

## GRANT AGREEMENT

**THIS AGREEMENT** made and entered into this 12 day of December 2024, by and between the City of La Crosse, Wisconsin, a Wisconsin municipal corporation hereinafter referred to as "City" and Karuna Inc. a Wisconsin nonprofit 501(c)3 corporation hereinafter referred to as the "Organization" or "Subrecipient".

### **WITNESSETH.**

**WHEREAS**, the U.S. Department of Treasury is the federal agency that administers ARPA funding and has provided funding to City of La Crosse through the State and Local Fiscal Recovery ("SLFRF") program as created by section 9901 of the American Rescue Plan Act of 2021 (Pub. L. 117-2) consisting of the Coronavirus State Fiscal Recovery Fund ("CSFRF") and Coronavirus Local Fiscal Recovery Fund ("CLFRF") to help offset the hardships caused by the COVID-19 emergency, which allows for the support of housing insecurity (hereinafter, collectively, called "ARPA Funding"), conditional on the City complying with its rules and regulations;

**WHEREAS**, Subrecipient is a registered 501(c)3 that provides services and housing to individuals within the city,

**WHEREAS**, Subrecipient continues to offer such housing services, and wishes to enhance those services with new housing opportunities in the City (the "Services"); and,

**WHEREAS**, the City wishes to encourage provision of Services by providing ARPA funding and other support to create additional Services related to housing capacity in the City.

### **NOW, THEREFORE, IT IS AGREED THAT:**

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#### **Statement of Work and Obligations**

The City will grant Subrecipient a sum of up to \$300,000.00 ARPA Funding to address homelessness in the City by adding specialized bridge housing units.

The Subrecipient will utilize a referral and intake process subject to the approval of the City. Referrals will come through the Pathways to Housing list, as managed by the Homeless Services Coordinator.

#### **a) Scope of Services:**

The Services performed shall consist of:

- Providing Co-living style units funded on a sliding fee scale;
- Providing 24-hour on site, peer based supportive services onsite including care coordination with other community service providers; and
- Community connection, integration, and engagement through planned recreational activities and required community service.

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- b) Performance Goals:** Subrecipient is expected to have met the performance goals stated below by the end of the agreement.

Housing Units

40 additional housing units added

Accordingly, a final report should be submitted no later than 30 days after the grant period.

Quarterly reports will provide all information necessary to determine that Performance Goals are being accomplished, in the opinion and discretion of the City Community Development Manager. Quarterly reports should also include justification satisfactory to the City for lack of progress or delays in accomplishing the scope of services above.

Subrecipient will give a presentation or written report to Common Council regarding the Services and Performance Goals on or before May 31, 2026.

- c) Financial Requirements:** The subrecipient shall, to the satisfaction of the City in its sole discretion:
- a. Maintain an effective system of internal fiscal control and accountability for all ARPA funds and property acquired or improved with ARPA funds that complies with all applicable laws and guidelines, and make sure the ARPA Funding are used solely for authorized purposes.
  - b. Register with Sam.gov and Neighborly software, and renew as required.
  - c. Ensure that all costs are supported by properly executed payrolls, time records, invoices, vouchers, and other official documentation, as evidence of the nature and propriety of the costs. All accounting documents pertaining in whole or in part to this agreement shall be clearly identified and readily accessible to the City.
  - d. Karuna Inc. shall also keep a continuing record of all disbursements by date, check number, amount, vendor, description of items purchased and line item from which the money was expended, as reflected in the Karuna Inc.'s accounting records.
  - e. Inform the City concerning any funds allocated to Karuna Inc., that Karuna Inc. anticipates will not be expended during the term of this agreement and permit the reassignment of the same by the City to other Subrecipients.
  - f. Submit to an external audit from time to time as required but the City and/or ARPA regulations, guidelines, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200), and all applicable law.

