service charges within 10 business days after they are due and payable as provided in Section 8;
 - o By ASIFlex upon the failure of Client to perform its obligations, including its obligations as Plan Administrator and/or Named Fiduciary where applicable, as such terms are defined in ERISA, and in accordance with this Agreement, including the provisions of Section 3;
 - o By Client upon the failure of ASIFlex to perform its obligations in accordance with this Agreement, including the provisions of Section 4;
 - o By either Client or ASIFlex, as of the end of the term of this Agreement, by giving the other party 30 days written notice; or
 - o By either Client or ASIFlex, upon a material breach of the other party's duties under this Agreement, or upon non-material breaches of a recurrent nature, after 30 days notice in the event of a material breach, or 60 days notice in the event of a non-material breach of a recurrent nature, and the right to cure such breach by the breaching party.
- **Limited Continuation After Termination.** If the Program is terminated, Client and ASIFlex may mutually agree in writing that this Agreement shall continue for the purpose of payment of Program benefits, expenses, or claims incurred before the date of Program termination. In addition, Client and ASIFlex may mutually agree in writing that this Agreement shall continue for the purpose of payment of any claims for which requests for reimbursements have been received by ASIFlex before the date of such termination.

If this Agreement is continued in accordance with this subsection, Client shall pay the monthly service charges incurred during the period that this Agreement is so continued and a final termination fee equal to the final month's service charge.

- **Survival of Certain Provisions.** Termination of this Agreement does not terminate the rights or obligations of either party arising out of the period prior to such termination. The indemnity, confidentiality, privacy, and security provisions of this Agreement shall survive its termination.

9.9 The City of La Crosse's Standard Terms and Conditions

Client's Standard Terms and Conditions are attached hereto and are fully incorporated into this Agreement with full force and effect.

9.10 Complete Agreement; Governing Law

This Agreement (including the Attachments) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior Agreements and representations between the parties. This Agreement shall be construed, enforced, and governed by the laws of the State of Wisconsin.

In Witness Whereof, Client and ASIFlex have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

CLIENT:

City of La Crosse

Application Software, Inc.,

a Missouri corporation

By: _____
Rebecca A. Franzen
Director of Human Resources

By: _____
Ashlee Sorber
Vice President & General Counsel

Glossary

For the purposes of this Agreement, the following words and phrases have the meanings set forth below. Wherever appropriate, the singular shall include the plural and the plural shall include the singular.

Agreement means this ASIFlex Administrative Services Agreement, including all Attachments hereto.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

Client has the meaning given in the Recitals.

Code means the Internal Revenue Code of 1986, as amended.

DCAP has the meaning given in the Recitals.

Eligibility Reports has the meaning described in Section 3.

Client has the meaning given in the recitals.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Effective Date has the meaning given in Section 1.

Electronic PHI has the meaning assigned to such term under HIPAA.

Health FSA has the meaning given in the Recitals.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended.

LSA means a lifestyle spending account established by the Client for the purpose of reimbursing expenses that do not otherwise qualify for an exclusion from gross income by the Internal Revenue Code

Named Fiduciary means the named fiduciary as defined in ERISA §402(a)(1).

Participant has the meaning given in Section 2.

Plan means the Health FSA or DCAP, as applicable.

Plan Administrator means the administrator as defined in ERISA §3(16)(A).

Prior Administration means services arising before the Effective Date.

Prior Reimbursement Requests means claims incurred before the Effective Date.

Program has the meaning given in the Recitals.

Protected Health Information or **PHI** has the meaning assigned to such term under HIPAA.

**ATTACHMENT A
SERVICE CHARGES**

Capitalized terms used in this Attachment but not defined have the meanings given in the Agreement to which this Attachment is attached.

Client has established a Code §125 Cafeteria Plan to allow eligible employees who make a proper election to pay for their share of certain benefit plan coverage with pre-tax salary reductions. Client has delegated certain administrative responsibilities with respect to the selected benefit options. Depending upon the benefit options chosen by the Client, the Client has established:

- ✓ a Code §125 Cafeteria Plan under which a Code §105 Health FSA is offered;
- ✓ a Code §125 Cafeteria Plan under which a Code §129 Dependent Care Assistance Program is offered;

As set forth in Section 8, the applicable service charges shall be as follows:

Standard Services Charges*	Cost
FSA PPPM** Service Charge	<u>\$2.76</u>
HRA PPPM Service Charge	
TRA PPPM Service Charge	
LSA PPPM Service Charge	

Additional Service Charges	Cost
Set-Up Fee	Waived
Sample Documents and Forms	Included at no charge
Staff Training	Included at no charge
Online Enrollment	Included at no charge
Open Enrollment Meetings – Notes:	\$250 per day, plus travel expenses
Non-discrimination Testing (Must be requested by Client)	Included at no charge
Form 5500 Preparation (Must be requested by Client)	Included at no charge
Debit Card (Must be requested by Client)	Included at no charge

***There is a \$75.00 per month minimum service charge.**

**PPPM = per participant per month

If the Client terminates the services, there will be a charge for a runoff period, should the Client choose to request one. This charge will be negotiated at the time of termination.

Services Included

Client is responsible for all legal requirements and administrative obligations with regard to the benefit options selected, except for the following administrative duties specifically delegated to ASIFlex:

- ASIFlex shall make available (by electronic medium and paper copy) enrollment forms and instructions.
- Upon receiving instructions from Client with regard to a Participant's change in status or other event that permits an election change under IRS regulations, ASIFlex shall make the requested change in the Participant's election as soon as possible.
- If requested, ASIFlex shall prepare the information necessary to enable Client to satisfy its Form 5500 filing obligation with regard to the Health FSA options chosen by Client. Client shall be responsible for reviewing the information provided by ASIFlex to ensure its accuracy, and Client shall prepare and submit any Form 5500.
- If requested, ASIFlex shall assist Client in preparing preliminary, mid-year, and final nondiscrimination tests for the PPP, Health FSA, DCAP, and HRA options chosen by Client:
 - o Key employee concentration testing required under Code §125;
 - o The 55% average benefits test required under Code §129; and
 - o The 25% shareholder concentration test required under Code §129.
- ASIFlex shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due normally within 3 days, but in no case later than within 30 business days, of the day on which ASIFlex receives the claim. Benefit payments shall be made by check or ACH payable to the Participant. Claims of less than \$25.00 may be carried forward and aggregated with future claims until the total amount is equal to or greater than \$25.00, except that any remaining amount shall be paid after the end of the Plan Year without regard to the \$25.00 threshold.
- ASIFlex shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim. ASIFlex shall follow the requirements of ERISA with regard to denial of claims.
- ASIFlex shall provide its standard reporting package for exchanging information.

Services Not Included

- Client's compliance with COBRA portability provisions (unless specifically selected within the Agreement).
- Determining whether Client's PPP, Health FSA, DCAP, HRA, LSA, and TRA documents are in compliance with the Code or any other applicable state, federal, or local statutes or regulations.

- Determining if and when an event has occurred under the IRS permitted election change regulations such that a change in election is permitted under the PPP, Health FSA, and DCAP.
- Client’s responsibility for the determination on the second and any final level of appeal.

CLIENT:
City of La Crosse

Application Software, Inc.,
a Missouri corporation

By: _____
Rebecca A. Franzen
Director of Human Resources

By: _____
Ashlee Sorber
Vice President & General Counsel

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 \$2,000,000.00 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 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 depot 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 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: 10-07-08

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (hereinafter called, the “Agreement”) is made and entered into as of October 3, 2023, by and between City of La Crosse (hereinafter called “Client”) and Application Software, Inc., dba ASI and ASIFlex (hereinafter called “ASIFlex”).

Background

Check applicable boxes

For Cafeteria Plan. Client has requested ASIFlex to provide administrative services for the following Benefit Programs, as described in Attachment A, offered under an Internal Revenue Code §125 Cafeteria Plan established by Client:

- Premium Payment Plan (PPP)
- Health Flexible Spending Arrangement (Health FSA)
- Dependent Care Assistance Program (DCAP)
- HSA Contribution Benefit

For Health Reimbursement Arrangements (HRA). Client has requested ASIFlex to provide administrative services for the Health Reimbursement Arrangement established under Revenue Ruling 2002-41 and Notice 2002-45 as described in Attachment A.

For Transportation Reimbursement Accounts (TRA). Client has requested ASIFlex to provide administrative services for the Transportation Reimbursement Account and/or Bicycle Commuting Expense Reimbursement Policy under Code §132(f) as described in Attachment A.

For LifeStyle Benefits Accounts (LSA). Client has requested ASIFlex to provide administrative services for the taxable LifeStyle Benefit Accounts (LSA) as described in Attachment A. LSA benefits are not intended to qualify for a tax exclusion under the Internal Revenue Code. Client agrees to comply with the provisions of Appendix B “Lifestyle Benefit Account (LSA) Compliance Considerations Appendix”.

The PPP, Health FSA, DCAP, LSA, and HSA Contribution Benefit will hereinafter be collectively referred to as the Program.

If services are provided for a Health FSA or HRA ASIFlex may be considered a “business associate” under HIPAA with regard to some of the programs. If applicable, there is a separate agreement between the Client and ASIFlex to document compliance with HIPAA's privacy, security, and electronic data interchange (EDI) requirements (Business Associate Agreement).

In consideration of the mutual promises and conditions contained in this Agreement, Client and ASIFlex agree as follows:

Section 1 Effective Date and Term

1.1 Effective Date

The effective date of this Agreement is January 1, 2024_(hereinafter called “Effective Date”).

1.2 Term

The term shall be three (3) years commencing on the Effective Date.

Section 2 Scope of Undertaking

2.1 Scope of Undertaking

Client has sole and final authority to control and manage the operation of the Program. ASIFlex is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of Client. ASIFlex and Client shall not be deemed partners, engaged in a joint venture, or governed by any legal relationship other than that of independent contractor.

ASIFlex does not assume any responsibility for the general policy design of the Program, the adequacy of its funding, or any act or omission, or breach of duty by Client. ASIFlex shall not in any way be deemed an insurer, underwriter, or guarantor with respect to any benefits payable under the Program. ASIFlex generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by Client under the Program.

Client is solely responsible for any applicable income and employment tax withholding as well as the associated W-2 and related reporting to the IRS and state agencies (as applicable) regarding any payments from any Account that are not excluded from gross income by the Internal Revenue Code and the regulations issued thereunder (as determined solely by the Client). ASIFlex and its Affiliates do not assume any responsibility for compliance with federal or state laws, including federal tax laws and regulations, applicable to the Client or any Employee Benefit Plan.

Except as otherwise expressly set forth herein, nothing herein shall be deemed to constitute ASIFlex as a party to the Program or to confer upon ASIFlex any authority or control respecting management of the Program, authority, or responsibility in connection with administration of the Program, or responsibility for the terms or validity of the Program. Nothing in this Agreement shall be deemed to impose upon ASIFlex any obligation to any employee of Client or any person who is participating in the Program (Participant).

2.2 Non-Discretionary Duties

Except as otherwise expressly set forth herein, the services to be performed by ASIFlex under this Agreement shall be ministerial in nature and will generally be performed in accordance with the terms of the Benefit Programs established by the Client.

2.3 Limited Fiduciary Duties (*Applies to Health FSA or HRA only*)

Notwithstanding the foregoing, pursuant to Section 405(c)(1) of ERISA, Client delegates to ASIFlex certain functions which might be deemed to be of a fiduciary nature, including authority to determine claims for benefits as set forth in Section 4, and to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of Client for the payment of Program benefits claims as set forth in Section 6, as further modified by Attachment A.

The parties agree that ASIFlex is fiduciary of the Program only to the limited extent necessary to perform such limited fiduciary duties as expressly delegated under this Agreement. ASIFlex shall not be deemed a fiduciary in connection with any other duty or responsibility in the administration of the Program.

Section 3 Client's Responsibilities

3.1 General Fiduciary Duties

Except as otherwise specifically delegated to ASIFlex in this Agreement, Client has the sole authority and responsibility for the Program and its operation, including the authority and responsibility for administering, construing, and interpreting the provisions of the Program and making all determinations thereunder. Client gives ASIFlex the authority to act on behalf of Client in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by Client and ASIFlex. Client is considered the Plan Administrator and Named Fiduciary of the Program benefits which are subject to ERISA.

3.2 Funding

Client shall promptly fund an account maintained for the payment of Program benefits as described in Section 6.

3.3 Information to ASIFlex

Upon request, Client agrees to provide ASIFlex with information necessary for ASIFlex's performance of duties and obligations under this Agreement, including information concerning the Program and the eligibility of individuals to participate in and receive Program benefits. ASIFlex shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the Client or its agents. Such information shall be provided to ASIFlex in the time and the manner agreed to by Client and ASIFlex. ASIFlex shall have no responsibility with regard to benefits paid in error due to Client's failure to timely update such information.

Client also agrees to provide ASIFlex with frequent updated reports summarizing eligibility data (Eligibility Reports). Unless otherwise agreed by Client and ASIFlex, the Eligibility Reports should be provided to ASIFlex by electronic medium. The Eligibility Reports shall specify the effective date for each Participant who is added to or terminated from participation in the Program.

Client shall be responsible for ensuring the accuracy of its Eligibility Reports and bears the burden of proof in any dispute with ASIFlex relating to the accuracy of any Eligibility Reports.

ASIFlex incurs no liability to Client or any Participant as a consequence of an inaccurate Eligibility Report. Additionally, ASIFlex is under no obligation to credit Client for any claims expenses or administrative fees incurred or paid to ASIFlex as a consequence of Client failing to review Eligibility Reports for accuracy.

ASIFlex shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information. Eligibility Reports are considered Protected Health Information (PHI) and, when transmitted by or maintained in electronic media shall be considered electronic PHI, and subject to the Privacy and Security Rules under HIPAA, and Section 5 of this Agreement.

3.4 Plan Documents

Client is responsible for the Program's compliance with all applicable federal and state laws and regulations and shall provide ASIFlex with all relevant documents, including but not limited to, the Program documents and any Program amendments. Client will notify ASIFlex of any changes to the Program at least 30 days before the effective date of such changes.

If requested by Client in Section 4.8, ASIFlex will provide sample plan documents and forms for review by Client and Client's legal counsel, including plan document/summary plan description, election forms, and other documents. ASIFlex will customize such documentation only to the extent to incorporate Client's responses to certain plan design questions submitted by ASIFlex. In addition, ASIFlex will provide sample document changes to reflect revisions in applicable legislation or regulations. Although ASIFlex has taken steps to ensure that its sample documents and forms are of high quality and generally comply with the applicable laws, it cannot be aware of all of the facts and circumstances that may apply to the Client or the Program.

Client acknowledges that ASIFlex is not providing tax or legal advice and that Client should ask its legal counsel to review such documents for legal and tax compliance. Client bears sole responsibility for determining the legal and tax status of the Program. Further, ASIFlex is not a law firm and has no authority to provide legal advice.

3.5 Liability for Claims

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of Client under the Program. Except for expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

3.6 Financial and Medical Records

In order to permit Client and/or ASIFlex to perform their obligations under this Agreement, personal financial records or medical records may be requested. If required by law or regulation, the Client must either, in accordance with applicable state and federal law:

- Notify each Participant and provide each Participant an opportunity to opt out (if required); or
- Obtain from each Participant written authorization for release of the requested records.

3.7 HIPAA Privacy

Client shall provide ASIFlex with the following documents, where required or applicable:

- Notice of Privacy Practices;
- Any subsequent changes to the Notice of Privacy Practices;
- Certification that Client amended the plan document as regulated by the Privacy Rule to permit disclosure of PHI to Client for plan administrative purposes;
- Certification that Client agrees to the conditions set forth in the plan amendment;
- Copies of any authorizations of Participants or beneficiaries to use or disclose PHI (and any later changes to or revocations of such authorizations);
- Notice of any restriction on the use or disclosure of PHI that Client agrees to under the Privacy Rule; and
- Notice of any requests that communications be sent to a Participant or beneficiary by an alternative means or at an alternative location that Client agrees to under the Privacy Rule.

Client shall not request ASIFlex to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by Client, except that ASIFlex may use or disclose PHI for purposes of Data Aggregation and the management and administrative activities of ASIFlex, as provided in Section 5 of this Agreement.

Section 4 ASIFlex's Responsibilities

4.1 Delegated Responsibilities

ASIFlex's responsibilities shall be as expressly delegated to ASIFlex in this Agreement (including the obligations listed in any Attachment to this Agreement) or any other written and signed Agreement between Client and ASIFlex. ASIFlex generally provides certain reimbursement and recordkeeping services, as described further below.

4.2 Service Delivery

ASIFlex agrees to provide customer service personnel by telephone during ASIFlex's normal business hours. ASIFlex also agrees to provide electronic administrative services 24 hours per day, 7 days per week. However, ASIFlex websites shall occasionally be unavailable in cases of required maintenance. Scheduled maintenance notices will be published in advance of closure.

ASIFlex will not be deemed in default of this Agreement, nor held responsible for any cessation, interruption, or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, acts of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

4.3 Benefits Payment

ASIFlex agrees to, on behalf of Client, operate under the express terms of this Agreement and the Program. ASIFlex makes the initial determination if persons covered by the Program (as described in the Eligibility Reports) are entitled to benefits under the Program and shall pay Program benefits in its usual and customary manner, to Participants as set forth in this Section 4.

Check this box if the following paragraph is applicable

- Client will be responsible for processing Prior Reimbursement Requests (including any run-out claims submitted after the Effective Date) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g., IRS substantiation) requirements;

OR *Check this box if the following paragraph is applicable*

- ASIFlex will be responsible for processing run-out claims submitted after the Effective Date and maintaining legally required records for such run-out claims.

4.4 Bonding

ASIFlex has, and will maintain, a fidelity bond and/or ERISA bond (where applicable) for all persons involved in collecting money or making claim payments, and all officers of the company. This bond covers the handling of Client's and Participants' money and must protect such money from losses by dishonesty, theft, forgery or alteration, and unexplained disappearance.

4.5 Reporting

ASIFlex agrees to make available to Client each month via electronic medium (unless otherwise agreed by the parties) a master report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts during the preceding month.

For those Program benefits subject to HIPAA, Client must provide certification that the plan document requires the Client to comply with applicable Privacy and Security Rules under HIPAA before ASIFlex will make available the reports provided for in this Section to the Client. ASIFlex agrees to also make available to Participants each month via electronic medium a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month.

For those Program benefits subject to HIPAA, Client is responsible for ensuring that any beneficiary of the Participant who submits a claim agrees to the disclosure of PHI to the Participant if required by the Privacy Rule.