**d) Timeline**

Starting Date: January 1, 2025

Completion Date: December 31, 2026

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<b>Grant Period</b>	<b>Report Deadline</b>
January – March 2025	April 15, 2025
April – June 2025	July 15, 2025
July – September 2025	October 15, 2025
October – December 2025	January 15, 2026
January – March 2026	April 15, 2026
April – June 2026	July 15, 2026
July – September 2026	October 15, 2026
October – December 2026	January 15, 2027

**Budget**

The Organization shall follow the below budget:

<b>Item Id</b>	<b>Category</b>	<b>Funding</b>	<b>Amount</b>	<b>Remaining</b>
562	Cost of Acquisition/Rehabilitation	ARPA 2023	\$200,000.00	\$200,000.00
561	Operational Costs	ARPA 2023	\$100,000.00	\$100,000.00
<b>Totals</b>			<b>\$300,000.00</b>	<b>\$300,000.00</b>

The City will be notified of any expected deviations from the budget. Budget allocations may be adjusted within 10%, without requiring a budget amendment, with approval from the City.

**Payments**

Drawdowns for the payment of eligible expenses shall be made against the budget categories specified above and in accordance with Performance Goals. Disbursements will be only made quarterly with the same deadlines as the quarterly report schedule listed above.

The City of La Crosse shall evaluate and if appropriate, plan to disburse monies to Karuna Inc. upon submission of a draw request and an appropriate quarterly report to the City through Neighborly software. Allowable disbursements are those necessary and proper for costs identified by this agreement, unless any or all costs are disallowed by the City of La Crosse or the U.S. Treasury. All costs must be incurred within the above timetable.

Karuna Inc. shall submit its drawdown requests via Neighborly and keep all evidence of the nature and propriety of the associated costs on file. The Organization is a “subrecipient” of ARPA Funding and should only expend funds budgeted for in this agreement. The subrecipient shall submit evidence to the City of properly executed payrolls, time records, invoices, vouchers, or other official documentation for each drawdown request via Neighborly, in accord with City directives and policies

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from time to time. When submitting a draw request, a quarterly report shall be submitted through Neighborly or Subrecipient will not receive payment.

The City reserves the right to withhold ten percent (10%) of the total award until all deliverables specified in Performance Goals are met, as determined by the City of La Crosse Community Development Manager. Upon verification and acceptance of the deliverables, funds shall be released within 30 days.

Karuna Inc. will be expected to expend \$300,000.00 by December 31<sup>st</sup>,2026 and then promptly return any funds not properly used to the City.

### **Records and Reporting**

Use of funds is intended to prioritize individuals on the Pathways to Housing list. Subrecipient is required to provide and continuously update data for the Pathways to Housing List. The data will be handled with confidentiality and in accordance with applicable privacy laws.

Subrecipient shall provide quarterly and annual project and expenditure reports as outlined in the Treasury's SLFRF Compliance and Reporting Guidance. Subrecipient shall submit quarterly reports for the preceding quarter within fifteen (15) calendar days following each quarter and a final report within fifteen (15) days following completion. Upon request, Subrecipient shall provide additional reports and information relating to Subrecipient's receipt, maintenance and expenditure of the Subaward. Subrecipient's failure to provide either the required financial and performance reports or any additional reports or information requested may result in: (a) withholding, delaying or denying payment of the Subaward; or (b) the termination of this Agreement at the discretion of the City.

City shall monitor Subrecipient's performance to ensure that the Subaward is used solely for purposes authorized and in compliance with (i) federal statutes and regulations; (ii) the terms and conditions of this Agreement; and (iii) the achievement of the Subaward performance goals listed in Attachment A as required by 2 C.F.R. § 200.332 (d). City shall monitor Subrecipient's performance and shall identify any issues associated therewith. In the City identifies deficiencies in the monitoring of Subrecipient's performance, City may: (a) terminate this Agreement as provided herein or (b) require Subrecipient to take corrective action to eliminate such performance deficiencies as determined by City.

In addition to program performance, City shall monitor Subrecipient's financial performance as required by 2 C.F.R. § 200.332(d)(1)). Monitoring shall: (a) document allowable and unallowable costs, (b) time and travel and (c) address findings identified in document reviews or audits during prior monitoring visits to ensure proper corrective action has been taken by Subrecipient. 2 C.F.R. § 200.332(d)(2)."