4.6 Claims Appeals

ASIFlex agrees to refer to Client or its designee, Plan Administrator, and/or Named Fiduciary for the following:

- The second and final level of appeal of an adverse benefit determination; and
- Any class of claims Client may specify, including:
 - o Questions of eligibility or entitlement of the claimant for coverage under the Program;
 - o Questions with respect to the amount due; or
 - o Any other appeal.

4.7 Forfeited Funds

Any unclaimed benefit payments (e.g. uncashed benefit checks) are deemed forfeited.

Check this box if the following paragraph is applicable

- Client may use forfeited funds to offset reasonable administrative expenses.

OR Check this box if the following paragraph is applicable

- Upon approval of Client, ASIFlex shall tender any remaining forfeited funds (after payment of administrative expenses) to the state unclaimed property fund.

4.8 Additional Documents

Check this box if the following paragraph is applicable

- Client requests that ASIFlex furnish Client with Sample documents for review by Client with its legal counsel, for the creation of customized documentation for the Program to be approved and executed by Client, including summary plan description, plan document, and plan amendments; and sample administrative forms needed for ASIFlex to perform its duties under this Agreement.

OR Check this box if the following paragraph is applicable

- Client will be responsible for the creation and maintenance of its own plan documents, including summary plan description, plan document, and plan amendments. Client will provide ASIFlex with a copy of such documents for administration purposes.

4.9 Communication

ASIFlex agrees to provide development of certain communication information.

4.10 Recordkeeping

ASIFlex agrees to maintain for the duration of this Agreement the usual and customary books, records, and documents ASIFlex has prepared or received possession of in the performance of its duties hereunder. These books, records, and documents, including electronic records, are the property of Client, and Client has the right of continuing access to them during normal business hours at ASIFlex's offices with reasonable prior notice. If this Agreement terminates, ASIFlex may deliver, or at Client's request, will deliver all such books, records, and documents to Client, subject to ASIFlex's right to retain copies of any records it deems appropriate. Client shall be required to pay ASIFlex reasonable charges for transportation or duplication of such records.

4.11 Standard of Care; Erroneous Payments

ASIFlex shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If ASIFlex makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, ASIFlex shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, ASIFlex will not be liable for such payment, unless ASIFlex would otherwise be liable under another provision of this Agreement.

ASIFlex owes a duty of care only to the Client, which duty is one of reasonable care under the attendant circumstances. ASIFlex is not liable for any mistake of judgment or for any action taken in good faith unless such mistake or action results in a breach of such duty of care.

4.12 Notices to Client

ASIFlex shall provide to Client all notices (including any required opt-out notice) reflective of its privacy policies and practices as required by state and/or federal law (including the Gramm-Leach-Bliley Act).

Section 5 Compliance with Privacy and Security Rules under HIPAA

Applies to All Services, except DCAP, LSA, and TRA

5.1 Compliance with Privacy and Security Rules under HIPAA

Contemporaneously with this Agreement, Client and ASIFlex have entered into a Business Associate Agreement pursuant to HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

Section 6 Payment of Benefits and Funding Responsibility

Applies to Health FSA, DCAP, HRA, LSA, and TRA

6.1 Payment of Benefits

Client authorizes ASIFlex to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of Client for the payment of Program benefits. Each week or at such other interval as mutually agreed upon, ASIFlex will notify Client of the amount needed to pay approved benefit claims and Client shall pay or transfer into the bank account the amount needed for the payment of Program benefits. Client shall enter into such agreements and provide instructions to its bank as are necessary to implement this Section. ASIFlex has sole authority to provide whatever notifications, instructions, or directions are necessary to accomplish the disbursement of such Program funds to, or on behalf of, Participants in payment of approved claims.

6.2 Funding of Benefits

Funding for any payment on behalf of the Participants under the Program, including, but not limited to, all benefits to Participants in accordance with the Program, is the sole responsibility of Client, and Client agrees to accept liability for, and provide sufficient funds to satisfy, all payments to Participants under the Program, including claims for reimbursement for covered expenses, if such expenses are incurred and the claim is presented for payment during the terms of this Agreement.

6.3 Banking Arrangements

Client further represents and agrees that:

- Neither it nor any of its employees, directors, representatives, fiduciaries, or employee benefits plans (or any entity performing services for Client or such plans) nor any of its predecessors, successors, or assigns have represented, or will represent to any Participant or beneficiary of the Program, that a separate account, fund, or trust is being held on behalf of the Program that may be used to provide or secure benefits under the plan; and
- Client shall advise the Participants and beneficiaries of the Program that the benefits under the Program shall at all times be paid out of the general assets of the Client.

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of the Client under the Program. Except for expenses required for ASIFlex to be in the business of providing services under this Agreement and expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

6.4 Debit Card (If requested)

ASIFlex agrees to:

- Process debit card swipes reported to ASIFlex on behalf of the Client;
- Request receipt notification on all swipes not eligible for electronic adjudication under the current IRS guidelines;
- Report to the debit card provider any account reimbursements that are a result of activities mentioned above; and
- Request data from debit card providers each business day to ensure participants are properly reimbursed for their expenses.

Any interchange shared between the debit card provider and ASIFlex will be retained wholly by ASIFlex. Any fees charged to ASIFlex by the debit card provider shall be the responsibility of ASIFlex, unless noted in Attachment A of this Agreement. ASIFlex currently contracts with WEX Health for the ASIFlex Debit Card. Under this Agreement, ASIFlex reserves the right to change card providers during the year, providing at least 90 day notice to the Client.

Section 7 Indemnification

7.1 Indemnification by Client

Upon ASIFlex's adherence to the standard of care set forth in Section 4, Client shall indemnify ASIFlex and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees, or other obligations, resulting from, or arising out of, any act or omission of Client in connection with the performance of its duties hereunder. In addition, Client shall indemnify ASIFlex and hold it harmless from and against any liability, expense, demand, or other obligation, resulting from, or out of any premium charge, tax, or similar assessment (federal or state), for which the Program or Client is liable.

Client agrees to reimburse ASIFlex for all attorney's fees and costs incurred by ASIFlex as a result of any collection action taken by ASIFlex to recover overdue service charges required to be paid in accordance with this Agreement or any Attachment hereto.

7.2 Indemnification by ASIFlex

Upon Client's adherence to the standard of care set forth in Section 3, ASIFlex shall indemnify Client and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees, or other obligations, resulting from, or arising out of, any act or omission of ASIFlex in connection with the performance of its duties hereunder.

Section 8 Service Charges

8.1 Service Charges

The amounts of the monthly services charges of ASIFlex are described in the Attachments. It is ASIFlex's intention that the service charges will never increase during the life of the contract. However, if circumstances arise that require ASIFlex to change the amount of such service charges, then ASIFlex will provide at least 90 days written or electronic notice to Client. ASIFlex may also change the monthly service charges as of the date any substantial change is made in the Program.

8.2 Billing of Service Charges

All services charges of ASIFlex, whether provided for in this or any other Section, shall be billed separately from statements for payment of claims so that proper accounting can be made by Client of the respective amounts paid for claims and administrative expenses.

8.3 Payment of Service Charges

ASIFlex will determine all service charges under this Section and bill Client monthly. Alternatively, if the parties agree, ASIFlex may deduct payment for monthly service charges from the bank account maintained by Client as described in Section 6. Client shall make payment to ASIFlex within 10 business days of receipt of notice of the amount due, or such amount will automatically be deducted from the bank account maintained by Client as described in Section 6.

Section 9 General Provisions

9.1 Severability; Headings

If any term of this Agreement is declared invalid by a court, the invalid term will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.2 Compliance; Non-Waiver

Failure by Client or ASIFlex to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 9 below.

9.3 Assignment; Amendment

Neither Client nor ASIFlex can assign this Agreement without the other party's written consent. This Agreement may be amended only by written agreement of duly authorized officers of Client and ASIFlex.

9.4 Audits

Each party is authorized to perform audits of the records of payment to all Participants and other data specifically related to performance of the parties under this Agreement upon reasonable prior written notice to the other. Audits shall be performed during normal working hours. Audits may be performed by an

agent of either party provided such agent signs an acceptable confidentiality agreement and business associate agreement required by HIPAA and the HITECH Act. Each party agrees to provide reasonable assistance and information to the auditors. Each party also agrees to provide such additional information and reports as the other party shall reasonably request.

9.5 Non-Disclosure of Proprietary Information

- **General.** Client and ASIFlex each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each party has revealed and disclosed, and shall continue to reveal and disclose to the other, proprietary and/or confidential information of such party. Client and ASIFlex agree that each party shall:
 - o Keep such proprietary and/or confidential information of the other party in strict confidence;
 - o Not disclose proprietary and/or confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and
 - o Not use proprietary and/or confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).
- **Confidential Information Defined.** Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered confidential information for purposes hereof:
 - o If, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or
 - o If the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party.

For purposes of this Section, confidential information is any information in written, human-readable, machine-readable, or electronically recorded form (and legended as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records, and correspondence concerning the parties' respective businesses or finances. The terms and conditions of this Section 9 shall survive the termination of this Agreement.

9.6 Dispute Resolution; Arbitration

In the event of a dispute by either party related to this Agreement, the parties agree to first attempt to resolve such dispute by having the parties' Chief Executive Officers (or their designees) meet in person within 30 days of written notice of dispute issued by either party. In the event the dispute is not resolved after reasonable efforts by the Chief Executive Officers within such 30 day period, either party may then proceed to arbitration under this Section. All disputes, controversies, or claims arising out of or relating to the operation or interpretation of this Agreement shall be settled by arbitration before one arbitrator in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the Client and ASIFlex. Any award rendered by the arbitrator shall be final and binding upon the parties and judgment upon any such award may be entered in any court having jurisdiction thereof.

Arbitration shall take place in Missouri, or at a location mutually agreed upon by the parties. The fees and expenses of the arbitrator shall be borne equally by the parties. Each party shall pay its own fees and costs relating to any arbitral proceedings, including experts' and attorneys' fees. The arbitrator shall render his/her determination in a manner consistent with the terms of this Agreement, and the arbitrator shall not be entitled to award punitive or exemplary damages.

9.7 Notices and Communications

- **Notices.** All notices and communications required by this Agreement shall be in writing at the address(es) specified by each party. Such notices and communications shall be given by: (a) in-person delivery, (b) guaranteed overnight prepaid nationally-recognized courier service with tracing capabilities, (c) by first-class, registered, or certified mail, postage prepaid, and addressed to the party to be notified; or (d) pdf attachment to email with electronic confirmation of receipt by the receiving party. Either party may change its address for notice by giving notice to the other at the address provided below. All notices provided for herein shall be deemed given or made when received.
- **Addresses.**
 - o Client's address for notices as described above is:

ATTN: Audra Bloom
400 La Crosse Street
La Crosse, WI 54601
 - o ASIFlex's address for notices as described above is:

ATTN: John Riddick
201 W. Broadway, Suite 4-C
Columbia, MO 65203
- **Communications.** Client agrees that ASIFlex may communicate confidential, protected, privileged, or otherwise sensitive information to Client through a named contact designated by Client (such person hereinafter called "**Named Contact**") and specifically agrees to indemnify ASIFlex and hold it harmless:
 - o For any such communications directed to Client through the Named Contact attempted via facsimile, mail, telephone, e-mail, or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and
 - o From any claim for the improper use or disclosure of any PHI by ASIFlex if such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

9.8 Termination of Agreement

- **Automatic.** This Agreement automatically terminates on the earliest of the following:
 - o The effective date of any legislation which makes the Program and/or this Agreement illegal;
 - o The date Client or ASIFlex becomes insolvent, bankrupt, or subject to liquidation, receivership, or conservatorship; or

- o The termination date of the Program. This termination is subject to any Agreement between Client and ASIFlex regarding payment of benefits after the Program is terminated.
- **Optional.** This Agreement may be terminated as of the earliest of the following:
 - o By ASIFlex upon the failure of Client to pay any service charges within 10 business days after they are due and payable as provided in Section 8;
 - o By ASIFlex upon the failure of Client to perform its obligations, including its obligations as Plan Administrator and/or Named Fiduciary where applicable, as such terms are defined in ERISA, and in accordance with this Agreement, including the provisions of Section 3;
 - o By Client upon the failure of ASIFlex to perform its obligations in accordance with this Agreement, including the provisions of Section 4;
 - o By either Client or ASIFlex, as of the end of the term of this Agreement, by giving the other party 30 days written notice; or
 - o By either Client or ASIFlex, upon a material breach of the other party's duties under this Agreement, or upon non-material breaches of a recurrent nature, after 30 days notice in the event of a material breach, or 60 days notice in the event of a non-material breach of a recurrent nature, and the right to cure such breach by the breaching party.
- **Limited Continuation After Termination.** If the Program is terminated, Client and ASIFlex may mutually agree in writing that this Agreement shall continue for the purpose of payment of Program benefits, expenses, or claims incurred before the date of Program termination. In addition, Client and ASIFlex may mutually agree in writing that this Agreement shall continue for the purpose of payment of any claims for which requests for reimbursements have been received by ASIFlex before the date of such termination.

If this Agreement is continued in accordance with this subsection, Client shall pay the monthly service charges incurred during the period that this Agreement is so continued and a final termination fee equal to the final month's service charge.

- **Survival of Certain Provisions.** Termination of this Agreement does not terminate the rights or obligations of either party arising out of the period prior to such termination. The indemnity, confidentiality, privacy, and security provisions of this Agreement shall survive its termination.

9.9 The City of La Crosse's Standard Terms and Conditions

Client's Standard Terms and Conditions are attached hereto and are fully incorporated into this Agreement with full force and effect.

9.10 Complete Agreement; Governing Law

This Agreement (including the Attachments) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior Agreements and representations between the parties. This Agreement shall be construed, enforced, and governed by the laws of the State of Wisconsin.

In Witness Whereof, Client and ASIFlex have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

CLIENT:

City of La Crosse

Application Software, Inc.,

a Missouri corporation

By: _____
Rebecca A. Franzen
Director of Human Resources

By: _____
Ashlee Sorber
Vice President & General Counsel

Glossary

For the purposes of this Agreement, the following words and phrases have the meanings set forth below. Wherever appropriate, the singular shall include the plural and the plural shall include the singular.

Agreement means this ASIFlex Administrative Services Agreement, including all Attachments hereto.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

Client has the meaning given in the Recitals.

Code means the Internal Revenue Code of 1986, as amended.

DCAP has the meaning given in the Recitals.

Eligibility Reports has the meaning described in Section 3.

Client has the meaning given in the recitals.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Effective Date has the meaning given in Section 1.

Electronic PHI has the meaning assigned to such term under HIPAA.

Health FSA has the meaning given in the Recitals.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended.

LSA means a lifestyle spending account established by the Client for the purpose of reimbursing expenses that do not otherwise qualify for an exclusion from gross income by the Internal Revenue Code

Named Fiduciary means the named fiduciary as defined in ERISA §402(a)(1).

Participant has the meaning given in Section 2.

Plan means the Health FSA or DCAP, as applicable.

Plan Administrator means the administrator as defined in ERISA §3(16)(A).

Prior Administration means services arising before the Effective Date.

Prior Reimbursement Requests means claims incurred before the Effective Date.

Program has the meaning given in the Recitals.

Protected Health Information or **PHI** has the meaning assigned to such term under HIPAA.

**ATTACHMENT A
SERVICE CHARGES**

Capitalized terms used in this Attachment but not defined have the meanings given in the Agreement to which this Attachment is attached.

Client has established a Code §125 Cafeteria Plan to allow eligible employees who make a proper election to pay for their share of certain benefit plan coverage with pre-tax salary reductions. Client has delegated certain administrative responsibilities with respect to the selected benefit options. Depending upon the benefit options chosen by the Client, the Client has established:

- ✓ a Code §125 Cafeteria Plan under which a Code §105 Health FSA is offered;
- ✓ a Code §125 Cafeteria Plan under which a Code §129 Dependent Care Assistance Program is offered;

As set forth in Section 8, the applicable service charges shall be as follows:

Standard Services Charges*	Cost
FSA PPPM** Service Charge	<u>\$2.76</u>
HRA PPPM Service Charge	
TRA PPPM Service Charge	
LSA PPPM Service Charge	

Additional Service Charges	Cost
Set-Up Fee	Waived
Sample Documents and Forms	Included at no charge
Staff Training	Included at no charge
Online Enrollment	Included at no charge
Open Enrollment Meetings – Notes:	\$250 per day, plus travel expenses
Non-discrimination Testing (Must be requested by Client)	Included at no charge
Form 5500 Preparation (Must be requested by Client)	Included at no charge
Debit Card (Must be requested by Client)	Included at no charge

***There is a \$75.00 per month minimum service charge.**

**PPPM = per participant per month

If the Client terminates the services, there will be a charge for a runoff period, should the Client choose to request one. This charge will be negotiated at the time of termination.

Services Included

Client is responsible for all legal requirements and administrative obligations with regard to the benefit options selected, except for the following administrative duties specifically delegated to ASIFlex:

- ASIFlex shall make available (by electronic medium and paper copy) enrollment forms and instructions.
- Upon receiving instructions from Client with regard to a Participant's change in status or other event that permits an election change under IRS regulations, ASIFlex shall make the requested change in the Participant's election as soon as possible.
- If requested, ASIFlex shall prepare the information necessary to enable Client to satisfy its Form 5500 filing obligation with regard to the Health FSA options chosen by Client. Client shall be responsible for reviewing the information provided by ASIFlex to ensure its accuracy, and Client shall prepare and submit any Form 5500.
- If requested, ASIFlex shall assist Client in preparing preliminary, mid-year, and final nondiscrimination tests for the PPP, Health FSA, DCAP, and HRA options chosen by Client:
 - o Key employee concentration testing required under Code §125;
 - o The 55% average benefits test required under Code §129; and
 - o The 25% shareholder concentration test required under Code §129.
- ASIFlex shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due normally within 3 days, but in no case later than within 30 business days, of the day on which ASIFlex receives the claim. Benefit payments shall be made by check or ACH payable to the Participant. Claims of less than \$25.00 may be carried forward and aggregated with future claims until the total amount is equal to or greater than \$25.00, except that any remaining amount shall be paid after the end of the Plan Year without regard to the \$25.00 threshold.
- ASIFlex shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim. ASIFlex shall follow the requirements of ERISA with regard to denial of claims.
- ASIFlex shall provide its standard reporting package for exchanging information.

Services Not Included

- Client's compliance with COBRA portability provisions (unless specifically selected within the Agreement).
- Determining whether Client's PPP, Health FSA, DCAP, HRA, LSA, and TRA documents are in compliance with the Code or any other applicable state, federal, or local statutes or regulations.