### **Administrative Requirements**

- A. Subrecipient understands this Agreement is for an ARPA Act Subaward from City under CFDA No. 21.027 and, as such:

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- a. Subaward funds may only be expended for eligible uses under and in full compliance with Section 603(b) of the Social Security Act (the Act), as amended by Section 9901 of the ARPA Act and in accordance with US Treasury Coronavirus State and Local Fiscal Recovery Fund rules and the Compliance and Reporting Guidelines for State and Local Fiscal Recovery Funds as may be amended and supplemented.
  - b. Subaward funds may only be used for costs applicable to this Agreement which are included in the approved budget. Subaward funds may not be used for general administration or operation of the Subrecipient and may not replace non-federal funds in any jointly funded project.
  - c. Subrecipient may provide an approved federally recognized indirect cost rate negotiated between the Subrecipient and the Federal Government. If no such rate exists, a *de minimis* indirect cost rate (10%) as defined in 2 CFR 200.414 Indirect (F&A) costs, paragraph (f), may be used.
- B. In addition to other audit requirements set forth in this Agreement, Subrecipients who are not required to obtain a single or program-specific audit that meets the requirements of 2 CFR 200.500-507 or do not have audited financial statements prepared, are required at a minimum to have a reviewed financial statement prepared annually by an independent Certified Public Accountant (CPA). Audits and/or reviewed financial statements must be submitted to the City within thirty (30) calendar days of issuance. The review must be conducted in accordance with the Statements and Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants for non-profits or the Government Auditing Standards issued by the Comptroller General of the United States for government entities.
- C. Amendment: This Agreement may be modified only by a written amendment signed by all parties hereto.
- D. Severability: The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. It is understood and agreed that Karuna Inc., nor any of its employees, volunteers, contractor or anyone otherwise working on this project shall be considered an employee of the City.
- E. It is understood and agreed that Subrecipient, nor any of its employees, volunteers, contractor or anyone otherwise working on this project shall not be considered an employee of the City.
- F. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.
- G. Subrecipient certifies by entering into this Agreement that it is, nor a principal of Courage is, not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into grant by any federal or any department, agency or political subdivision of the State. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee or other person with primary

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management or supervisory responsibilities, or a person who has critical influence on or substantive control over the operations.

- H. Subrecipient certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this agreement and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. Courage shall immediately notify the City if any subcontractor becomes debarred or suspended, and shall, at the City's request, take all steps required by the City of La Crosse to terminate its contractual relationship with the subcontractor for work to be performed under this agreement.
- I. Duplication of Funding: Subrecipient shall not submit City of La Crosse funding requests that have been or are intended to be claimed as expenses of another Federal, State, or other agreement in which funding has been provided.

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IN WITNESS WHEREOF, Subrecipient and City have executed this Agreement as dated below in two counterparts, each of which shall be deemed an original.



Mitch Reynolds, Mayor

*Julia McDermid*

Julie McDermid Member



<sup>Deputy</sup>  
Nikki Elsen, City Clerk  
Sondra Craig

*Kara Burgos*

Kara Burgos, Board of Directors Chair

## Attachment A

### City of La Crosse Standard Contract 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 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

11. **Agreement,** Contracting Party disclaims any authority or responsibility for general job site safety, or the safety of third-parties or their property.

12. **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.

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.** 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.

15. **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.

16. **Commercial General Liability and Automobile Liability Insurance.** Contracting Party shall provide and maintain the following commercial general liability and automobile liability insurance:

17. i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:

18. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).

19. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).

20. ii. Contracting Party shall maintain limits no less than the following:

21. **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.

22. **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.

23. **Umbrella Liability.** Five million dollars (\$3,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.

24. **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.

25. **Required Provisions.** The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by La Crosse.

35. 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.

36. 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.

37. 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.

38. 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

39. liability claims. The aforesaid indemnity and hold harmless

40. 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.

41. 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.

42. 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.

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

44. **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.

45. Intentionally omitted.

46. **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.

47. **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.

48. **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.

49. **20. NOTIFICATION.** Parties shall:

50. 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.

51. 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.

52. 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.

53. **21. SEVERABILITY.** The provisions of this Agreement are

54. 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.

55. **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

56. 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

57. **NO WAIVER.** The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

58. **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.

59. **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

60. **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.

61. 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. **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.

62. **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. .

63. **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.

64. **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.

65. **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.

66. **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

67. notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

68. **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:

69. To the City: Attn. City Clerk Copy to: Attn. City Attorney

70. City of La Crosse City of La Crosse

71. 400 La Crosse Street 400 La Crosse Street

72. La Crosse, WI 54601 La Crosse, WI 54601

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

74. Intentionally omitted.

75. **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.

76. **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

77. 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.

78. **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.

79. **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.

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

81. **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.

82. **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.

83. **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.

**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.

84. **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.

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

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

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