- Determining if and when an event has occurred under the IRS permitted election change regulations such that a change in election is permitted under the PPP, Health FSA, and DCAP.
- Client’s responsibility for the determination on the second and any final level of appeal.

CLIENT:
City of La Crosse

Application Software, Inc.,
a Missouri corporation

By: _____
Rebecca A. Franzen
Director of Human Resources

By: _____
Ashlee Sorber
Vice President & General Counsel

Resolution approving an agreement between the City of La Crosse and ASI Flex to provide third party administration services for the City's I.R.S. Section #125 Plan for a three (3) year term beginning January 1, 2024, through December 31, 2026.

RESOLUTION

WHEREAS, the administrative services contract for third party administration of the City's Internal Revenue Service Section #125 Flexible Spending and Premium Reduction Plan expires on December 31, 2023, and

WHEREAS, the Human Resources Department sought proposals for third party administration services for the City's Internal Revenue Service Section #125 Flexible Spending and Premium Reduction Plan and

WHEREAS, an open and competitive process was utilized to secure proposals from third party administrators of Internal Revenue Service Section #125 Flexible Spending and Premium Reduction Plans, and the recommendation of the Director of Human Resources is to select the proposal submitted by ASIFlex.

NOW THEREFORE BE IT RESOLVED that the attached Administrative Services Agreement between the City of La Crosse and ASIFlex for the period January 1, 2024, through December 31, 2026, is hereby approved.

BE IT FURTHER RESOLVED, that the Director of Human Resources and the Director of Finance are authorized to take all necessary steps to implement the attached Plan Services Agreement.



CITY OF LA CROSSE

**400 La Crosse Street
La Crosse, Wisconsin 54601
(608) 789-CITY
www.cityoflacrosse.org**

LEGISLATION STAFF REPORT FOR COUNCIL

File ID Caption

Staff/Department Responsible for Legislation

Requestor of Legislation

Location, if applicable

Summary/Purpose

Background

Fiscal Impact

Staff Recommendation

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (hereinafter called, the “**Agreement**”) is made and entered into as of _____, 2023, by and between City of La Crosse (hereinafter called “**Client**”) and Application Software, Inc., dba ASI and ASIFlex (hereinafter called “**ASIFlex**”).

Background

Check applicable boxes

For Cafeteria Plan. Client has requested ASIFlex to provide administrative services for the following Benefit Programs, as described in Attachment A, offered under an Internal Revenue Code §125 Cafeteria Plan established by Client:

- Premium Payment Plan (PPP)
- Health Flexible Spending Arrangement (Health FSA)
- Dependent Care Assistance Program (DCAP)
- HSA Contribution Benefit

For Health Reimbursement Arrangements (HRA). Client has requested ASIFlex to provide administrative services for the Health Reimbursement Arrangement established under Revenue Ruling 2002-41 and Notice 2002-45 as described in Attachment A.

For Transportation Reimbursement Accounts (TRA). Client has requested ASIFlex to provide administrative services for the Transportation Reimbursement Account and/or Bicycle Commuting Expense Reimbursement Policy under Code §132(f) as described in Attachment A.

For LifeStyle Benefits Accounts (LSA). Client has requested ASIFlex to provide administrative services for the taxable LifeStyle Benefit Accounts (LSA) as described in Attachment A. LSA benefits are not intended to qualify for a tax exclusion under the Internal Revenue Code. Client agrees to comply with the provisions of Appendix B “Lifestyle Benefit Account (LSA) Compliance Considerations Appendix”.

The PPP, Health FSA, DCAP, LSA, and HSA Contribution Benefit will hereinafter be collectively referred to as the Program.

If services are provided for a Health FSA or HRA ASIFlex may be considered a “business associate” under HIPAA with regard to some of the programs. If applicable, there is a separate agreement between the Client and ASIFlex to document compliance with HIPAA's privacy, security, and electronic data interchange (EDI) requirements (Business Associate Agreement).

In consideration of the mutual promises and conditions contained in this Agreement, Client and ASIFlex agree as follows:

**Section 1
Effective Date and Term**

1.1 Effective Date

The effective date of this Agreement is January 1, 2024 (hereinafter called “**Effective Date**”).

1.2 Term

The term shall be three (3) years commencing on the Effective Date.

Section 2 Scope of Undertaking

2.1 Scope of Undertaking

Client has sole and final authority to control and manage the operation of the Program. ASIFlex is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of Client. ASIFlex and Client shall not be deemed partners, engaged in a joint venture, or governed by any legal relationship other than that of independent contractor.

ASIFlex does not assume any responsibility for the general policy design of the Program, the adequacy of its funding, or any act or omission, or breach of duty by Client. ASIFlex shall not in any way be deemed an insurer, underwriter, or guarantor with respect to any benefits payable under the Program. ASIFlex generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by Client under the Program.

Client is solely responsible for any applicable income and employment tax withholding as well as the associated W-2 and related reporting to the IRS and state agencies (as applicable) regarding any payments from any Account that are not excluded from gross income by the Internal Revenue Code and the regulations issued thereunder (as determined solely by the Client). ASIFlex and its Affiliates do not assume any responsibility for compliance with federal or state laws, including federal tax laws and regulations, applicable to the Client or any Employee Benefit Plan.

Except as otherwise expressly set forth herein, nothing herein shall be deemed to constitute ASIFlex as a party to the Program or to confer upon ASIFlex any authority or control respecting management of the Program, authority, or responsibility in connection with administration of the Program, or responsibility for the terms or validity of the Program. Nothing in this Agreement shall be deemed to impose upon ASIFlex any obligation to any employee of Client or any person who is participating in the Program (Participant).

2.2 Non-Discretionary Duties

Except as otherwise expressly set forth herein, the services to be performed by ASIFlex under this Agreement shall be ministerial in nature and will generally be performed in accordance with the terms of the Benefit Programs established by the Client.

2.3 Limited Fiduciary Duties (*Applies to Health FSA or HRA only*)

Notwithstanding the foregoing, pursuant to Section 405(c)(1) of ERISA, Client delegates to ASIFlex certain functions which might be deemed to be of a fiduciary nature, including authority to determine claims for benefits as set forth in Section 4, and to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of Client for the payment of Program benefits claims as set forth in Section 6, as further modified by Attachment A.

The parties agree that ASIFlex is fiduciary of the Program only to the limited extent necessary to perform such limited fiduciary duties as expressly delegated under this Agreement. ASIFlex shall not be deemed a fiduciary in connection with any other duty or responsibility in the administration of the Program.

Section 3 Client's Responsibilities

3.1 General Fiduciary Duties

Except as otherwise specifically delegated to ASIFlex in this Agreement, Client has the sole authority and responsibility for the Program and its operation, including the authority and responsibility for administering, construing, and interpreting the provisions of the Program and making all determinations thereunder. Client gives ASIFlex the authority to act on behalf of Client in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by Client and ASIFlex. Client is considered the Plan Administrator and Named Fiduciary of the Program benefits which are subject to ERISA.

3.2 Funding

Client shall promptly fund an account maintained for the payment of Program benefits as described in Section 6.

3.3 Information to ASIFlex

Upon request, Client agrees to provide ASIFlex with information necessary for ASIFlex's performance of duties and obligations under this Agreement, including information concerning the Program and the eligibility of individuals to participate in and receive Program benefits. ASIFlex shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the Client or its agents. Such information shall be provided to ASIFlex in the time and the manner agreed to by Client and ASIFlex. ASIFlex shall have no responsibility with regard to benefits paid in error due to Client's failure to timely update such information.

Client also agrees to provide ASIFlex with frequent updated reports summarizing eligibility data (Eligibility Reports). Unless otherwise agreed by Client and ASIFlex, the Eligibility Reports should be provided to ASIFlex by electronic medium. The Eligibility Reports shall specify the effective date for each Participant who is added to or terminated from participation in the Program.

Client shall be responsible for ensuring the accuracy of its Eligibility Reports and bears the burden of proof in any dispute with ASIFlex relating to the accuracy of any Eligibility Reports.

ASIFlex incurs no liability to Client or any Participant as a consequence of an inaccurate Eligibility Report. Additionally, ASIFlex is under no obligation to credit Client for any claims expenses or administrative fees incurred or paid to ASIFlex as a consequence of Client failing to review Eligibility Reports for accuracy.

ASIFlex shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information. Eligibility Reports are considered Protected Health Information (PHI) and, when transmitted by or maintained in electronic media shall be considered electronic PHI, and subject to the Privacy and Security Rules under HIPAA, and Section 5 of this Agreement.

3.4 Plan Documents

Client is responsible for the Program's compliance with all applicable federal and state laws and regulations and shall provide ASIFlex with all relevant documents, including but not limited to, the Program documents and any Program amendments. Client will notify ASIFlex of any changes to the Program at least 30 days before the effective date of such changes.

If requested by Client in Section 4.8, ASIFlex will provide sample plan documents and forms for review by Client and Client's legal counsel, including plan document/summary plan description, election forms, and other documents. ASIFlex will customize such documentation only to the extent to incorporate Client's responses to certain plan design questions submitted by ASIFlex. In addition, ASIFlex will provide sample document changes to reflect revisions in applicable legislation or regulations. Although ASIFlex has taken steps to ensure that its sample documents and forms are of high quality and generally comply with the applicable laws, it cannot be aware of all of the facts and circumstances that may apply to the Client or the Program.

Client acknowledges that ASIFlex is not providing tax or legal advice and that Client should ask its legal counsel to review such documents for legal and tax compliance. Client bears sole responsibility for determining the legal and tax status of the Program. Further, ASIFlex is not a law firm and has no authority to provide legal advice.

3.5 Liability for Claims

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of Client under the Program. Except for expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

3.6 Financial and Medical Records

In order to permit Client and/or ASIFlex to perform their obligations under this Agreement, personal financial records or medical records may be requested. If required by law or regulation, the Client must either, in accordance with applicable state and federal law:

- Notify each Participant and provide each Participant an opportunity to opt out (if required); or
- Obtain from each Participant written authorization for release of the requested records.

3.7 HIPAA Privacy

Client shall provide ASIFlex with the following documents, where required or applicable:

- Notice of Privacy Practices;
- Any subsequent changes to the Notice of Privacy Practices;
- Certification that Client amended the plan document as regulated by the Privacy Rule to permit disclosure of PHI to Client for plan administrative purposes;
- Certification that Client agrees to the conditions set forth in the plan amendment;
- Copies of any authorizations of Participants or beneficiaries to use or disclose PHI (and any later changes to or revocations of such authorizations);
- Notice of any restriction on the use or disclosure of PHI that Client agrees to under the Privacy Rule; and
- Notice of any requests that communications be sent to a Participant or beneficiary by an alternative means or at an alternative location that Client agrees to under the Privacy Rule.

Client shall not request ASIFlex to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by Client, except that ASIFlex may use or disclose PHI for purposes of Data Aggregation and the management and administrative activities of ASIFlex, as provided in Section 5 of this Agreement.

Section 4 ASIFlex's Responsibilities

4.1 Delegated Responsibilities

ASIFlex's responsibilities shall be as expressly delegated to ASIFlex in this Agreement (including the obligations listed in any Attachment to this Agreement) or any other written and signed Agreement between Client and ASIFlex. ASIFlex generally provides certain reimbursement and recordkeeping services, as described further below.

4.2 Service Delivery

ASIFlex agrees to provide customer service personnel by telephone during ASIFlex's normal business hours. ASIFlex also agrees to provide electronic administrative services 24 hours per day, 7 days per week. However, ASIFlex websites shall occasionally be unavailable in cases of required maintenance. Scheduled maintenance notices will be published in advance of closure.

ASIFlex will not be deemed in default of this Agreement, nor held responsible for any cessation, interruption, or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, acts of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

4.3 Benefits Payment

ASIFlex agrees to, on behalf of Client, operate under the express terms of this Agreement and the Program. ASIFlex makes the initial determination if persons covered by the Program (as described in the Eligibility Reports) are entitled to benefits under the Program and shall pay Program benefits in its usual and customary manner, to Participants as set forth in this Section 4.

~~Client agrees that:~~

- ~~• ASIFlex has no responsibility or obligation with respect to Prior Reimbursement Requests and/or Prior Administration;~~
- ~~• Client shall indemnify and hold ASIFlex harmless for any liability relating to Prior Reimbursement Requests and Prior Administration;~~

Check this box if the following paragraph is applicable

- Client will be responsible for processing Prior Reimbursement Requests (including any run-out claims submitted after the Effective Date) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g., IRS substantiation) requirements;

OR Check this box if the following paragraph is applicable

- ASIFlex will be responsible for processing run-out claims submitted after the Effective Date and maintaining legally required records for such run-out claims.

4.4 Bonding

ASIFlex has, and will maintain, a fidelity bond and/or ERISA bond (where applicable) for all persons involved in collecting money or making claim payments, and all officers of the company. This bond covers the handling of Client's and Participants' money and must protect such money from losses by dishonesty, theft, forgery or alteration, and unexplained disappearance.

4.5 Reporting

ASIFlex agrees to make available to Client each month via electronic medium (unless otherwise agreed by the parties) a master report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts during the preceding month.

For those Program benefits subject to HIPAA, Client must provide certification that the plan document requires the Client to comply with applicable Privacy and Security Rules under HIPAA before ASIFlex will make available the reports provided for in this Section to the Client. ASIFlex agrees to also make available to Participants each month via electronic medium a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month.

For those Program benefits subject to HIPAA, Client is responsible for ensuring that any beneficiary of the Participant who submits a claim agrees to the disclosure of PHI to the Participant if required by the Privacy Rule.

4.6 Claims Appeals

ASIFlex agrees to refer to Client or its designee, Plan Administrator, and/or Named Fiduciary for the following:

- The second and final level of appeal of an adverse benefit determination; and
- Any class of claims Client may specify, including:
 - o Questions of eligibility or entitlement of the claimant for coverage under the Program;
 - o Questions with respect to the amount due; or
 - o Any other appeal.

4.7 Forfeited Funds

Any unclaimed benefit payments (e.g. uncashed benefit checks) are deemed forfeited.

Check this box if the following paragraph is applicable

- Client may use forfeited funds to offset reasonable administrative expenses.

OR Check this box if the following paragraph is applicable

- Upon approval of Client, ASIFlex shall tender any remaining forfeited funds (after payment of administrative expenses) to the state unclaimed property fund.

4.8 Additional Documents

Check this box if the following paragraph is applicable

- Client requests that ASIFlex furnish Client with Sample documents for review by Client with its legal counsel, for the creation of customized documentation for the Program to be approved and executed by Client, including summary plan description, plan document, and plan amendments; and sample administrative forms needed for ASIFlex to perform its duties under this Agreement.

OR Check this box if the following paragraph is applicable

- Client will be responsible for the creation and maintenance of its own plan documents, including summary plan description, plan document, and plan amendments. Client will provide ASIFlex with a copy of such documents for administration purposes.

4.9 Communication

ASIFlex agrees to provide development of certain communication information.

4.10 Recordkeeping

ASIFlex agrees to maintain for the duration of this Agreement the usual and customary books, records, and documents ASIFlex has prepared or received possession of in the performance of its duties hereunder. These books, records, and documents, including electronic records, are the property of Client, and Client has the right of continuing access to them during normal business hours at ASIFlex's offices with reasonable prior notice. If this Agreement terminates, ASIFlex may deliver, or at Client's request, will deliver all such books, records, and documents to Client, subject to ASIFlex's right to retain copies of any records it deems appropriate. Client shall be required to pay ASIFlex reasonable charges for transportation or duplication of such records.

4.11 Standard of Care; Erroneous Payments

ASIFlex shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If ASIFlex makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, ASIFlex shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, ASIFlex will not be liable for such payment, unless ASIFlex would otherwise be liable under another provision of this Agreement.

ASIFlex owes a duty of care only to the Client, which duty is one of reasonable care under the attendant circumstances. ASIFlex is not liable for any mistake of judgment or for any action taken in good faith unless such mistake or action results in a breach of such duty of care.

4.12 Notices to Client

ASIFlex shall provide to Client all notices (including any required opt-out notice) reflective of its privacy policies and practices as required by state and/or federal law (including the Gramm-Leach-Bliley Act).

Section 5 Compliance with Privacy and Security Rules under HIPAA

Applies to All Services, except DCAP, LSA, and TRA

5.1 Compliance with Privacy and Security Rules under HIPAA

Contemporaneously with this Agreement, Client and ASIFlex have entered into a Business Associate Agreement pursuant to HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

Section 6 Payment of Benefits and Funding Responsibility

Applies to Health FSA, DCAP, HRA, LSA, and TRA

6.1 Payment of Benefits

Client authorizes ASIFlex to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of Client for the payment of Program benefits. Each week or at such other interval as mutually agreed upon, ASIFlex will notify Client of the amount needed to pay approved benefit claims and Client shall pay or transfer into the bank account the amount needed for the payment of Program benefits. Client shall enter into such agreements and provide instructions to its bank as are necessary to implement this Section. ASIFlex has sole authority to provide whatever notifications, instructions, or directions are necessary to accomplish the disbursement of such Program funds to, or on behalf of, Participants in payment of approved claims.

6.2 Funding of Benefits

Funding for any payment on behalf of the Participants under the Program, including, but not limited to, all benefits to Participants in accordance with the Program, is the sole responsibility of Client, and Client agrees to accept liability for, and provide sufficient funds to satisfy, all payments to Participants under the Program, including claims for reimbursement for covered expenses, if such expenses are incurred and the claim is presented for payment during the terms of this Agreement.

6.3 Banking Arrangements

Client further represents and agrees that:

- Neither it nor any of its employees, directors, representatives, fiduciaries, or employee benefits plans (or any entity performing services for Client or such plans) nor any of its predecessors, successors, or assigns have represented, or will represent to any Participant or beneficiary of the Program, that a separate account, fund, or trust is being held on behalf of the Program that may be used to provide or secure benefits under the plan; and
- Client shall advise the Participants and beneficiaries of the Program that the benefits under the Program shall at all times be paid out of the general assets of the Client.

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of the Client under the Program. Except for expenses required for ASIFlex to be in the business of providing services under this Agreement and expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

6.4 Debit Card (If requested)

ASIFlex agrees to:

- Process debit card swipes reported to ASIFlex on behalf of the Client;
- Request receipt notification on all swipes not eligible for electronic adjudication under the current IRS guidelines;
- Report to the debit card provider any account reimbursements that are a result of activities mentioned above; and
- Request data from debit card providers each business day to ensure participants are properly reimbursed for their expenses.

Any interchange shared between the debit card provider and ASIFlex will be retained wholly by ASIFlex. Any fees charged to ASIFlex by the debit card provider shall be the responsibility of ASIFlex, unless noted in Attachment A of this Agreement. ASIFlex currently contracts with WEX Health for the ASIFlex Debit Card. Under this Agreement, ASIFlex reserves the right to change card providers during the year, providing at least 90 day notice to the Client.

Section 7 Indemnification

7.1 Indemnification by Client

Upon ASIFlex's adherence to the standard of care set forth in Section 4, Client shall indemnify ASIFlex and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees, or other obligations, resulting from, or arising out of, any act or omission of Client in connection with the performance of its duties hereunder. In addition, Client shall indemnify ASIFlex and hold it harmless from and against any liability, expense, demand, or other obligation, resulting from, or out of any premium charge, tax, or similar assessment (federal or state), for which the Program or Client is liable.

Client agrees to reimburse ASIFlex for all attorney's fees and costs incurred by ASIFlex as a result of any collection action taken by ASIFlex to recover overdue service charges required to be paid in accordance with this Agreement or any Attachment hereto.

7.2 Indemnification by ASIFlex

Upon Client's adherence to the standard of care set forth in Section 3, ASIFlex shall indemnify Client and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees, or other obligations, resulting from, or arising out of, any act or omission of ASIFlex in connection with the performance of its duties hereunder.

Section 8 Service Charges

8.1 Service Charges

The amounts of the monthly services charges of ASIFlex are described in the Attachments. It is ASIFlex's intention that the service charges will never increase during the life of the contract. However, if circumstances arise that require ASIFlex to change the amount of such service charges, then ASIFlex will provide at least 90 days written or electronic notice to Client. ASIFlex may also change the monthly service charges as of the date any substantial change is made in the Program.

8.2 Billing of Service Charges

All services charges of ASIFlex, whether provided for in this or any other Section, shall be billed separately from statements for payment of claims so that proper accounting can be made by Client of the respective amounts paid for claims and administrative expenses.

8.3 Payment of Service Charges

ASIFlex will determine all service charges under this Section and bill Client monthly. Alternatively, if the parties agree, ASIFlex may deduct payment for monthly service charges from the bank account maintained by Client as described in Section 6. Client shall make payment to ASIFlex within 10 business days of receipt of notice of the amount due, or such amount will automatically be deducted from the bank account maintained by Client as described in Section 6.

Section 9 General Provisions

9.1 Severability; Headings

If any term of this Agreement is declared invalid by a court, the invalid term will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.2 Compliance; Non-Waiver

Failure by Client or ASIFlex to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 9 below.

9.3 Assignment; Amendment

Neither Client nor ASIFlex can assign this Agreement without the other party's written consent. This Agreement may be amended only by written agreement of duly authorized officers of Client and ASIFlex.

9.4 Audits

Each party is authorized to perform audits of the records of payment to all Participants and other data specifically related to performance of the parties under this Agreement upon reasonable prior written notice to the other. Audits shall be performed during normal working hours. Audits may be performed by an

agent of either party provided such agent signs an acceptable confidentiality agreement and business associate agreement required by HIPAA and the HITECH Act. Each party agrees to provide reasonable assistance and information to the auditors. Each party also agrees to provide such additional information and reports as the other party shall reasonably request.

9.5 Non-Disclosure of Proprietary Information

- **General.** Client and ASIFlex each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each party has revealed and disclosed, and shall continue to reveal and disclose to the other, proprietary and/or confidential information of such party. Client and ASIFlex agree that each party shall:
 - o Keep such proprietary and/or confidential information of the other party in strict confidence;
 - o Not disclose proprietary and/or confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and
 - o Not use proprietary and/or confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).
- **Confidential Information Defined.** Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered confidential information for purposes hereof:
 - o If, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or
 - o If the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party.

For purposes of this Section, confidential information is any information in written, human-readable, machine-readable, or electronically recorded form (and legended as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records, and correspondence concerning the parties' respective businesses or finances. The terms and conditions of this Section 9 shall survive the termination of this Agreement.

9.6 Dispute Resolution; Arbitration

In the event of a dispute by either party related to this Agreement, the parties agree to first attempt to resolve such dispute by having the parties' Chief Executive Officers (or their designees) meet in person within 30 days of written notice of dispute issued by either party. In the event the dispute is not resolved after reasonable efforts by the Chief Executive Officers within such 30 day period, either party may then proceed to arbitration under this Section. All disputes, controversies, or claims arising out of or relating to the operation or interpretation of this Agreement shall be settled by arbitration before one arbitrator in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the Client and ASIFlex. Any award rendered by the arbitrator shall be final and binding upon the parties and judgment upon any such award may be entered in any court having jurisdiction thereof.

Arbitration shall take place in Missouri, or at a location mutually agreed upon by the parties. The fees and expenses of the arbitrator shall be borne equally by the parties. Each party shall pay its own fees and costs relating to any arbitral proceedings, including experts' and attorneys' fees. The arbitrator shall render his/her determination in a manner consistent with the terms of this Agreement, and the arbitrator shall not be entitled to award punitive or exemplary damages.

9.7 Notices and Communications

- **Notices.** All notices and communications required by this Agreement shall be in writing at the address(es) specified by each party. Such notices and communications shall be given by: (a) in-person delivery, (b) guaranteed overnight prepaid nationally-recognized courier service with tracing capabilities, (c) by first-class, registered, or certified mail, postage prepaid, and addressed to the party to be notified; or (d) pdf attachment to email with electronic confirmation of receipt by the receiving party. Either party may change its address for notice by giving notice to the other at the address provided below. All notices provided for herein shall be deemed given or made when received.
- **Addresses.**
 - o Client's address for notices as described above is:

ATTN: Audra Bloom
400 La Crosse Street
La Crosse, WI 54601
 - o ASIFlex's address for notices as described above is:

ATTN: John Riddick
201 W. Broadway, Suite 4-C
Columbia, MO 65203
- **Communications.** Client agrees that ASIFlex may communicate confidential, protected, privileged, or otherwise sensitive information to Client through a named contact designated by Client (such person hereinafter called "**Named Contact**") and specifically agrees to indemnify ASIFlex and hold it harmless:
 - o For any such communications directed to Client through the Named Contact attempted via facsimile, mail, telephone, e-mail, or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and
 - o From any claim for the improper use or disclosure of any PHI by ASIFlex if such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

9.8 Termination of Agreement

- **Automatic.** This Agreement automatically terminates on the earliest of the following:
 - o The effective date of any legislation which makes the Program and/or this Agreement illegal;
 - o The date Client or ASIFlex becomes insolvent, bankrupt, or subject to liquidation, receivership, or conservatorship; or

- o The termination date of the Program. This termination is subject to any Agreement between Client and ASIFlex regarding payment of benefits after the Program is terminated.
- **Optional.** This Agreement may be terminated as of the earliest of the following:
 - o By ASIFlex upon the failure of Client to pay any service charges within 10 business days after they are due and payable as provided in Section 8;
 - o By ASIFlex upon the failure of Client to perform its obligations, including its obligations as Plan Administrator and/or Named Fiduciary where applicable, as such terms are defined in ERISA, and in accordance with this Agreement, including the provisions of Section 3;
 - o By Client upon the failure of ASIFlex to perform its obligations in accordance with this Agreement, including the provisions of Section 4;
 - o By either Client or ASIFlex, as of the end of the term of this Agreement, by giving the other party 30 days written notice; or
 - o By either Client or ASIFlex, upon a material breach of the other party's duties under this Agreement, or upon non-material breaches of a recurrent nature, after 30 days notice in the event of a material breach, or 60 days notice in the event of a non-material breach of a recurrent nature, and the right to cure such breach by the breaching party.
- **Limited Continuation After Termination.** If the Program is terminated, Client and ASIFlex may mutually agree in writing that this Agreement shall continue for the purpose of payment of Program benefits, expenses, or claims incurred before the date of Program termination. In addition, Client and ASIFlex may mutually agree in writing that this Agreement shall continue for the purpose of payment of any claims for which requests for reimbursements have been received by ASIFlex before the date of such termination.

If this Agreement is continued in accordance with this subsection, Client shall pay the monthly service charges incurred during the period that this Agreement is so continued and a final termination fee equal to the final month's service charge.

- **Survival of Certain Provisions.** Termination of this Agreement does not terminate the rights or obligations of either party arising out of the period prior to such termination. The indemnity, confidentiality, privacy, and security provisions of this Agreement shall survive its termination.

9.9 Complete Agreement; Governing Law

This Agreement (including the Attachments) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior Agreements and representations between the parties. This Agreement shall be construed, enforced, and governed by the laws of the State of Wisconsin.

In Witness Whereof, Client and ASIFlex have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

CLIENT: City of La Crosse

Application Software, Inc.,
a Missouri corporation

By: _____

By: _____

Name: Rebecca A. Franzen_____

Name: _____

Title: Director of Human Resources_____

Title:_____

Glossary

For the purposes of this Agreement, the following words and phrases have the meanings set forth below. Wherever appropriate, the singular shall include the plural and the plural shall include the singular.

Agreement means this ASIFlex Administrative Services Agreement, including all Attachments hereto.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

Client has the meaning given in the Recitals.

Code means the Internal Revenue Code of 1986, as amended.

DCAP has the meaning given in the Recitals.

Eligibility Reports has the meaning described in Section 3.

Client has the meaning given in the recitals.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Effective Date has the meaning given in Section 1.

Electronic PHI has the meaning assigned to such term under HIPAA.

Health FSA has the meaning given in the Recitals.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended.

LSA means a lifestyle spending account established by the Client for the purpose of reimbursing expenses that do not otherwise qualify for an exclusion from gross income by the Internal Revenue Code

Named Fiduciary means the named fiduciary as defined in ERISA §402(a)(1).

Participant has the meaning given in Section 2.

Plan means the Health FSA or DCAP, as applicable.

Plan Administrator means the administrator as defined in ERISA §3(16)(A).

Prior Administration means services arising before the Effective Date.

Prior Reimbursement Requests means claims incurred before the Effective Date.

Program has the meaning given in the Recitals.

Protected Health Information or **PHI** has the meaning assigned to such term under HIPAA.

**ATTACHMENT A
SERVICE CHARGES**

Capitalized terms used in this Attachment but not defined have the meanings given in the Agreement to which this Attachment is attached.

Client has established a Code §125 Cafeteria Plan to allow eligible employees who make a proper election to pay for their share of certain benefit plan coverage with pre-tax salary reductions. Client has delegated certain administrative responsibilities with respect to the selected benefit options. Depending upon the benefit options chosen by the Client, the Client has established:

- ✓ a Code §125 Cafeteria Plan under which a Code §105 Health FSA is offered;
- ✓ a Code §125 Cafeteria Plan under which a Code §129 Dependent Care Assistance Program is offered;
- ~~✓ a Health Reimbursement Arrangement under Revenue Ruling 2002-41 and Notice 2002-45;~~
- ~~✓ a LifeStyle Benefits Account for purposes of providing taxable benefits; and~~
- ~~✓ a Transportation Reimbursement Account Plan and/or Bicycle Commuting Expense Reimbursement Policy under Code §132(f).~~

As set forth in Section 8, the applicable service charges shall be as follows:

Standard Services Charges*	Cost
FSA PPPM** Service Charge	\$ <u>2.76</u>
HRA PPPM Service Charge	
TRA PPPM Service Charge	
LSA PPPM Service Charge	

Additional Service Charges	Cost
Set-Up Fee	Waived
Sample Documents and Forms	Included at no charge
Staff Training	Included at no charge
Online Enrollment	Included at no charge
Open Enrollment Meetings – Notes:	\$250 per day, plus travel expenses
Non-discrimination Testing (Must be requested by Client)	Included at no charge
Form 5500 Preparation (Must be requested by Client)	Included at no charge
Debit Card (Must be requested by Client)	Included at no charge

***There is a \$75.00 per month minimum service charge.**

**PPPM = per participant per month

If the Client terminates the services, there will be a charge for a runoff period, should the Client choose to request one. This charge will be negotiated at the time of termination.

Services Included

Client is responsible for all legal requirements and administrative obligations with regard to the benefit options selected, except for the following administrative duties specifically delegated to ASIFlex:

- ASIFlex shall make available (by electronic medium and paper copy) enrollment forms and instructions.
- Upon receiving instructions from Client with regard to a Participant's change in status or other event that permits an election change under IRS regulations, ASIFlex shall make the requested change in the Participant's election as soon as possible.
- If requested, ASIFlex shall prepare the information necessary to enable Client to satisfy its Form 5500 filing obligation with regard to the Health FSA options chosen by Client. Client shall be responsible for reviewing the information provided by ASIFlex to ensure its accuracy, and Client shall prepare and submit any Form 5500.
- If requested, ASIFlex shall assist Client in preparing preliminary, mid-year, and final nondiscrimination tests for the PPP, Health FSA, DCAP, and HRA options chosen by Client:
 - o Key employee concentration testing required under Code §125;
 - o The 55% average benefits test required under Code §129; and
 - o The 25% shareholder concentration test required under Code §129.
- ASIFlex shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due normally within 3 days, but in no case later than within 30 business days, of the day on which ASIFlex receives the claim. Benefit payments shall be made by check or ACH payable to the Participant. Claims of less than \$25.00 may be carried forward and aggregated with future claims until the total amount is equal to or greater than \$25.00, except that any remaining amount shall be paid after the end of the Plan Year without regard to the \$25.00 threshold.
- ASIFlex shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim. ASIFlex shall follow the requirements of ERISA with regard to denial of claims.
- ASIFlex shall provide its standard reporting package for exchanging information.

Services Not Included

- Client's compliance with COBRA portability provisions (unless specifically selected within the Agreement).
- Determining whether Client's PPP, Health FSA, DCAP, HRA, LSA, and TRA documents are in compliance with the Code or any other applicable state, federal, or local statutes or regulations.

- Determining if and when an event has occurred under the IRS permitted election change regulations such that a change in election is permitted under the PPP, Health FSA, and DCAP.
- Client’s responsibility for the determination on the second and any final level of appeal.

CLIENT: City of La Crosse

Application Software, Inc.,
a Missouri corporation

By: _____

By: _____

Name: Rebecca A. Franzen _____

Name: _____

Title: Director of Human Resources _____

Title: _____

ATTACHMENT B
LIFESTYLE BENEFIT ACCOUNT (LSA)
COMPLIANCE CONSIDERATIONS APPENDIX

You have requested our assistance in connection with administering a Lifestyle Benefits Account (LSA) Program. At the outset, we stress that many legal, compliance, and tax issues surrounding LSAs are undeveloped. We have outlined some of these issues below. By engaging ASIFlex (“ASIFLEX”) to provide LSA administration services you represent and warrant that you have consulted with your legal and tax counsel regarding the tax and other compliance requirements relating to the LSA Program, acknowledge and accept full responsibility for all legal and tax compliance obligations associated with the LSA Program design, and agree to hold harmless ASIFLEX for all liability and responsibility associated with any tax, legal, or other compliance requirements.

Among the compliance issues you have considered and assume responsibility for are the following:

i) ~~Income and employment tax withholding and reporting responsibility, including responsibility under the income tax “constructive receipt” concept.~~ One or more of the benefits offered under the LSA Program are taxable. In most cases, LSA benefits should be treated as taxable cash compensation for all purposes. As a result, all LSA Program benefits are likely taxable and subject to income and employment tax requirements. Even when LSA benefits are fully taxed, several compliance uncertainties remain with regard to what amount is taxed (e.g., the full award or only the redeemed amounts) and the timing for taxation under the tax doctrine of constructive receipt. The constructive receipt doctrine generally requires that compensation (such as credits and awards) is taxable (e.g., constructively received) when it is made available, whether or not the employee chooses to receive it, unless receipt is subject to substantial limitations or restrictions. The IRS has not offered guidance specifically addressing the application of constructive receipt to LSA Programs. The IRS could conclude that award credits are taxable when the credit is “awarded” and not at such later time when the credit is “redeemed” or “cashed out”. You are responsible for determining timing and the tax consequences associated with awards and redemptions and withholding and submitting all applicable taxes. ASIFLEX is only responsible for administering Program benefits in accordance with your Program design and direction.

ii) ~~Possible application of Internal Revenue Code Section 409A.~~ To the extent that an employee obtains a “legally binding right” to amounts in an LSA in one taxable year that is or may be payable in a later taxable year then Code Section 409A could be implicated. Section 409A carries with it a 20% penalty on employees and other tax implications.

iii) ~~Impact of including otherwise non-taxable benefits in an LSA Program.~~ Certain benefits (e.g., certain health or dependent care benefits) may, subject to tax rules, be offered on a tax free basis (e.g., through a flexible spending arrangement pursuant to a cafeteria plan). By including otherwise tax free benefits as part of the LSA Program, the otherwise tax free benefits will generally become taxable.

iv) ~~Compliance with state and federal employment and wage and hour laws.~~ LSA Programs should be evaluated for compliance with state and federal wage and hour (e.g., overtime) and employment law requirements that may impose limitations on the forfeiture of credits. You are responsible for compliance with all applicable employment and wage and hour requirements associated with the LSA Program and its benefits.

v) ~~Exclusion of health and medical benefits from the LSA Program.~~ Certain health and medical benefits will raise significant compliance concerns under COBRA, HIPAA Privacy, and the Affordable Care Act if included in the LSA Program. These obligations will arise regardless of whether such health and medical benefits are provided on a taxable or tax free basis. To limit these health plan related

~~compliance obligations, you have agreed that no health benefit will be offered through the LSA Program.~~

~~vi) For private employers, inclusion of ERISA covered health and welfare benefits may cause LSA Program to be subject to ERISA requirements. ERISA imposes significant reporting (Form 5500), disclosure (SPD), and claims requirements on specified health, sickness, disability, and other welfare benefits. Inclusion of any ERISA coverage benefit in the LSA Program may cause ERISA to apply.~~



OFFICE OF THE MAYOR
LA CROSSE

23-1174

October 3, 2023

I hereby approve the submitting of the attached Legislation “Resolution approving an agreement between the City of La Crosse and ASI Flex to provide third party administration services for the City’s I.R.S. Section #125 Plan for a three (3) year term beginning January 1, 2024, through December 31, 2026” to the Finance and Personnel Committee, to be considered by the members thereof at their next committee meeting. This approval is given due to the time element necessitating consideration of the attached Legislation at the earliest possible date.

Mayor Mitch Reynolds



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Text File

File Number: 23-0001

Agenda Date: 10/5/2023

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Status: New Business

In Control: Finance & Personnel Committee

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